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**STATE RETIREMENT SYSTEM (R20-0901)**

Title 2, Chapter 8, Article 1, Retirement System

**Amend:** R2-8-115, R2-8-126

**Repeal:** R2-8-120

**New Section:** R2-8-127, R2-8-128, R2-8-129, R2-8-130, R2-8-131, R2-8-132, R2-8-133



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** September 1, 2020

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

**FROM:** Council Staff

**DATE:** August 11, 2020

**SUBJECT: STATE RETIREMENT SYSTEM**  
Title 2, Chapter 8, Article 1, Retirement System

**Amend:** R2-8-115, R2-8-126

**Repeal:** R2-8-120

**New Section:** R2-8-127, R2-8-128, R2-8-129, R2-8-130, R2-8-131, R2-8-132,  
R2-8-133

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### **Summary:**

This is a regular rulemaking from the Arizona State Retirement System (ASRS) which seeks to amend two rules, repeal one rule, and add seven rules to Title 2, Chapter 8, Article 1 regarding application to and administration of the state retirement trust fund. Specifically, ASRS seeks to update its rules to clarify how to submit various retirement, refund, and survivor applications for benefits, thereby increasing understandability of how to obtain ASRS benefits and increasing the efficiency of the administration.

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

ASRS cites both general and specific statutory authority for these rules.

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

ASRS 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?**

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

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

In the rulemaking, ASRS is updating rules regarding the various retirement options and survivor benefits to better reflect necessary application information. Incorrect or insufficient applications can cause significant benefit distribution delays. Implementing clear and concise language will help ASRS members apply for benefits and submit information in a timely manner.

ASRS administrates how public-sector employers and employees participate in the ASRS. Because of this, ASRS and its rules have little to no economic impact on private-sector businesses, small businesses, or consumers.

**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?**

ASRS believes this rulemaking is the least costly and least intrusive method because it will clarify information that is required to process various benefits applications without imposing any additional requirements on the public.

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

Key stakeholders include: ASRS, active ASRS members, retired ASRS members, and active and retired member's beneficiaries.

ASRS will benefit from the rulemaking because increased member understanding of how to obtain ASRS benefits will lead to fewer corrections and appeals processed by ASRS. This will therefore increase the efficiency of the administration.

ASRS active and retired members, and their beneficiaries will benefit from the rule by having an increased understanding how to obtain benefits. This increased understanding benefits members since it will reduce the time ASRS takes to process their document, leading to members and their beneficiaries receiving benefits quickly.

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

Other than formatting changes to R2-8-133(J), and conforming changes to the remaining subsections in that section, ASRS has made no other changes from the proposed rules. Therefore, the final rules, considered as a whole, have not substantially changed from the proposed rules.

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

ASRS indicates it received no written comments regarding the rulemaking. Furthermore ASRS indicates no one attended oral proceedings regarding the rulemaking on June 30, 2020.

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 federal laws applicable to these rules.

11. **Conclusion**

This regular rulemaking from ASRS seeks to amend two rules, repeal one rule, and add seven rules to Title 2, Chapter 8, Article 1 regarding application to and administration of the state retirement trust fund. Specifically, ASRS seeks to update its rules to clarify how to submit various retirement, refund, and survivor applications for benefits, thereby increasing understandability of how to obtain ASRS benefits and increasing the efficiency of the administration. ASRS is requesting the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

July 13, 2020

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

**Re: A.A.C. Title 2. Administration  
Chapter 8. State Retirement System 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:

1. Close of record date: The rulemaking record was closed on June 30, 2020 following a period for public comment and an oral proceeding.
2. Relation of the rulemaking to a five-year-review report: This rulemaking relates in part to a Five-year Review Report that was approved by the Council on July 7, 2020.
3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.
4. Immediate effective date: An immediate effective date is not requested.
5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.
6. 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 the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.
7. List of documents enclosed:
  - a. Cover letter signed by the Board's Assistant Director;
  - b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
  - c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,



Jeremiah Scott  
Assistant Director

**NOTICE OF FINAL RULEMAKING  
TITLE 2. ADMINISTRATION  
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**

**PREAMBLE**

<b><u>1. Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R2-8-115	Amend
R2-8-120	Repeal
R2-8-126	Amend
R2-8-127	New Section
R2-8-128	New Section
R2-8-129	New Section
R2-8-130	New Section
R2-8-131	New Section
R2-8-132	New Section
R2-8-133	New Section

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

Authorizing statute: A.R.S. § 38-714(E)(4)

Implementing statutes: A.R.S. §§ 38-760, 38-762, 38-763, and 38-764

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

**a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Not applicable.

**b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

Not applicable.

**4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rules:**

Notice of Docket Opening: 26 A.A.R. 978, May 15, 2020  
Notice of Proposed Rulemaking: 26 A.A.R. 947, May 15, 2020

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

Name: Jessica A.R Thomas, Rules Writer  
Address: Arizona State Retirement System  
3300 N. Central Ave., Ste. 1400  
Phoenix, AZ 85012-0250  
Telephone: (602) 240-2039  
E-Mail: [JessicaT@azasrs.gov](mailto:JessicaT@azasrs.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 ASRS needs to update its rules regarding the various retirement options and survivor benefits to better reflect necessary application information.

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

None

**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 ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies what information is required in order to

submit a retirement or survivor benefit application and how the ASRS will process such applications.

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

The ASRS made formatting changes to R2-8-133(J) and conforming changes to the remaining subsections in that section.

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

The ASRS received no written comments regarding the rulemaking. No one attended the oral proceeding on June 30, 2020.

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

None

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

None of the rules requires 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:**

There are no federal laws applicable to these rules.

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

No analysis was submitted.

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

None

**14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the**

**agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable.

**15. The full text of the rules follows:**

**TITLE 2. ADMINISTRATION**  
**CHAPTER 8. STATE RETIREMENT SYSTEM BOARD**  
**ARTICLE 1. RETIREMENT SYSTEM**

Section

- R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death; ~~Payment of Survivor Benefits Upon the Death of a Member~~
- ~~R2-8-120. Designating a Beneficiary; Spousal Consent to Designation~~ Repealed
- R2-8-126. ~~Calculating Optional Forms of Benefits~~ Retirement Application
- R2-8-127. Re-Retirement Application
- R2-8-128. Joint and Survivor Retirement Benefit Options
- R2-8-129. Period Certain and Life Annuity Retirement Options
- R2-8-130. Rescind or Revert Retirement Election; Change of Contingent Annuitant
- R2-8-131. Designating a Beneficiary; Spousal Consent to Beneficiary Designation
- R2-8-132. Survivor Benefit Options
- R2-8-133. Survivor Benefit Applications

## ARTICLE 1. RETIREMENT SYSTEM

### **R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death; ~~Payment of Survivor Benefits Upon the Death of a Member~~**

A. The following definitions apply to this Section unless otherwise specified:

1. ~~“Acceptable documentation” means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.~~ “DRO” means the same as “domestic relations order” in A.R.S. § 38-773(H)(1).
2. “Eligible retirement plan” means the same as in A.R.S. § 38-770(D)(3).
3. “Employer number” means a unique identifier the ASRS assigns to a member employer.
4. “Employer plan” means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(c), (d), (e), and (f).
5. “LTD” Means the same as in R2-8-301.
6. “On file” means ASRS has received the information.
- ~~5.7.~~ “Process date” means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.
- ~~6.8.~~ “Warrant” means a voucher authorizing payment of funds due to a member.

**B.** A member who terminates from all ASRS employment by other than retirement or death and desires a return of the member’s contributions, including amounts received for the purchase of service, any employer contributions authorized under A.R.S. § 38-740, and

interest on the contributions, shall request from the ASRS, in writing or verbally, the documents necessary to apply for the withdrawal of the member's contributions.

C. Upon request to withdraw by the member, the ASRS shall provide:

1. An Application for Withdrawal of Contributions and Termination of Membership form to the member, and
2. An Ending Payroll Verification - Withdrawal of Contribution and Termination of Membership form to the employer, if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS.

D. The member shall complete and return to the ASRS the Application for Withdrawal of Contributions and Termination of Membership form that includes the following information:

1. The member's full name;
2. The member's Social Security number or U.S. Tax Identification number;
3. The member's current mailing address, if not On File with ASRS;
4. ~~The member's daytime telephone number, if applicable;~~
- ~~5.~~4. The member's birth date, if not On File with ASRS;
6. ~~The date of termination;~~
- ~~7.~~5. ~~Dated~~ Notarized signature of the member certifying that the member:
  - a. Is no longer employed by any ~~ASRS employer~~ Employer;
  - b. Is neither under contract nor has any verbal or written agreement for future employment with an ~~ASRS employer~~ Employer;

- c. Is not currently in a leave of absence status with an ~~ASRS~~  
~~employer~~Employer;
- d. Understands that each of the member's former ~~ASRS~~  
~~employers~~Employers will complete a an ending payroll verification form  
if ~~payroll transactions occurred with the~~ ASRS has received contributions  
for the member employer within the six months ~~before~~ immediately  
preceding the process date the member submitted the request to ASRS;
- e. Understands that the member's most recent Employer will complete an  
ending payroll verification form for the member if the member has  
reached the member's required beginning date pursuant to A.R.S. § 38-  
775;
- e. f. Has read and understands the Special Tax Notice Regarding Plan  
Payments the member received with the application and the member elects  
to waive the member's 30-day waiting period to consider a rollover or a  
cash distribution;
- f. g. Understands that the member is forfeiting all future retirement rights and  
privileges of membership with ~~the~~ ASRS;
- g. h. Understands that ~~long-term disability~~LTD benefits will be canceled if the  
member elects to withdraw contributions while receiving or electing to  
receive long-term disability benefits;
- h. i. Understands that if the member elects to roll over all or any portion of the  
member's distribution to another employer plan, it is the member's  
responsibility to verify that the receiving employer plan will accept the

rollover and, if applicable, agree to separately account for the pre-tax and post-tax amounts rolled over and the related subsequent earnings on the amounts;

~~i.~~ j. Understands that if the member elects to roll over all or any portion of the member's distribution to an individual retirement account, it is the member's responsibility to separately account for pre-tax and post-tax amounts; and

~~j.k.~~ k. Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for ~~rollover~~ roll over will be paid directly to the member and any taxable amounts will be subject to ~~20% federal income tax withholding and 5% state~~ applicable state and federal tax withholding;

l. Understands that the member is not considered terminated and cannot withdraw the member's ASRS contribution if the member was called to active military service and is not currently performing services for an Employer;

m. Understands that any person who knowingly makes any false statement with an intent to defraud the ASRS is guilty of a Class 6 felony in accordance with A.R.S. §38-793.

~~8.6.~~ Specify that:

a. The entire amount of the distribution be paid directly to the member,

b. The entire amount of the distribution be ~~transferred~~ rolled over to an eligible retirement plan, or

- c. An identified amount of the distribution be ~~transferred~~ rolled over to an eligible retirement plan and the remaining amount be paid directly to the member; and
- 9. 7. If the member selects all or a portion of the withdrawal be ~~paid~~ rolled over to an eligible retirement plan, specify;
  - a. The type of eligible retirement plan; and
  - b. ~~The eligible retirement plan account number, if applicable; and~~
  - e.b. The name and mailing address of the eligible retirement plan.
- ~~E.~~ ~~If the member requesting the withdrawal has been inactive for five years or more, and if the member's account balance is \$1,000 or more, the member requesting the withdrawal shall provide a copy of a driver license or a form of other government issued identification to the ASRS.~~
- F. E.** If ASRS has received contributions ~~a payroll transaction~~ for the member occurred with ~~any ASRS employer~~ within six months ~~before~~ immediately preceding the process date the member submitted the request to ASRS each ~~ASRS employer~~ Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the following information:
  - 1. The member's full name;
  - 2. The member's Social Security number or U.S. Tax Identification number;
  - 3. The member's termination date;
  - 4. The member's final pay period ending date;
  - 5. The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions;

6. The ~~ASRS employer's~~ Employer's name and telephone number;
7. The ~~employer~~Employer ~~number~~Number;
8. The name and title of the authorized ~~employer~~Employer representative;
9. Certification by the authorized ~~employer~~Employer representative that:
  - a. The member ~~terminated employment~~Terminated Employment and is neither under contract nor bound by any verbal or written agreement for employment with the ~~employer~~Employer;
  - b. There is no agreement to re-employ the member; ~~and~~
  - c. ~~The authorized employer representative has the legal power to bind the employer in transactions with the ASRS; and~~ Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
  - d. The authorized Employer representative certifies that they are the Employer user named on the Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form and their title and contact information is current and correct.

10. ~~The signature of the authorized employer representative and date of signature.~~

**F.** If the member has attained a required beginning distribution date as of the date the member submitted the request to ASRS, the most recent Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the information contained in subsection (E).

- G.** If the member requests a return of contributions and a ~~warrant~~ Warrant is distributed during the fiscal year that the member began membership in the ASRS, no interest is paid to the account of the member.
- H.** If the member requests a return of contributions after the first fiscal year of membership, the ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(A) to the account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the ~~warrant~~ Warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.
- I.** Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, after the ASRS has received any Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership forms, a member is entitled to payment of the amount due to the member as specified in subsection (G) or (H) unless a present or former spouse submits to the ASRS a ~~domestic relations order~~ certified copy or original DRO that specifies entitlement to all or part of the return of contributions under A.R.S. § 38-773 before the ASRS returns the contributions as specified by the member.
- J.** A member may cancel an Application for Withdrawal of Contributions and Termination of Membership form at any time before the return of contributions is disbursed by submitting written notice to ASRS to cancel the request.

**K.** If an Application for Withdrawal of Contributions and Termination of Membership form is completed through the member's secure ASRS account, the secure login and successful submission of the knowledge based answers shall serve as the member's notarized signature required under subsection (D)(5).

**J.** ~~Upon the death of a member, the ASRS shall distribute the survivor benefits according to the most recent, acceptable documentation that is on file with the ASRS that was received prior to the date of the member's death, unless otherwise provided by law.~~

**K.** ~~If there is no designation of beneficiary or if the designated beneficiary predeceases the member, the survivor benefit is paid as specified in A.R.S. § 38-762(E). The designated beneficiary or other person specified in A.R.S. § 38-762(E) shall:~~

- ~~1. Provide a certified copy of a death certificate or a certified copy of a court order that establishes the member's death;~~
- ~~2. Provide a certified copy of the court order of appointment as administrator, if applicable; and~~
- ~~3. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an application for survivor benefits, provided by the ASRS, that includes:
  - ~~a. The deceased member's full name,~~
  - ~~b. The deceased member's Social Security number,~~
  - ~~c. The following, as it pertains to the designated beneficiary or other person specified in A.R.S. § 38-762(F):
    - ~~i. Full name;~~
    - ~~ii. Mailing address;~~~~~~

- iii. Contact telephone number;
- iv. Date of birth, if applicable; and
- v. Social Security number or Tax ID number, if applicable.

**R2-8-120. Designating a Beneficiary; Spousal Consent to Designation Repealed**

**A.** The following definitions apply to this Section unless otherwise specified:

- 1. ~~“DRO” means the same as “domestic relations order” in A.R.S. § 38-773(H)(1).~~
- 2. ~~“Joint and survivor annuity” means an optional form of retirement benefits described in A.R.S. § 38-760(B)(1).~~
- 3. ~~“Period certain and life annuity” means an optional form of retirement benefits described in A.R.S. § 38-760(B)(2).~~
- 4. ~~“Spouse” means the individual to whom a member is married under Arizona law.~~

**B.** Effective July 1, 2013, a married member:

- 1. ~~Who is not retired shall name and maintain the member’s current spouse as primary beneficiary of at least 50 percent of the member’s retirement account unless:~~
  - a. ~~Naming or maintaining the current spouse as beneficiary violates another law, existing contract, or court order; or~~
  - b. ~~The spouse consents to an alternate beneficiary; and~~
- 2. ~~Who retires shall choose a joint and survivor annuity and name the member’s current spouse as contingent annuitant of at least 50 percent of the member’s retirement benefit unless the spouse consents to an alternative.~~

**C.** Application of subsection (B).

1. ~~The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (B).~~
2. ~~The ASRS shall not apply subsection (B) to a lump sum retirement authorized under A.R.S. § 38-764.~~
3. ~~The ASRS shall not apply subsection (B) if a member submits a letter to the ASRS in which the member affirms under penalty of perjury that spousal consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).~~

**D.** ~~Changing a beneficiary designation:~~

1. ~~If a married member changes a beneficiary designation on or after July 1, 2013, the member shall ensure that the new beneficiary designation is consistent with the requirements specified in subsection (B);~~
2. ~~If a married member who retired before July 1, 2013, and:~~
  - a. ~~Chose a straight life annuity wishes to change the member's beneficiary, the member shall ensure that the new beneficiary designation is consistent with subsection (B); or~~
  - b. ~~Chose a period certain and life annuity or joint and survivor annuity wishes to change either the annuity option or the contingent annuitant, the member shall ensure that the new beneficiary designation is consistent with subsection (B).~~

**E.** ~~Re-retirement. A married member who re-retires, as described in A.R.S. § 38-766:~~

1. ~~Within 60 months of the member's previous retirement date, shall elect the same annuity option and beneficiary as the member made at the time of the previous retirement; or~~
2. ~~More than 60 months after the member's previous retirement date, shall comply with subsection (B).~~

**F.** ~~Involuntary cancellation of retirement. If a married member retires on or after July 1, 2013, and is issued one or more estimate checks but fails to comply with subsection (B) within 30 days after the member's effective retirement date, the member shall submit a signed letter to ASRS stating that the member's spouse refuses to consent to the chosen alternative and asking that the retirement be cancelled. The member may submit another retirement application that complies with subsection (B). The member's new effective retirement date is the date ASRS receives the new application. ASRS shall not issue additional estimate checks to a member whose retirement was involuntarily cancelled.~~

**G.** ~~Survivor benefits:~~

1. ~~If a married member last made a beneficiary designation before July 1, 2013, the ASRS shall, at the time of the member's death, honor the beneficiary designation even if the beneficiary designation is not consistent with the requirements specified in subsection (B); and~~
2. ~~If a married member made a beneficiary designation on or after July 1, 2013, that is not consistent with the requirements specified in subsection (B), the ASRS shall, at the time of the member's death:~~
  - a. ~~Notify both the spouse and designated beneficiary and:~~

- ~~i. Provide the spouse with an opportunity to waive the right under subsection (B); and~~
- ~~ii. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (B); and~~
- ~~b. Designate 50 percent of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond under subsection (G)(2)(a) within 30 days after notification.~~

~~**H.** Effect of legal documents. In general, a legal document such as a QDRO or prenuptial agreement will supersede the requirements in subsection (B). The ASRS shall ask the Office of the Attorney General to review the legal document before the ASRS decides how to disburse the retirement benefit.~~

~~**I.** Spousal waiver and consent; consent revocation~~

- ~~1. The current spouse of a member has a right to:
  - ~~a. Be designated as primary beneficiary of at least 50 percent of the member's retirement account, and~~
  - ~~b. Have the member choose a joint and survivor annuity with the spouse as contingent annuitant of at least 50 percent of the retirement benefit.~~~~
- ~~2. To waive the right described in subsection (I)(1) and consent to an alternative, the current spouse shall complete and have notarized a spousal consent form, which is available from the ASRS. If the current spouse is not capable of completing the spousal consent form because of a documented incapacitating mental or physical~~

~~condition, a person with power of attorney or a conservator may complete the spousal consent form on behalf of the current spouse.~~

- ~~3. A spouse may revoke a waiver and consent by sending written notice to ASRS and ensuring the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.~~

### **R2-8-126. Calculating Optional Forms of Benefits Retirement Application**

A. For the purposes of this Section, the following definitions apply, unless stated otherwise:

- ~~1. “Prior service credit” means a “service credit” listed in R2-8-501(24), credited service that is earned according to A.R.S. § 38-739, or a service credit that is transferred or redeemed according to A.R.S. §§ 38-730, 38-771, or 38-921 et seq.~~  
“Acceptable documentation” means any written request containing all the accurate, required information, dates, and signatures necessary to process the request.
- ~~2. “Acceptable form” means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.~~
- ~~3. “Applicable retirement date” means the later of:~~
  - ~~a. The date a member retires from the ASRS for the first time; or~~
  - ~~b. The date a member re-retires from the ASRS after returning to active membership.~~
- ~~4. “Conservator” means the same as in A.R.S. § 14-7651.~~
- ~~5. “DRO” means the same as in R2-8-115.~~

6. “Joint and survivor retirement benefit option” means an optional form of retirement benefits described in A.R.S. § 38-760(B)(1).
7. “Legal documentation” means:
  - a. One document issued from a United States government entity; or
  - b. Two documents issued from one or more federal, state, local, sovereign, medical, or religious institution.
8. “LTD” means the same as in R2-8-301.
9. “Irrevocable PDA” means the same as in R2-8-501.
10. “On file” means the same as in R2-8-115.
- ~~2.~~ 11. “Original retirement date” means the later of:
  - a. The date a member retires from the ASRS for the first time; or
  - b. The date a member re-retires from the ASRS after returning to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C).
11. “Period certain and life annuity retirement benefit option” means an optional form of retirement benefits described in A.R.S. § 38-760(B)(2).
12. “Spouse” means the individual to whom a member is married under Arizona law.
13. “Straight life annuity” means the same as monthly life annuity according to A.R.S. § 38-757.

**B.** ~~An individual who is 104 years of age or older at the time of retirement is not eligible to elect an option of life annuity with a term certain.~~

~~C. An individual who is 93 years of age or older at the time of retirement is not eligible to elect the options of life annuity with ten years certain or life annuity with 15 years certain.~~

~~D. An individual who is 85 years of age or older at the time of retirement is not eligible to elect the option of life annuity with 15 years certain.~~

B. A member may retire from the ASRS by submitting a Retirement Application to the ASRS that contains the following information:

1. The member's full name;
2. The member's Social Security number or U.S. Tax Identification number;
3. The member's marital status, if not On File with ASRS;
4. The member's current mailing address; if not On File with ASRS;
5. The member's date of birth, if not On File with ASRS;
6. A retirement date according to A.R.S. § 38-764(A);
7. The retirement option the member is electing;
8. If the member is electing to roll over a lump sum distribution amount to another retirement account, then:
  - a. The type of account and account number, if applicable, to which the member is electing to roll over the lump sum distribution; and
  - b. The name and address of the financial institution of the account to which the member is electing to roll over the lump sum distribution;
9. The following information for each primary beneficiary, unless the member is receiving a mandatory lump sum distribution under subsection (M):
  - a. The beneficiary's full name;

- b. The beneficiary's Social Security number, if the beneficiary is a U.S. citizen;
  - c. The beneficiary's date of birth;
  - d. The beneficiary's relationship to the member; and
  - e. The percent of benefit the beneficiary may receive upon death of the member, if the member is designating more than one beneficiary.
10. Whether the member is electing the Optional Health Insurance Premium Benefit;
11. The following spousal consent information, if the member is married and is electing a retirement option other than a Joint and Survivor Retirement Benefit Option with at least 50% of the retirement benefit designated to the member's spouse:
- a. Whether the member's spouse consents to the member making a beneficiary election that provides the member's spouse with less than 50% of the member's account balance;
  - b. Whether the member's spouse consents to the member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
  - c. The member's spouse's full name; and
  - d. The member's spouse's notarized signature;
12. Whether the member is electing to receive a partial lump sum distribution according to A.R.S. § 38- 760 and if so:
- a. How many months of annuity, up to 36 months, the member is electing to receive as a partial lump sum;

- b. Whether the member is electing to directly receive the partial lump sum distribution reduced by applicable tax withholding amounts;
  - c. Whether the member is electing to roll over all or a portion of the partial lump sum distribution amount to one other retirement account; and
  - d. Whether the member is electing to use the partial lump sum distribution to purchase service credit with ASRS based on a service purchase request dated before January 6, 2013;
13. Acknowledgement of the following statements of understanding:
- a. The member is aware of the member's LTD stop-payment date and any disability benefits the member is receiving shall cease upon the retirement date the member elects according to subsection (B)(6);
  - b. The member understands that if an overpayment exists, ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with ASRS LTD claims administrator shall cease;
  - c. The member understands that if the member is submitting written notice of a changed retirement date, benefit option, or partial lump sum increment selection, ASRS shall distribute the member's benefit as of the later of:
    - i. The date ASRS receives the most recent Acceptable Documentation; or
    - ii. The retirement date contained in the most recent Acceptable Documentation.

- d. The member has received the Special Tax Notice Regarding Plan Payments;
- e. The member has received the Return to Work information and will comply with the laws and rules governing the member's return to work;
- f. The member authorizes ASRS and the banking institution identified in subsection (W) to debit the member's account for the purposes of correcting errors and returning any payments inadvertently made after the member's death;
- g. The member understands that the member may have a one-time option to rescind a Joint and Survivor Retirement Benefit Option or a Period Certain and Life Annuity Retirement Benefit Option according to R2-8-130;
- h. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
- i. The member acknowledges that the member has complied with A.R.S. §§ 38-755 and 38-776 regarding spousal consent; and

14. The member's notarized signature.

- C.** If a Retirement Application is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(14).
- D.** If the retirement date the member elects according to subsection (B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.

**E.** A member who elects to roll over all or a portion of the partial lump sum distribution amount according to subsection (B)(12)(c), shall submit the following written information to the ASRS:

1. The type of account and account number to which the member is electing to roll over;
2. The name and address of the financial institution of the account to which the member is electing to roll over; and
3. If the member is electing to roll over a portion of the partial lump sum distribution, then the amount the member is electing to roll over.

**F.** If the member elects to roll over all or a portion of their lump sum or partial lump sum distribution, the ASRS shall only roll over the distribution to one retirement account.

**G.** Any portion of the partial lump sum distribution that is not rolled over to another retirement account according to subsection (B) shall be distributed directly to the member.

**H.** If the member elects to use the partial lump sum distribution to purchase service credit according to subsection (B)(12)(d) the member shall submit the following written information to the ASRS:

1. The number of the service purchase invoice;
2. Whether the member is electing to apply the partial lump sum distribution to all eligible service on that invoice;
3. If the member is not electing to apply the partial lump sum distribution to all eligible service on that invoice, then:

- a. The amount of the partial lump sum distribution to be applied to that invoice; or
  - b. The number of years on that invoice the member is electing to purchase with the partial lump sum distribution;
- 4. If the member is electing to make a payment on that service purchase invoice with after-tax payments, a rollover, or termination pay according to A.R.S. § 38-747;
  - 5. Whether the member is electing to authorize the ASRS to increase the number of months of annuity, not to exceed 36 months, to purchase the eligible service on that service purchase invoice, if the member elected an insufficient number of months of annuity to receive as a partial lump sum according to subsection (G) to complete the service purchase invoice;
  - 6. If the member does not have eligible service to purchase on that invoice, whether the member is electing to cancel the member's election to receive a partial lump sum distribution.
- I.** A member who elects to receive a partial lump sum distribution shall receive an actuarially reduced annuity retirement benefit according to A.R.S. § 38-760.
  - J.** ASRS shall disburse any partial lump sum amount that is not applied to a service purchase invoice according to subsection (G) directly to the member after withholding applicable taxes.
  - K.** After submitting a Retirement Application according to subsection (B), a member may make changes to the member's Retirement Application by submitting written notice to the ASRS of the specific changes according to A.R.S. § 38-764(H).

- E.L.** If ASRS has received contributions for the member within the three years immediately preceding the member's retirement date, the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer. If ASRS has received contributions for the member within the six months immediately preceding the member's retirement date and the member shall receive a one-time lump sum payment according to subsection (P), the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer.
- M.** If the member has reached the age for minimum required distribution according to A.R.S. § 38-775(H)(4), the ASRS shall send a New Retirement Ending Payroll Verification form to the member's most recent Employer.
- N.** The Employer shall submit the completed New Retirement Ending Payroll Verification form to ASRS with the following information:
1. The member's Termination date or last day of ASRS membership with that Employer, if applicable;
  2. The member's total salary paid during their last fiscal year;
  3. The member's compensation for the last pay period;
  4. The name and title of the authorized Employer representative;
  5. Certification by the authorized Employer representative that:
    - a. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
    - b. The authorized Employer representative certifies that they are the Employer user named on the New Retirement Ending Payroll Verification form and their title and contact information is current and correct.

- O.** The ASRS shall cancel a member's Retirement Application if ASRS does not receive all forms and information required under this section within six months immediately after the member's retirement date.
- F.P.** As authorized under A.R.S. § 38-764(F), if a member's ~~the life annuity~~ Straight Life Annuity, after any applicable early retirement reduction factor, ~~of any Plan member~~ is less than a monthly amount of \$100, ~~determined by the Board~~, the ASRS shall not pay the annuity. Instead, the ASRS shall make a one-time mandatory lump sum payment in the amount determined by using appropriate actuarial assumptions.
- Q.** For purposes of calculating a member's retirement benefit according to A.R.S. §§ 38-758 and 38-759, ASRS shall calculate age to the nearest day as of the member's retirement date.
- R.** Based on the retirement option the member elects according to A.R.S. § 38-760, ~~The~~ ASRS shall calculate a member's actuarially reduced ~~or beneficiary's~~ benefits, based on the attained age of the member, and if necessary, the attained age of the ~~or contingent annuitant beneficiary, determined in years and full months,~~ as of the date of the member's retirement as follows:
1. ~~The date of the member's retirement;~~ For a partial lump sum retirement benefit option, ASRS shall calculate age to the nearest day as of the member's retirement date;
  2. ~~The date of the member's death, if the beneficiary is eligible to elect the survivor benefit as monthly income for life according to A.R.S. § 38-762(C).~~ For a Joint and Survivor Retirement Benefit Option, ASRS shall calculate age to the nearest day as of the member's retirement date; and

3. For a mandatory lump sum payment according to subsection (O) or a Period Certain and Life Annuity Retirement Benefit Option, ASRS shall calculate age to the nearest full month in addition to calculating age according to subsection (P) as necessary.
- S.** If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.
- G.** ~~Before the ASRS applies the calculation for an optional form of retirement benefit provided in A.R.S. § 38-760, the ASRS shall include any prior service credit benefit that applicable to the life annuity of the member.~~
- H.** ~~A member who is ten years and one day, or more, older than the member's non-spousal contingent annuitant is not eligible to participate in a 100% joint and survivor option. A member who is 24 years and one day, or more, older than the member's non-spousal contingent annuitant is not eligible to participate in a 66 2/3% joint and survivor option.~~
- I.** ~~For members whose original retirement date is on or after March 6, 2016, notwithstanding subsection (H), a member who is ten years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 100% joint and survivor option, if:~~
- ~~1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and~~
  - ~~2. The member submits a DRO to the ASRS which requires the ex-spouse to be the contingent annuitant on the member's account.——~~

- ~~J. For member whose original retirement date is on or after March 6, 2016, notwithstanding subsection (H), a member who is 24 years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 66 2/3% joint and survivor option, if:~~
- ~~1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and~~
  - ~~2. The member submits a DRO to the ASRS which requires the ex-spouse to be the contingent annuitant on the member's account.~~
- ~~K. Notwithstanding subsection (F), for purposes of determining whether a member is eligible to participate in a joint and survivor option, the ASRS shall calculate the difference in a member's age and the contingent annuitant's age based on the birthdates of the member and the contingent annuitant.~~
- T. If a member does not retire by the date minimum distribution payments are required according to A.R.S. §§ 38-759 and 38-775, the required minimum distribution payments will accrue interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) and in effect on the date the required minimum distribution payments should have begun.
- U. The ASRS shall distribute any required minimum distribution payments with interest according to subsection (T) with the member's first finalized benefits payment.
- V. If a member submits a retirement application after the member's minimum required distribution date, the ASRS shall determine that the member's Applicable Retirement Date is the date the required minimum distribution payments should have begun.

- W.** Notwithstanding any other section, an inactive member who does not have contributions related to compensation is not eligible for retirement.
- X.** The ASRS shall issue a debit benefit card, if the annuitant does not provide the following direct deposit information through the annuitant's secure ASRS account or by a notarized Direct Deposit form:
1. The member's full name;
  2. The member's bank account routing number;
  3. The member's bank account number; and
  4. The type of the account.
- Y.** The ASRS shall disburse benefits payments according to subsection (R), only retroactive to the later date specified in A.R.S. § 38-759(B).
- Z.** ASRS shall not issue additional estimate checks to a member whose retirement is canceled.

### **R2-8-127. Re-Retirement Application**

- A.** The definitions in R2-8-126 apply to this section.
- B.** If a member has previously retired from ASRS, the member may re-retire from ASRS by submitting a Re-Retirement Application to the ASRS that contains:
1. The information identified in R2-8-126(B)(1) through (B)(8);
  2. The retirement option the member is electing, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);

3. The information identified in R2-8-126(B)(11);
4. Whether the member is electing the Optional Health Insurance Premium Benefit, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
5. The information identified in R2-8-126(B)(13), if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
6. Acknowledgement of the following statements of understanding:
  - a. The member's signature confirms the member's intent to re-retire and applies to all the sections included in the Re-Retirement Application.
  - b. The member understands that as a re-retiree, the member must keep the same retirement option and beneficiary the member elected when the member previously retired from ASRS, unless the member returned to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C);
  - c. The member may change the member's beneficiary after re-retiring and changing the beneficiary may change the member's monthly annuity;
  - d. The member has complied with A.R.S. §§ 38-755 and 38-766 regarding spousal consent;
  - e. The member certifies that the member has read and understands the instructions and Special Tax Notice Regarding Plan Payments;

- f. The member authorizes ASRS and the banking institution the member listed for direct deposit to debit the member's account for the purpose of correcting errors and returning any payments inadvertently paid after the member's death;
- g. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
- h. The member understands that if an overpayment exists, the ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with the ASRS LTD claims administrator shall cease.

7. The member's notarized signature.

C. If the retirement date the member elects according to R2-8-126(B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.

**R2-8-128. Joint and Survivor Retirement Benefit Options**

A. The definitions in R2-8-126 apply to this section.

B. A member who is ten years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 100% Joint and Survivor Retirement Benefit Option.

- C. A member who is 24 years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 66 2/3% Joint and Survivor Retirement Benefit Option.
- D. For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (B), a member who is ten years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 100% Joint and Survivor Retirement Benefit Option, if:
1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
  2. The member submits an original or certified copy of a DRO to ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- E. For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (C), a member who is 24 years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 66 2/3% Joint and Survivor Retirement Benefit Option, if:
1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
  2. The member submits an original or certified copy of a DRO to the ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- F. Notwithstanding any other section, for purposes of determining whether a member is eligible to participate in a Joint and Survivor Retirement Benefit Option, the ASRS shall

calculate the difference in a member's age and the contingent annuitant's age based on the birthdates of the member and the contingent annuitant. For purposes of this section, a contingent annuitant must be a living person.

**R2-8-129. Period Certain and Life Annuity Retirement Options**

- A.** The definitions in R2-8-126 apply to this section.
- B.** An individual who is 104 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option.
- C.** An individual who is 93 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with ten years certain or 15 years certain.
- D.** An individual who is 85 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with 15 years certain.
- E.** The ASRS shall calculate the period certain term as beginning on the first day of the first full calendar month following the member's Applicable Retirement Date.
- F.** Notwithstanding subsection (E), the ASRS shall calculate the period certain term as beginning on the member's Applicable Retirement Date if the member's Applicable Retirement Date is the first day of the month.

**R2-8-130. Rescind or Revert Retirement Election; Change of Contingent Annuitant**

- A.** The definitions in R2-8-126 apply to this section.
- B.** According to A.R.S. § 38-760(B)(2), for a member whose Original Retirement Date is after August 9, 2001, upon the expiration of a member's period certain term the ASRS

shall rescind the member's election and the ASRS shall provide the member a Straight Life Annuity retirement benefit subject to any retirement reductions applicable at the member's Original Retirement Date.

- C.** According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is after August 9, 2001 and before July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term.
- D.** According to A.R.S. § 38-760(B)(1), a member whose Original Retirement Date is before July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the member's death.
- E.** A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term if the member provides proof to ASRS of the death of the primary beneficiary or an original or certified copy of a DRO showing that the primary beneficiary has ceased to be a primary beneficiary.
- F.** A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the death of the member if the member provides proof to ASRS of the death of the contingent

annuitant or an original or certified copy of a DRO showing that the contingent annuitant has ceased to be a contingent annuitant.

**G.** A member who elected to rescind a Period Certain and Life Annuity Retirement Benefit Option according to subsection (C) may elect to revert to the Period Certain and Life Annuity Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).

**H.** A member who elected to rescind a Joint and Survivor Retirement Benefit Option according to subsection (D) may elect to revert to the Joint and Survivor Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).

**I.** A member may only revert to the same Period Certain and Life Annuity Retirement Benefit Option the member rescinded according to subsection (C) prior to the expiration of the period certain term the member elected at the member's most recent retirement.

**J.** A member who rescinds their election according to subsections (E) or (F) is not eligible to revert to a Period Certain and Life Annuity Retirement Benefit Option or a Joint and Survivor Retirement Benefit Option.

**K.** Notwithstanding any other provision, the time period of a Period Certain and Life Annuity Retirement Benefit Option shall be continuous from the member's retirement date until the term expires regardless of whether the member rescinds or reverts to another retirement option.

**L.** A member who wants to rescind or revert a retirement election according to subsections (C) through (H) shall ensure ASRS receives an Application to Rescind, Revert or Change Contingent Annuitant at least one day prior to the member's death.

**M.** In order to rescind, revert, or change a contingent annuitant, the member shall submit an Application to Rescind, Revert or Change Contingent Annuitant with the following information:

1. The member's full name;
2. The member's Social Security number or U.S. Tax Identification number;
3. The member's marital status, if not On File with ASRS;
4. Whether the member is electing to rescind, revert, or change a contingent annuitant;
5. The member's notarized signature acknowledging the following statements of understanding:
  - a. For rescinding a retirement election:
    - i. By this action, and the member's signature, the member is aware that the member's designated beneficiary or contingent annuitant will not continue with monthly benefits after the member's death;
    - ii. The member is aware that a certified copy of the member's designated beneficiary's or contingent annuitant's death certificate or an original or certified copy of a DRO is required if the member retired or re-retired on or after July 1, 2008;
    - iii. At the time of the member's death, if the ASRS has not disbursed the total employee contributions on the member's account, plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's

retirement date, the balance will be payable in a lump sum to the beneficiary named on the member's most recent Acceptable Form.

- b. For changing a contingent annuitant or beneficiary:
  - i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named on the member's most recent Acceptable Form will receive the previously elected percentage amount of the member's monthly benefit for their lifetime following the member's death;
  - ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of the contingent annuitant's Legal Documentation is required and the member's benefit will be recalculated based on the member's age and the age of the member's new contingent annuitant as of the effective date of the member's request according to this section;
  - iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
  - iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member's signature, the beneficiary named on the member's most recent Acceptable Form will receive the remaining term of monthly payments.
- c. For reverting to a previously elected retirement benefit option according to A.R.S. § 38-760:

- i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named the member's most recent Acceptable Form will receive the previously elected percentage amount of the member's monthly benefit for their lifetime following the member's death;
- ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of Legal Documentation showing the contingent annuitant's date of birth is required and the member's benefit will be recalculated based on the member's age and the age of the member's contingent annuitant as of the effective date of the member's request according to this section;
- iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
- iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member's signature, the beneficiary named on the member's most recent Acceptable Form will receive the remaining term of monthly payments.

6. If the member is electing to change a contingent annuitant, the following information for the new contingent annuitant:

- a. Full name;
- b. Social Security number, if the contingent annuitant is a U.S. citizen;
- c. Date of birth; and
- d. Legal relationship to the member.

7. If the member is married, whether the member's spouse consents to the following with the spouse's notarized signature:
- a. The member making a beneficiary designation that provides the member's spouse with less than 50% of the member's account balance;
  - b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option; or
  - c. The member changing or ending the spouse's contingent annuitant status.
8. Whether the spouse's consent is not required because:
- a. The spouse predeceased the member and if so, provide a copy of the spouse's death certificate; or
  - b. The member is divorced and if so, provide an original or certified copy of a DRO.
- N.** If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.
- O.** The effective date of the member's request according to this section is the date on which ASRS receives the Application to Rescind, Revert or Change Contingent Annuitant.
- P.** According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is on or after July 1, 2008 and who elects a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election according to subsection (E) and elect to receive a Straight Life Annuity prior to the expiration of the member's period certain term if one or more of the member's primary beneficiaries dies or ceases to be a beneficiary according to the terms of an original or certified copy of a DRO.

**Q.** The ASRS shall cancel a member's Application to Rescind, Revert, or Change Contingent Annuitant if ASRS does not receive all forms and information required under this section within six months immediately after the ASRS receives the application.

**R2-8-131. Designating a Beneficiary; Spousal Consent to Beneficiary Designation**

**A.** The definitions in R2-8-126 apply to this section.

**B.** In order to designate a beneficiary, a member shall submit an Acceptable Form containing the following information:

1. The Member's full name and one or more of the following information:

a. The Member's Social Security number or U.S. Tax Identification number;

or

b. The Member's address; or

c. The Member's date of birth;

2. The following information for the beneficiary:

a. The full name of the person or entity the member is designating as beneficiary;

b. Whether the beneficiary is being designated as primary or secondary beneficiary;

c. The percentage of the benefit the member is allocating to the beneficiary; and

3. The member's notarized signature.

**C.** If a change in a designated beneficiary is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(3).

- D.** If a member submits an Acceptable Form designating a beneficiary without indicating the percentage of the benefit the member is allocating to the beneficiary, the ASRS shall determine that each beneficiary is designated to receive an equal amount of the benefit.
- E.** Effective July 1, 2013, a married member:
- 1.** Who is not retired shall name and maintain the member's current spouse as primary beneficiary of at least 50% of the member's retirement account unless:
    - a.** Naming or maintaining the current spouse as beneficiary violates another law, existing contract, or court order; or
    - b.** The spouse consents to an alternate beneficiary;
  - 2.** Who retires shall choose a Joint and Survivor Retirement Benefit Option and name the member's current spouse as contingent annuitant unless:
    - a.** Naming or maintaining the current spouse as contingent annuitant violates another law, existing contract, or court order; or
    - b.** The spouse consents to an alternate contingent annuitant; or
    - c.** The spouse consents to an alternate annuity option under A.R.S. §§ 38-757 or 38-760.
- F.** The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (E).
- G.** Subsection (E) does not apply to a member who is receiving a mandatory lump sum distribution according to A.R.S. § 38-764.
- H.** Subsection (E) does not apply to a member who submits a Spousal Consent Exception form that contains the member's notarized signature to the ASRS affirming under penalty

of perjury that the member's spouse's consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).

**I.** In order to change a beneficiary designation, a member shall submit the information contained in subsection (B) and:

1. A married member who changes a beneficiary designation on or after July 1, 2013, shall ensure the new beneficiary designation is consistent with subsection (E); or
2. A married member who retired before July 1, 2013, and who wishes to change the contingent annuitant or beneficiary, shall ensure that the new designation is consistent with subsection (E).

**J.** A married member who re-retires according to A.R.S. § 38-766:

1. Within less than 60 consecutive months of active membership from the member's previous retirement date, is not eligible to elect a different annuity option or different beneficiary than the member elected at the time of the previous retirement; or
2. At least 60 consecutive months of active membership after the member's previous retirement date, may elect a different annuity option and different beneficiary than the member elected at the time of the previous retirement, and the election shall comply with subsection (E).

**K.** If a married member submits a retirement application that fails to comply with subsection (E), the member shall submit a new retirement application or written notice of new retirement elections that comply with subsection (E) within six months of the member's Original Retirement Date. The member's new Original Retirement Date is the date ASRS

receives the new application or written notice unless the member elects a later date according to A.R.S. § 38-764.

**L.** If a married member made a beneficiary designation on or after July 1, 2013 that is not consistent with the requirements specified in subsection (E), the ASRS shall, at the time of the member's death:

1. Notify both the spouse and designated beneficiary and:
  - a. Provide the spouse with an opportunity to waive the right under subsection (E); and
  - b. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (E); and
2. Designate 50% of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond to notification according to subsection (L)(1) within 30 days after notification.

**M.** If a married member designated a beneficiary before July 1, 2013 that does not comply with subsection (E), upon the death of the member, the member's spouse may submit written notice to the ASRS prior to disbursement of the member's account with the following information:

1. The member's full name;
2. The member's Social Security number or U.S. Tax Identification number;
3. The spouse's assertion to the spouse's right to community property;
4. An original or copy of the marriage certificate; and
5. An original or certified copy of the member's death certificate.

- N.** If a spouse submits written notice according to subsection (M), the ASRS shall designate the spouse as beneficiary of a percentage of the member's account according to A.R.S. §§25-211 and 25-214 and notify the member's designated beneficiary of the spouse's assertion.
- O.** The ASRS shall determine a spouse's percentage of the member's account according to subsection (L) based on the amount of service credit the member acquired during the marriage divided by the total amount of service credit the member acquired, multiplied by 50%.
- P.** If a beneficiary is notified of a spouse's assertion according to subsection (N), then before ASRS disburses a survivor benefit, the beneficiary may notify ASRS of the beneficiary's intent to appeal the spouse's right to a survivor benefit.
- Q.** Within 30 days, a beneficiary who has notified ASRS of the beneficiary's intent to appeal a survivor benefit disbursement according to subsection (P), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- R.** An original or certified copy of a DRO may supersede the requirements in subsection (B).
- S.** To consent to an alternative retirement benefit option or beneficiary designation, a member's spouse shall complete and have notarized a Spousal Consent form containing the following information:
- 1.** Member's full name;
  - 2.** Member's Social Security number or U.S. Tax Identification number;
  - 3.** Whether the member's spouse is consenting to one or more of the following:

- a. The member making a beneficiary designation that provides the spouse with less than 50% of the member's account balance;
- b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
- c. The member naming a contingent annuitant other than the spouse; and
- d. The spouse's notarized signature.

**T.** A member's spouse may revoke the spouse's consent to an alternative retirement benefit option or beneficiary designation by sending written notice to ASRS with the following information:

- 1. The member's full name
- 2. The member's Social Security number or U.S. Tax Identification number;
- 3. The spouse's full name;
- 4. The spouse's dated signature indicating the spouse is revoking all previous Spousal Consent forms.

**U.** A spouse who is revoking a Spousal Consent form shall ensure the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.

**R2-8-132. Survivor Benefit Options**

- A.** The definitions in R2-8-126 apply to this section.
- B.** If the beneficiary is eligible to elect the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits based on the

attained age of the beneficiary, calculated to the nearest full month, as of the date of the member's death.

**C.** If the beneficiary elects to receive the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits effective date as of the day after the member's death and the ASRS shall pay interest up to the benefits effective date.

**D.** According to A.R.S. § 38-763, if the member elected a Period Certain and Life Annuity Retirement Benefit Option and deceases prior to the expiration of the period certain term, the member's beneficiary may elect to complete the remaining period certain term or the beneficiary may elect to receive a lump sum distribution which is the greater of:

1. The present value of the benefits based on the remaining period certain term; or
2. The member's ASRS account balance plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member.

**E.** Notwithstanding subsection (D), a beneficiary is not eligible to elect to complete the remaining period certain term if the period certain term has expired.

**F.** If the beneficiary elects to complete the remaining period certain term or elects to receive a lump sum that is the present value of the benefits based on the remaining period certain term according to subsection (D), the ASRS shall not pay interest.

**G.** If a member's beneficiary or contingent annuitant does not want to receive a survivor benefit according to 26 U.S.C. § 2518, within nine months after the member's death, the

beneficiary or contingent annuitant may submit a written request to the ASRS with the following information for the beneficiary or contingent annuitant:

1. Full name;
2. Social Security number if the beneficiary or contingent annuitant is a U.S. citizen;
3. Address; and
4. Notarized signature acknowledging the following statements:
  - a. The beneficiary or contingent annuitant is aware that, as a beneficiary or contingent annuitant of the member, the beneficiary or contingent annuitant is entitled to a survivor benefit in the amount specified by the ASRS;
  - b. The beneficiary is renouncing a portion or all of the beneficiary's rights to the member's benefit;
  - c. The contingent annuitant is renouncing all of the contingent annuitant's rights to the member's benefit;
  - d. The beneficiary understands that by renouncing rights to the member's benefit, the portion that the beneficiary is renouncing will be paid to any other survivor on the member's account, or if there is no other designated survivor, the benefit will be paid to the member's estate; and
  - e. The contingent annuitant understands that by renouncing rights to the member's benefit, the ASRS shall pay the member's ASRS account balance plus interest at the Assumed Actuarial Interest and Investment Return Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the

member, to any other survivor on the member's account, or if there is no other designated survivor, to the member's estate.

**H.** According to 26 U.S.C. § 2518, a minor beneficiary's or contingent annuitant's survivor benefit cannot be renounced.

### **R2-8-133. Survivor Benefit Applications**

**A.** The definitions in R2-8-126 apply to this section.

**B.** The ASRS shall not distribute a survivor benefit until a claimant notifies the ASRS of a member's death by telephone or submission of a death certificate, unless the member elected a Joint and Survivor Benefit Option upon retirement.

**C.** Upon notification of the death of a member, the ASRS shall distribute the survivor benefits according to the most recent, Acceptable Form that is On File with the ASRS that was received at least one day prior to the date of the member's death, unless otherwise provided by law.

**D.** The designated beneficiary or other person specified in A.R.S. § 38-762(E) shall provide the following:

1. An original certified death certificate or a certified copy of a court order that establishes the member's death;
2. If the claimant is not a designated beneficiary, but is a person specified in A.R.S. § 38-762(E), a copy of a document issued from a federal, state, local, sovereign, or medical institution showing the claimant's relationship to the deceased member;

3. A certified copy of the court order of appointment as administrator, if applicable;  
and
4. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an Application for Survivor Benefits, provided by the ASRS that includes:
  - a. The deceased member's full name,
  - b. The deceased member's Social Security number or U.S. Tax Identification number,
  - c. The benefit the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing;
  - d. If the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing to roll over a benefit, the following information:
    - i. The claimant's full name;
    - ii. The name of the institution to which the claimant is electing to roll over;
    - iii. The address of the institution to which the claimant is electing to roll over;
    - iv. The full name of the authorized representative of the institution to which the claimant is electing to roll over;
    - v. The signature of the authorized representative of the institution to which the claimant is electing to roll over;
  - e. If the beneficiary is electing to have any of the survivor benefits directly deposited into a bank account, the following information:

- i. Whether the bank account is a checking or savings account;
  - ii. The name of the banking institution to which the benefit is being sent;
  - iii. The routing number;
  - iv. The account number; and
- f. The following information for the designated beneficiary or other person specified in A.R.S. § 38-762(E):
  - i. Full name;
  - ii. Mailing address, if not On File with ASRS;
  - iii. Date of birth, if applicable; and
  - iv. Social Security number or U.S. Tax Identification number, if not On File with ASRS.
- g. The following statements of understanding:
  - i. The designated beneficiary or other person specified in A.R.S. § 38-762(E) has read and understands the Special Tax Notice Regarding Plan Payments they received with this application;
  - ii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit;

iii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death;

iv. Under penalties of perjury, the designated beneficiary or other person specified in A.R.S. § 38-762(E) certifies that:

(1) The Social Security number or U.S. Tax Identification number shown on this application is correct;

(2) They are not subject to backup withholding because:

(a) They are exempt from backup withholding, or

(b) They have not been notified by the Internal Revenue Service that they are subject to backup withholding as a result of a failure to report all interest or dividends, or

(c) The Internal Revenue Service has notified them that they are no longer subject to backup withholding;  
and

(3) They are a legal resident of the United States, unless they are an estate or trust.

v. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands their right to a 30-day notice period to consider a rollover or a cash distribution and they elect to waive the notice period by their election for payment on this application;

- vi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to another eligible retirement plan, it is their responsibility to verify that the receiving plan will accept the rollover and, if applicable, agree to separately account for the taxable and nontaxable amounts rolled over and the related subsequent earnings on such amounts;
- vii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to an IRA plan, it is their responsibility to verify that the receiving IRA institution will accept the rollover and, if applicable, it is their responsibility to separately account for taxable and nontaxable amounts;
- viii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to another eligible retirement plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding;
- ix. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding.

xi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, they may be required to receive a minimum distribution and they certify that the date of birth shown on this form is correct.

5. For a member who elected a Joint and Survivor Retirement Benefit Option, a contingent annuitant shall submit a Joint and Survivor Certification form containing:

a. The following information for the member:

i. Full name;

ii. Social Security number or U.S. Tax Identification number;

iii. Date of death; and

b. The following information for the beneficiary:

i. Legal relationship to the member;

ii. Full name;

iii. Social Security number or United States Tax Identification number, if not On File with ASRS;

iv. Mailing address, if not On File with ASRS;

v. Date of birth, if not On File with ASRS;

vi. If the contingent annuitant is electing to have any of the survivor benefits directly deposited into a bank account, the following information:

(1) Whether the bank account is a checking or savings account;

(2) The name of the banking institution to which the benefit is being sent;

(3) The routing number;

(4) The account number; and

c. The following statements of understanding:

i. The contingent annuitant has read and understands the Special Tax Notice Regarding Plan Payments they received with the Joint and Survivor Certification form;

ii. The contingent annuitant authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit; and

iii. The contingent annuitant authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death.

d. The contingent annuitant's notarized signature.

**E.** Notwithstanding R2-8-132(H), if the beneficiary or contingent annuitant is a minor as of the date of the member's death, the beneficiary or contingent annuitant may submit a written request with the information contained in R2-8-132(G)(1) through (4) within nine months after the minor attains 18 years of age.

- F.** For a member who deceases prior to the member's retirement date, if there is no designation of beneficiary or if the designated beneficiary predeceases the member, the ASRS shall pay a survivor benefit as specified in A.R.S. § 38-762(E).
- G.** The ASRS shall begin disbursing a survivor benefit to a contingent annuitant according to A.R.S. § 38-760(B)(1) upon notification and verification of the member's death by a third party.
- H.** The ASRS shall suspend a survivor benefit for a contingent annuitant unless the contingent annuitant provides the information in subsection (D) within two months of the ASRS disbursing a survivor benefit.
- I.** If the member is domiciled in Arizona, according to A.R.S. § 14-3971, and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits an Affidavit for Collection of Personal Property to ASRS with the following:
1. The claimant's name;
  2. The claimant's Social Security number or U.S. Tax Identification number;
  3. The claimant's mailing address;
  4. The member's name;
  5. The member's Social Security number or U.S. Tax Identification number;
  6. The date of the member's death;
  7. The state and county where the member died;
  8. Statements indicating:
    - a. According to A.R.S. § 14-3971(B)(2)(a), no application or petition for the appointment of a personal representative is pending or has been granted in

any jurisdiction and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date of the member's death;

b. According to A.R.S. § 14-3971(B)(2)(b), the personal representative has been discharged, or more than a year has elapsed since a closing statement has been filed and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date the ASRS receives the Affidavit for Collection of Personal Property;

c. The claimant is the successor of the member and is entitled to the member's personal property because:

i. The claimant is named in the member's will; or

ii. The member did not have a will and the claimant is entitled to the member's personal property by right of intestate succession according to A.R.S. § 14-2103;

d. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(i), then a copy of the member's will;

e. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(ii), then the relationship between the member and the claimant and whether there are other surviving heirs;

f. If there are other surviving heirs, then the name and relationship of each surviving heir;

g. A statement indicating the claimant is making the Affidavit for Collection of Personal Property according to A.R.S. § 14-3971 for the purpose of making a claim to the member's ASRS account; and

h. The claimant's notarized signature.

**J.** If the member is not domiciled in Arizona and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits legal documentation to claim the member's ASRS account that complies with the statutory requirements of the state in which the member was domiciled at the time of the member's death.

**K.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is less than \$10,000 per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's legal guardian submits the following written information:

1. The member's full name;
2. The member's Social Security number or U.S. Tax Identification number;
3. The minor beneficiary's full name;
4. The minor beneficiary's Social Security number or U.S. Tax Identification number;
5. The full name of the minor beneficiary's legal guardian;
6. The minor beneficiary's legal guardian's address, if not On File with ASRS; and
7. The minor beneficiary's legal guardian's signature certifying the minor beneficiary's legal guardian has care and custody of the minor beneficiary.

- L.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is \$10,000 or more per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's conservator submits proof of court-appointed fiduciary responsibility for the minor beneficiary.
- M.** The ASRS shall remit payment to the minor beneficiary according to subsection (K) by sending the minor beneficiary's conservator a check, if the document providing proof of the court-appointed fiduciary responsibility requires payment to be made to a restricted or secure account.
- N.** If a person claims that a beneficiary or claimant is not entitled to a survivor benefit, then before ASRS disburses a survivor benefit, the person may notify ASRS of the person's intent to appeal the beneficiary's or claimant's right to a survivor benefit.
- O.** Within 30 days, a person who has notified ASRS of the person's intent to appeal a survivor benefit disbursement according to subsection (N), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- P.** If the ASRS receives documentation from, or confirmed by, a law enforcement agency, that a beneficiary or claimant may be guilty of the felonious and intentional killing of the member, the ASRS shall not distribute any benefits to the beneficiary or claimant that may be guilty of the felonious and intentional killing of the member until the matter has been adjudicated.
- Q.** If the member's estate has an appointed personal representative, the member's estate shall submit a court document identifying the personal representative for the member's estate before ASRS may distribute a survivor benefit.

- R.** If the member's estate is closed, the person claiming a right to the member's ASRS account shall provide a court document proving the estate is closed.
- S.** If the survivor receives a monthly annuity and does not provide the direct deposit information according to subsection (D)(4)(e) or (D)(5)(b)(vi), ASRS shall issue a debit benefit card.

# ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>[1]</sup>

## TITLE 2. ADMINISTRATION

### CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

#### 1. Identification of the rulemaking:

The ASRS needs to update its rules regarding the various retirement options and survivor benefits to better reflect necessary application information.

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

Currently, the ASRS collects approximately \$2 Billion in contributions each year from approximately 212,000 active members and 667 employers. The ASRS pays approximately \$3 Billion in benefits each year to approximately 160,000 retired members and their survivor beneficiaries.

##### 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:

A misunderstanding of the application requirements for a retirement or survivor benefit can result in incorrect/insufficient applications which can cause significant delay of benefit distributions. This rulemaking will ensure members and employers understand what information is required for specific applications and how the ASRS processes those applications. Implementing clear and concise language will ensure members and Employers understand how to apply for benefits and submit the appropriate information in a timely manner. This rulemaking will ensure the ASRS is consistent with Arizona statutes.

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

As indicated above, this rulemaking will clarify how to submit various retirement, refund, and survivor applications for benefits, thereby increasing understandability of how to obtain ASRS benefits and increasing the efficiency of the administration. Clarifying how the ASRS shall process specific applications will increase understanding of how members may obtain various benefits thereby reducing corrections and appeals that arise out of misunderstanding of how to apply for benefits. Such clarification will ensure that applications are processed more efficiently. As discussed above and below, these rules will increase the clarity and effectiveness of how applications are submitted, which should result in reducing confusion, as well as any potential administrative delay caused by a misunderstanding of the program and its requirements.

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

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administers how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies what information is required in order to submit a

retirement or survivor benefit application and how the ASRS will process such applications.

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: Jessica A.R. Thomas, Rules Writer  
Address: Arizona State Retirement System  
3300 N. Central Ave., Suite 1400  
Phoenix, AZ 85012-0250  
Telephone: (602) 240-2039  
E-mail: [JessicaT@azasrs.gov](mailto:JessicaT@azasrs.gov)

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

In general, all members and Employers of the ASRS will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The ASRS incurred the cost of the rulemaking. The ASRS currently has a total membership of approximately 608,150.

Specifically, active members and survivor beneficiaries who submit various applications for benefits will be directly affected by this rulemaking. These rules will clarify how the ASRS processes various applications. Such clarification will benefit members and Employers by increasing the understandability of how to obtain ASRS benefits.

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:

All active ASRS members and Employers are directly affected by this rulemaking because it will clarify what information is required in order apply for ASRS benefits. However, the ASRS has determined that no new full-time employees will be required to implement and enforce the rules.

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

This rulemaking does not provide any benefits or impose any costs on political subdivisions, other than the cost on some employer charter schools to provide information that is required by statute to process a member's application for benefits.

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 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:

No businesses, regardless of size, are subject to the rulemaking.

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

Not applicable.

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

Not applicable.

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

All ASRS members and Employers are directly affected by the rulemaking. The effect has been previously described above.

9. Probable effects on state revenues:

There will be no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

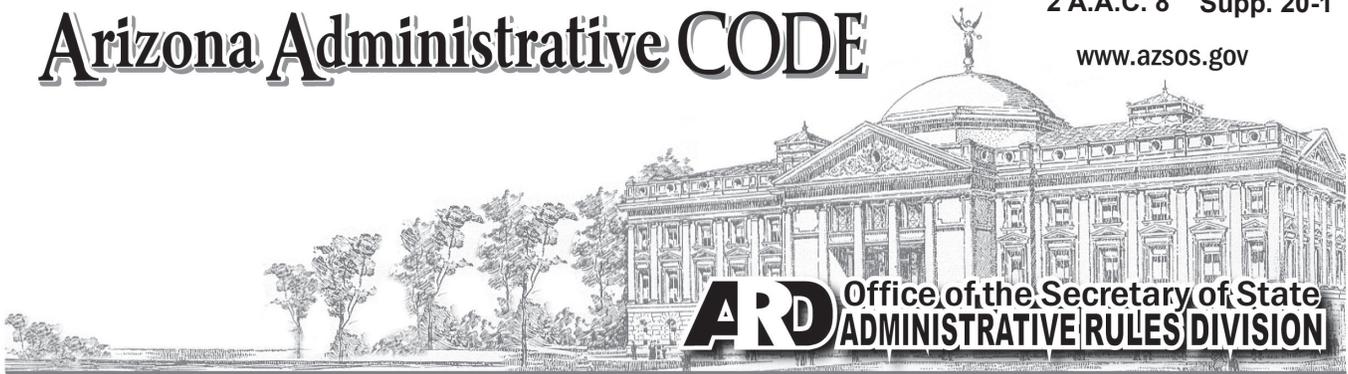
The ASRS believes this is the least costly and least intrusive method because it will clarify the minimum amount of information that is required to process various benefits applications without imposing any additional requirements on the public.

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

[2] Small business has the meaning specified in A.R.S. § 41-1001(20).



## TITLE 2. ADMINISTRATION

### CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

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

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

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of January 1, 2020 through March 31, 2020.

[R2-8-122.](#)      [Remittance of Contributions](#) ..... [9](#)

**Questions about these rules? Contact:**

Name:            Jessica A.R. Thomas, Rules Writer  
Address:        Arizona State Retirement System  
                     3300 N. Central Ave., Suite 1400  
                     Phoenix, AZ 85012-0250  
Telephone:     (602) 240-2039  
E-mail:          [JessicaT@azasrs.gov](mailto:JessicaT@azasrs.gov)

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**The release of this Chapter in Supp. 20-1 replaces Supp. 19-3, 1-44 pages**

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

## PREFACE

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

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION

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### RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

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

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

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

### AUTHENTICATION OF PDF CODE CHAPTERS

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

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

### HOW TO USE THE CODE

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

### ARIZONA REVISED STATUTE REFERENCES

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

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

### SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

### EXEMPTIONS FROM THE APA

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

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

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

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

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

### EXEMPTIONS AND PAPER COLOR

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

### PERSONAL USE/COMMERCIAL USE

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



Administrative Rules Division
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TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Authority: A.R.S. § 38-701 et seq.

ARTICLE 1. RETIREMENT SYSTEM

Table listing sections R2-8-101 through R2-8-126 and Tables 1 through 8, with corresponding page numbers.

Table listing Tables 9 through 11 and Exhibits A through K, with corresponding page numbers.

ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017; under the authority of A.R.S. § 38-714(E)(4) (Supp. 17-2).

Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2).

Table listing sections R2-8-201 through R2-8-207, with corresponding page numbers.

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Article 3, consisting of R2-8-301 through R2-8-306, made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

Table listing sections R2-8-301 through R2-8-306, with corresponding page numbers.

ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

Article 4, consisting of R2-8-401 through R2-8-405, made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

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**ARTICLE 1. RETIREMENT SYSTEM**

**R2-8-101. Repealed**

**Historical Note**

Former Rule, Social Security Regulation 1; Former Section R2-8-01 renumbered as Section R2-8-101 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (A) and (C) effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-102. Repealed**

**Historical Note**

Former Rule, Social Security Regulation 2; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-02 renumbered as Section R2-8-102 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A), (B), and (D), amended effective April 12, 1984 (Supp. 84-2). Correction, subsection (B), as amended effective April 12, 1984 (Supp. 84-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-103. Repealed**

**Historical Note**

Former Rule, Social Security Regulation 3; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-03 renumbered as Section R2-8-103 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A) thru (C), amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-104. Definitions**

- A. The definitions in A.R.S. § 38-711 apply to this Chapter.
- B. Unless otherwise specified, in this Chapter:
  - 1. “Actuarial assumption” means an estimate of an uncertain future event that affects pension liabilities, or assets, or both.
  - 2. “Assumed actuarial investment earnings rate” means the assumed rate of investment return approved by the Board and contained in R2-8-118(A).
  - 3. “Authorized employer representative” means an individual specified by the ASRS employer to provide the ASRS with information about a member who previously worked for the ASRS employer.
  - 4. “Contribution” means:
    - a. Amounts required by A.R.S. Title 38, Chapter 5, Articles 2 and 2.1 to be paid to the ASRS by a member or an employer on behalf of a member;
    - b. Any voluntary amounts paid to the ASRS by a member to be placed in the member’s account; and
    - c. Amounts credited by transfer under A.R.S. § 38-924.
  - 5. “Day” means a calendar day, and excludes the:
    - a. Day of the act or event from which a designated period of time begins to run; and
    - b. Last day of the period if a Saturday, Sunday, or official state holiday.

- 6. “Designated beneficiary” means the same as in A.R.S. § 38-762(G).
- 7. “Director” means the Director appointed by the Board as provided in A.R.S. § 38-715.
- 8. “Individual retirement account” or “IRA” means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(a) and (b).
- 9. “Party” means the same as in A.R.S. § 41-1001(14).
- 10. “Person” means the same as in A.R.S. § 41-1001(15).
- 11. “Plan” means the same as “defined benefit plan” in A.R.S. § 38-712(B), and as administered by the ASRS.
- 12. “Retirement account” means the same as in A.R.S. § 38-771(J)(2).
- 13. “Rollover” means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (H)(3).
- 14. “Terminate employment” means to end the employment relationship between a member and an ASRS employer with the intent that the member does not return to employment with an ASRS employer.
- 15. “United States” means the same as in A.R.S. § 1-215(39).

**Historical Note**

Former Rule, Social Security Regulation 4; Former Section R2-8-04 renumbered as Section R2-8-104 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (G), (J), and (K) effective April 12, 1984 (Supp. 84-2). Typographical error corrected in subsection (5)(c) “required” corrected to “required” (Supp. 97-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

**R2-8-105. Repealed**

**Historical Note**

Former Rule, Social Security Regulation 5; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-05 renumbered as Section R2-8-105 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-106. Reserved**

**R2-8-107. Reserved**

**R2-8-108. Reserved**

**R2-8-109. Reserved**

**R2-8-110. Reserved**

**R2-8-111. Reserved**

**R2-8-112. Reserved**

**R2-8-113. Emergency Expired**

**Historical Note**

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

**R2-8-114. Emergency Expired**

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**Historical Note**

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

**R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death; Payment of Survivor Benefits Upon the Death of a Member**

- A.** The following definitions apply to this Section unless otherwise specified:
1. "Acceptable documentation" means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.
  2. "Eligible retirement plan" means the same as in A.R.S. § 38-770(D)(3).
  3. "Employer number" means a unique identifier the ASRS assigns to a member employer.
  4. "Employer plan" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(c), (d), (e), and (f).
  5. "Process date" means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.
  6. "Warrant" means a voucher authorizing payment of funds due to a member.
- B.** A member who terminates from all ASRS employment by other than retirement or death and desires a return of the member's contributions, including amounts received for the purchase of service, any employer contributions authorized under A.R.S. § 38-740, and interest on the contributions, shall request from the ASRS, in writing or verbally, the documents necessary to apply for the withdrawal of the member's contributions.
- C.** Upon request to withdraw by the member, the ASRS shall provide:
1. An Application for Withdrawal of Contributions and Termination of Membership form to the member, and
  2. An Ending Payroll Verification - Withdrawal of Contribution and Termination of Membership form to the employer.
- D.** The member shall complete and return to the ASRS the Application for Withdrawal of Contributions and Termination of Membership form that includes the following information:
1. The member's full name;
  2. The member's Social Security number;
  3. The member's current mailing address;
  4. The member's daytime telephone number, if applicable;
  5. The member's birth date;
  6. The date of termination;
  7. Dated signature of the member certifying that the member:
    - a. Is no longer employed by any ASRS employer;
    - b. Is neither under contract nor has any verbal or written agreement for future employment with an ASRS employer;
    - c. Is not currently in a leave of absence status with an ASRS employer;
    - d. Understands that each of the member's former ASRS employers will complete a payroll verification form if payroll transactions occurred with the ASRS employer within the six months before the process date;
    - e. Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application;
  - f. Understands that the member is forfeiting all future retirement rights and privileges of membership with the ASRS;
  - g. Understands that long-term disability benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;
  - h. Understands that if the member elects to roll over all or any portion of the member's distribution to another employer plan, it is the member's responsibility to verify that the receiving employer plan will accept the rollover and, if applicable, agree to separately account for the pre-tax and post-tax amounts rolled over and the related subsequent earnings on the amounts;
  - i. Understands that if the member elects to roll over all or any portion of the member's distribution to an individual retirement account, it is the member's responsibility to separately account for pre-tax and post-tax amounts; and
  - j. Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for rollover will be paid directly to the member and any taxable amounts will be subject to 20% federal income tax withholding and 5% state tax withholding;
- 8.** Specify that:
- a. The entire amount of the distribution be paid directly to the member,
  - b. The entire amount of the distribution be transferred to an eligible retirement plan, or
  - c. An identified amount of the distribution be transferred to an eligible retirement plan and the remaining amount be paid directly to the member; and
- 9.** If the member selects all or a portion of the withdrawal be paid to an eligible retirement plan, specify:
- a. The type of eligible retirement plan;
  - b. The eligible retirement plan account number, if applicable; and
  - c. The name and mailing address of the eligible retirement plan.
- E.** If the member requesting the withdrawal has been inactive for five years or more, and if the member's account balance is \$1,000 or more, the member requesting the withdrawal shall provide a copy of a driver license or a form of other government issued identification to the ASRS.
- F.** If a payroll transaction for the member occurred with any ASRS employer within six months before the process date each ASRS employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the following information:
1. The member's full name;
  2. The member's Social Security number;
  3. The member's termination date;
  4. The member's final pay period ending date;
  5. The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions;
  6. The ASRS employer's name and telephone number;
  7. The employer number;
  8. The name and title of the authorized employer representative;
  9. Certification by the authorized employer representative that:

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- a. The member terminated employment and is neither under contract nor bound by any verbal or written agreement for employment with the employer;
  - b. There is no agreement to re-employ the member; and
  - c. The authorized employer representative has the legal power to bind the employer in transactions with the ASRS; and
10. The signature of the authorized employer representative and date of signature.
- G.** If the member requests a return of contributions and a warrant is distributed during the fiscal year that the member began membership in the ASRS, no interest is paid to the account of the member.
- H.** If the member requests a return of contributions after the first fiscal year of membership, the ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(A) to the account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.
- I.** Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, after the ASRS has received any Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership forms, a member is entitled to payment of the amount due to the member as specified in subsection (G) or (H) unless a present or former spouse submits to the ASRS a domestic relations order that specifies entitlement to all or part of the return of contributions under A.R.S. § 38-773 before the ASRS returns the contributions as specified by the member.
- J.** Upon the death of a member, the ASRS shall distribute the survivor benefits according to the most recent, acceptable documentation that is on file with the ASRS that was received prior to the date of the member's death, unless otherwise provided by law.
- K.** If there is no designation of beneficiary or if the designated beneficiary predeceases the member, the survivor benefit is paid as specified in A.R.S. § 38-762(E). The designated beneficiary or other person specified in A.R.S. § 38-762(E) shall:
1. Provide a certified copy of a death certificate or a certified copy of a court order that establishes the member's death;
  2. Provide a certified copy of the court order of appointment as administrator, if applicable; and
  3. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an application for survivor benefits, provided by the ASRS, that includes:
    - a. The deceased member's full name,
    - b. The deceased member's Social Security number,
    - c. The following, as it pertains to the designated beneficiary or other person specified in A.R.S. § 38-762(F):
      - i. Full name;
      - ii. Mailing address;
      - iii. Contact telephone number;
      - iv. Date of birth, if applicable; and
      - v. Social Security number or Tax ID number, if applicable.

**Historical Note**

Former Rule, Social Security Regulation 1; Amended effective Dec. 20, 1979 (Supp. 79-6). Former Section R2-8-15 renumbered as Section R2-8-115 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 644, effective February 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1).

**R2-8-116. Alternate Contribution Rate**

- A.** For purposes of this Section, the following definitions apply:
1. "ACR" means an alternate contribution rate pursuant to A.R.S. § 38-766.02, the resulting amount of which is not deducted from the employee's compensation.
  2. "Class of positions" means all employment positions of the employer that perform the same, or substantially similar, function or duties, for the employer as determined by the ASRS in subsection (B).
  3. "Compensation" has the same meaning as A.R.S. § 38-711(7) and does not include ACR amounts.
  4. "Leased from a third party" means:
    - a. The employee is not employed by an employer; and
    - b. A co-employment relationship, as defined in A.R.S. § 23-561(4), does not exist.
- B.** An employer that employs a retired member shall pay an ACR to the ASRS, unless the employer provides proof that:
1. The retired member is leased from a third party; and
  2. All employees in the entire class of positions, to which the retired member's position belongs, have been leased from a third party; and
  3. No employee who has not been leased is performing the same, or substantially similar, function or duties, as the retired member.
- C.** In order to determine whether an employer satisfies the criteria in subsection (B), the employer shall submit information and documentation, pursuant to A.R.S. § 38-766.02(E), within 14 days of written request by the ASRS.
- D.** The employer shall directly remit payment of an ACR to the ASRS from the employer's funds, through the employer's secure ASRS account within 14 days of the first pay period end date after the hire of the retired member.
- E.** If the employer does not remit the ACR by the date it is due pursuant to subsection (D), the ASRS shall charge interest on the ACR amount from the date it was due to the date the ACR payment is remitted to the ASRS at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- F.** A payment of an ACR on behalf of a retired member pursuant to A.R.S. § 38-766.02, shall not entitle a retired member to a refund of an ACR payment or any additional ASRS benefit as described in A.R.S. § 38-766.01(E).

**Historical Note**

Former Rule, Retirement System Regulation 2; Former Section R2-8-16 renumbered as Section R2-8-116 without change effective May 21, 1982 (Supp. 82-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 22 A.A.R. 1341, effective July 4, 2016 (Supp. 16-2). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

**R2-8-117. Return to Work After Retirement**

- A.** Unless otherwise specified, in this Section:
1. "Commencing employment" means the date a retired member who is not independently contracted or leased

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from a third party pursuant to R2-8-116(A)(4) renders services directly to an Employer for which the retired member is entitled to be paid.

2. "Returns to work" means the member retired from the ASRS prior to commencing employment with an Employer.
- B. Pursuant to A.R.S. § 38-766.01(C), a retired member who returns to work directly with an Employer shall submit a Working After Retirement form to each of the retired member's current Employers through the retired member's secure website account within 30 days of the retired member commencing employment with an Employer.
- C. Pursuant to A.R.S. § 38-766.02(E), within 14 days of receipt of a Working After Retirement form, an Employer shall verify the retired member's employment information and submit the verified Working After Retirement form to the ASRS through the Employer's secure website account for each retired member who returns to work with the Employer.
- D. After a retired member returns to work, the Employer shall submit a verified Working After Retirement form to the ASRS through the Employer's secure website account within 30 days of a change in the intent of each retired member's employment that results in:
  1. The member's number of hours worked per week increasing from less than 20 hours per week to 20 or more hours per week; or
  2. The member's number of weeks worked in a fiscal year increasing from less than 20 weeks per fiscal year to 20 or more weeks per fiscal year.
- E. The Working After Retirement form shall contain the following information:
  1. The retired member's social security number;
  2. The retired member's full name;
  3. The date the member retired;
  4. Whether the retired member terminated employment, and if so, the date the retired member terminated employment;
  5. The first date of commencing employment upon the retired member's return to work;
  6. The intent of the retired member's employment reflected as:
    - a. The anticipated number of hours the retired member is engaged to work per week and the anticipated number of weeks the retired member is engaged to work per fiscal year; or
    - b. The actual number of hours the retired member works for an Employer per week and the actual number of weeks the retired member works for an Employer in a fiscal year.
  7. Acknowledgement by the retired member that the retired member has read the Return to Work information on the ASRS website and intends to continue submitting the Working After Retirement form to the retired member's Employer.
- F. Upon discovering that the retired member's employment violates A.R.S. §§ 38-766 or 38-766.01, the ASRS shall send the retired member a Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- G. By the due date specified on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form, the retired member shall return the completed form and any supporting documentation to the ASRS indicating the action the retired member will take to correct the violation of A.R.S. §§ 38-766 or 38-766.01.
- H. If the member does not submit the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form pursuant

to subsection (G), the ASRS shall suspend the retired member's retirement benefits from the date on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.

- I. If the ASRS suspends the retired member's retirement benefits pursuant to subsection (H), the ASRS shall reinstate the retired member's retirement benefits upon notice from the Employer that all violations pursuant to subsection (F) have been corrected.

**Historical Note**

Former Rule, Retirement System Regulation 3; Former Section R2-8-17 renumbered as Section R2-8-117 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). New Section made by final rulemaking at 23 A.A.R. 209, effective March 5, 2017 (Supp. 17-1).

**R2-8-118. Application of Interest Rates**

- A. Application of interest from inception of the ASRS Plan through the present is as follows:

Effective Date of Interest Rate Change	Assumed Actuarial Investment Earnings Rate	Interest Rate Used to Determine Return of Contributions Upon Termination of Membership by Separation from Service by Other Than Retirement or Death
7-1-1953	2.50%	2.50%
7-1-1959	3.00%	3.00%
7-1-1966	3.75%	3.75%
7-1-1969	4.25%	4.25%
7-1-1971	4.75%	4.75%
7-1-1975	5.50%	5.50%
7-1-1976	6.00%	5.50%
7-1-1981	7.00%	5.50%
7-1-1982	7.00%	7.00%
7-1-1984	8.00%	8.00%
7-1-2005	8.00%	4.00%
7-1-2013	8.00%	2.00%
7-1-2018	7.50%	2.00%

- B. At the beginning of each fiscal year, interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member's account as of the previous June 30. The balance on which interest is credited includes:
  1. Employer and employee contributions;
  2. Voluntary additional contributions made by members pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745, if applicable;
  3. Amounts credited by transfer under A.R.S. § 38-922; and
  4. Interest credited in previous years.
- C. Notwithstanding subsection (B), the retirement account of each member stops accruing interest the last full month prior to the retirement date.

**Historical Note**

Former Rule, Retirement System Regulation 4; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-18 renumbered and amended as Section R2-8-118 effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final

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rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

**R2-8-119. Expired****Historical Note**

Former Rule, Retirement System Regulation 5; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-19 renumbered and amended as Section R2-8-119 effective May 21, 1982 (Supp. 82-3). Section R2-8-119 and Appendix A and B expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-120. Designating a Beneficiary; Spousal Consent to Designation**

- A.** The following definitions apply to this Section unless otherwise specified:
1. "DRO" means the same as "domestic relations order" in A.R.S. § 38-773(H)(1).
  2. "Joint and survivor annuity" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(1).
  3. "Period certain and life annuity" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(2).
  4. "Spouse" means the individual to whom a member is married under Arizona law.
- B.** Effective July 1, 2013, a married member:
1. Who is not retired shall name and maintain the member's current spouse as primary beneficiary of at least 50 percent of the member's retirement account unless:
    - a. Naming or maintaining the current spouse as beneficiary violates another law, existing contract, or court order; or
    - b. The spouse consents to an alternate beneficiary; and
  2. Who retires shall choose a joint and survivor annuity and name the member's current spouse as contingent annuitant of at least 50 percent of the member's retirement benefit unless the spouse consents to an alternative.
- C.** Application of subsection (B).
1. The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (B).
  2. The ASRS shall not apply subsection (B) to a lump-sum retirement authorized under A.R.S. § 38-764.
  3. The ASRS shall not apply subsection (B) if a member submits a letter to the ASRS in which the member affirms under penalty of perjury that spousal consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).
- D.** Changing a beneficiary designation:
1. If a married member changes a beneficiary designation on or after July 1, 2013, the member shall ensure that the new beneficiary designation is consistent with the requirements specified in subsection (B);
  2. If a married member who retired before July 1, 2013, and:
    - a. Chose a straight-life annuity wishes to change the member's beneficiary, the member shall ensure that the new beneficiary designation is consistent with subsection (B); or
    - b. Chose a period certain and life annuity or joint and survivor annuity wishes to change either the annuity option or the contingent annuitant, the member shall ensure that the new beneficiary designation is consistent with subsection (B).
- E.** Re-retirement. A married member who re-retires, as described in A.R.S. § 38-766:
1. Within 60 months of the member's previous retirement date, shall elect the same annuity option and beneficiary as the member made at the time of the previous retirement; or
  2. More than 60 months after the member's previous retirement date, shall comply with subsection (B).
- F.** Involuntary cancellation of retirement. If a married member retires on or after July 1, 2013, and is issued one or more estimate checks but fails to comply with subsection (B) within 30 days after the member's effective retirement date, the member shall submit a signed letter to ASRS stating that the member's spouse refuses to consent to the chosen alternative and asking that the retirement be cancelled. The member may submit another retirement application that complies with subsection (B). The member's new effective retirement date is the date ASRS receives the new application. ASRS shall not issue additional estimate checks to a member whose retirement was involuntarily cancelled.
- G.** Survivor benefits:
1. If a married member last made a beneficiary designation before July 1, 2013, the ASRS shall, at the time of the member's death, honor the beneficiary designation even if the beneficiary designation is not consistent with the requirements specified in subsection (B); and
  2. If a married member made a beneficiary designation on or after July 1, 2013, that is not consistent with the requirements specified in subsection (B), the ASRS shall, at the time of the member's death:
    - a. Notify both the spouse and designated beneficiary and:
      - i. Provide the spouse with an opportunity to waive the right under subsection (B); and
      - ii. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (B); and
    - b. Designate 50 percent of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond under subsection (G)(2)(a) within 30 days after notification.
- H.** Effect of legal documents. In general, a legal document such as a QDRO or prenuptial agreement will supersede the requirements in subsection (B). The ASRS shall ask the Office of the Attorney General to review the legal document before the ASRS decides how to disburse the retirement benefit.
- I.** Spousal waiver and consent; consent revocation
1. The current spouse of a member has a right to:
    - a. Be designated as primary beneficiary of at least 50 percent of the member's retirement account, and
    - b. Have the member choose a joint and survivor annuity with the spouse as contingent annuitant of at least 50 percent of the retirement benefit.
  2. To waive the right described in subsection (I)(1) and consent to an alternative, the current spouse shall complete and have notarized a spousal consent form, which is available from the ASRS. If the current spouse is not capable of completing the spousal consent form because of a documented incapacitating mental or physical condition, a person with power of attorney or a conservator may complete the spousal consent form on behalf of the current spouse.

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3. A spouse may revoke a waiver and consent by sending written notice to ASRS and ensuring the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.

**Historical Note**

Former Rule, Social Security Regulation 6; Amended effective June 19, 1975 (Supp. 75-1). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-20 renumbered and amended as Section R2-8-120 effective May 21, 1982 (Supp. 82-3). Repealed effective July 24, 1985 (Supp. 85-4). New Section made by final rulemaking at 20 A.A.R. 2236, effective October 4, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

**R2-8-121. Repealed****Historical Note**

Former Rule, Retirement System Regulation 7; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-21 renumbered as Section R2-8-121 without change effective May 21, 1982 (Supp. 82-3). Amended subsection (A) effective May 30, 1985 (Supp. 85-3). Section repealed by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (05-1).

**R2-8-122. Remittance of Contributions**

- A.** Each Employer shall certify on each payroll the amount to be contributed by each one of their employee members of the ASRS and shall remit the amount of employee member contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- B.** Each Employer shall remit the amount of employer contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employer contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- C.** Each Employer shall remit contributions pursuant to this Section based on the contribution rate in effect on the pay period end date.
- D.** Each Employer shall certify on each payroll that each employee included on that payroll has met the requirements for active member eligibility and that all contributions to be remitted are for eligible compensation under A.R.S. § 38-711.

**Historical Note**

Former Rule, Retirement System Regulation 8; Amended effective Dec. 8, 1978 (Supp. 78-6). Former Section R2-8-22 renumbered as Section R2-8-122 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 371, effective April 11, 2020 (Supp. 20-1).

**R2-8-123. Actuarial Assumptions and Actuarial Value of****Assets**

- A.** For the purposes of this Section, “market value” means an estimated monetary worth of an asset based on the current demand for the asset and the amount of that type of asset available for sale.
- B.** The Board adopts the following actuarial assumptions and asset valuation method:
1. The interest and investment return rate assumptions are determined by the Board.
  2. The actuarial value of assets equals the market value of assets:
    - a. Minus a 10-year phase-in of the excess for years in which actual investment return exceeds expected investment return; and
    - b. Plus a 10-year phase-in of the shortfall for years in which actual investment return falls short of expected investment return.

**Historical Note**

Adopted effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Amended effective December 20, 1977 (Supp. 77-6). Former Section R2-8-23 renumbered and amended as Section R2-8-123 effective May 21, 1982 (Supp. 82-3). Emergency amendments effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent amendments adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 1006, effective February 24, 2003 for a period of 180 days (Supp. 03-1). Emergency rulemaking renewed at 9 A.A.R. 3963, effective August 21, 2003 for a period of 180 days (Supp. 03-3). Amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 20 A.A.R. 3043, effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

**Table 1. Expired****Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 1 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-

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- 3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 2. Expired****Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 2 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 3. Repealed****Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 3 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Table 3 repealed; new Table 3 renumbered from Table 4 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 3A. Expired****Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 3B. Expired****Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 4. Expired****Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3).

Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 4 renumbered as Table 3 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 4A. Repealed****Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 4B. Repealed****Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 4C. Repealed****Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 5. Expired****Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 5 repealed, new Table 5 adopted by emergency action effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Table 5 repealed, new Table 5 adopted by regular rulemaking action effective September 12, 1997 (Supp. 97-3). Table 5 repealed; new Table 5 renumbered from Table 6 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 5 renumbered to Table 6; new Table 5 made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 6. Expired**

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**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Former Table 6 renumbered to Table 5; new Table 6 renumbered from Table 7 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 6 renumbered to Table 7; new Table 6 renumbered from Table 5 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 7. Expired****Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Renumbered to Table 6 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table 7 renumbered from Table 6 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-124. Termination Incentive Program by Agreement; Unfunded Liability Calculations**

- A.** The following definitions apply to this Section unless otherwise specified:
1. "Compensation" means the same as in A.R.S. § 38-711(7).
  2. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(2).
- B.** An Employer that intends to implement a Termination Incentive Program shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. Within 90 days before implementation of the program, a complete description of the program terms and conditions, including the program contract, understanding, or agreement; and
  2. Within 90 days before implementation of the program, the following information for each member who may be eligible to participate in the program:
    - a. The member's full name;
    - b. The member's date of birth; and
    - c. The member's current Compensation;
- C.** The ASRS may use the information provided by the Employer pursuant to subsection (B) and the information on file with the ASRS to determine an estimated unfunded liability amount in consultation with the ASRS actuary, which may result from the implementation of the Employer's Termination Incentive Program.

- D.** If the ASRS determines an estimated unfunded liability amount pursuant to subsection (C), the ASRS may send a Notice of Estimated Liability to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the estimated unfunded liability amount the Employer may owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B). An Employer may owe the ASRS more or less than the estimated unfunded liability amount based on actual employee participation in the Employer's Termination Incentive Program pursuant to subsection (F).
- E.** Within 30 days of termination of employment of each member who participated in a Termination Incentive Program identified under subsection (B), the Employer shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. The member's full name;
  2. The member's date of birth;
  3. The member's Compensation at termination;
  4. The date the member terminated employment; and
  5. The amount and type of any additional pay the member received, or was entitled to receive, from the Employer as a result of participating in the Employer's Termination Incentive Program.
- F.** Upon receipt of all the information identified in subsection (E) and in consultation with the ASRS actuary, the ASRS shall calculate the actual unfunded liability amount which resulted from the implementation of the Employer's Termination Incentive Program.
- G.** If the ASRS calculates an unfunded liability of less than \$0.00 for any member who participated in the Employer's Termination Incentive Program, the amount will be applied against the aggregate unfunded liability of the Employer.
- H.** Upon calculating the unfunded liability pursuant to subsections (F) and (G), the ASRS shall send the Employer a Termination Incentive Program Liability Invoice through the Employer's secure ASRS account.
- I.** An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- J.** Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- K.** The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

**Historical Note**

Adopted as an emergency effective August 25, 1975 (Supp. 75-1). Former Section R2-8-24 renumbered as Section R2-8-124 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

**R2-8-125. Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations**

- A.** The following definitions apply to this Section unless otherwise specified:
1. "Average monthly compensation" means the same as in A.R.S. § 38-711(5).

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2. "Baseline salary" means a member's Average Monthly Compensation during the 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit. The Baseline Salary shall include only Compensation from the Same Employer that paid the Compensation used in the calculation of a member's retirement benefit. If the member has less than 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit, then the ASRS will calculate the member's Baseline Salary as the total of the 12 months of Compensation the member received:
    - a. Starting with the first month of Compensation the member received in the 12 months immediately preceding the member's Average Monthly Compensation, or within the Average Monthly Compensation; and
    - b. Ending with the 12th month of Compensation the member received after the first month of Compensation used in subsection (A)(2)(a).
  3. "Compensation" means the same as in A.R.S. § 38-711(7).
  4. "Job reclassification" means a change in the classification of an employment position made by the Employer when it finds the duties and responsibilities of the position have changed significantly, materially, and permanently from when the position was last classified.
  5. "Promotion" means, excluding a Salary Regrade or Job Reclassification, the act of advancing an employee to a higher salary or higher rank within the organization, which is characterized by:
    - a. A change in the employee's primary job responsibilities; and
    - b. A pay increase that is supported by a standard salary administration practice that is documented by the Employer; and
    - c. A competitive selection process or a noncompetitive selection process supported by a standard hiring practice that is documented by the Employer.
  6. "Salary regrade" means a change in the salary scale of an employment position made by the Employer in order to align the position's salary scale with market factors and/or the Employer's current salary practices.
  7. "Same employer" means the Employer has the same ownership as another Employer, except that for purposes of this Section, each agency, board, commission, and department of the State of Arizona shall be considered a separate Employer.
  8. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(1).
- B.** Upon a member's retirement on or after January 1, 2018, the ASRS shall compare the member's Baseline Salary to the Average Monthly Compensation for each consecutive 12 months of Compensation used to calculate the member's retirement benefit in order to determine whether an Employer utilized a Termination Incentive Program as defined in A.R.S. § 38-749(D)(1). This subsection only applies to members who earned the Compensation used to calculate the member's Baseline Salary, on or after July 1, 2005.
- C.** Upon determining that a Termination Incentive Program exists under subsection (B), the ASRS shall send a Request for Documentation to the Employer through the Employer's secure ASRS account, in order to notify the Employer that the ASRS has identified a Termination Incentive Program for a particular member and the Employer may be required to pay the ASRS for the unfunded liability resulting from the Termination Incentive Program, unless the Employer can prove the increase in the member's salary was the result of a Promotion.
- D.** Within 90 days of the date on the Request for Documentation, the Employer shall respond to the Request for Documentation by:
1. Submitting documentation through the Employer's secure ASRS account that shows the member's increase in Compensation was the result of a Promotion; or
  2. Acknowledging in writing that the increase in the member's salary was not the result of a Promotion.
- E.** Pursuant to subsection (D), the Employer bears the burden of producing evidence that a Promotion has occurred as defined in subsection (A)(5).
- F.** The ASRS shall use any evidence the Employer submits to the ASRS pursuant to subsection (D) to determine whether a Promotion occurred.
- G.** If the Employer does not respond to the Request for Documentation within 90 days of the date on the Request for Documentation, the ASRS shall determine that the increase in the member's salary was not the result of a Promotion.
- H.** If the ASRS determines that the increase in the member's salary was not the result of a Promotion pursuant to subsections (F) or (G), the ASRS shall calculate the unfunded liability amount pursuant to subsection (I).
- I.** In consultation with the ASRS actuary, the ASRS shall use a determination under subsection (B) to calculate the unfunded liability resulting from the implementation of the Employer's Termination Incentive Program.
- J.** Upon calculating an unfunded liability amount pursuant to subsection (I), the ASRS shall send a Termination Incentive Program Liability Invoice to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the unfunded liability amount the Employer shall owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B).
- K.** An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- L.** Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- M.** The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

**Historical Note**

Adopted as an emergency effective July 30, 1975 (Supp. 75-1). Former Section R2-8-25 renumbered as Section R2-8-125 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

**R2-8-126. Calculating Optional Forms of Benefits**

- A.** For the purposes of this Section, the following definitions apply, unless stated otherwise:
1. "Prior service credit" means a "service credit" listed in R2-8-501(24), credited service that is earned pursuant to A.R.S. § 38-739, or a service credit that is transferred or

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redeemed pursuant to A.R.S. §§ 38-730, 38-771, or 38-921 et seq.

2. "Original retirement date" means:
  - a. The date a member retires from the ASRS for the first time; or
  - b. The date a member retires from the ASRS after returning to active membership for 60 consecutive months or more pursuant to A.R.S. § 38-766(C).
- B. An individual who is 104 years of age or older at the time of retirement is not eligible to elect an option of life annuity with a term certain.
- C. An individual who is 93 years of age or older at the time of retirement is not eligible to elect the options of life annuity with ten years certain or life annuity with 15 years certain.
- D. An individual who is 85 years of age or older at the time of retirement is not eligible to elect the option of life annuity with 15 years certain.
- E. As authorized under A.R.S. § 38-764(F), if the life annuity of any member is less than a monthly amount determined by the Board, the ASRS shall not pay the annuity. Instead, the ASRS shall make a lump sum payment in the amount determined by using appropriate actuarial assumptions.
- F. The ASRS shall calculate a member's or beneficiary's benefits, based on the attained age of the member or beneficiary, determined in years and full months, as of:
  1. The date of the member's retirement; or
  2. The date of the member's death, if the beneficiary is eligible to elect the survivor benefit as monthly income for life pursuant to A.R.S. § 38-762(C).
- G. Before the ASRS applies the calculation for an optional form of retirement benefit provided in A.R.S. § 38-760, the ASRS shall include any prior service credit benefit that is applicable to the life annuity of the member.
- H. A member who is ten years and one day, or more, older than the member's non-spousal contingent annuitant is not eligible to participate in a 100% joint-and-survivor option. A member who is 24 years and one day, or more, older than the member's non-spousal contingent annuitant is not eligible to participate in a 66 2/3% joint-and-survivor option.
- I. For members whose original retirement date is on or after March 6, 2016, notwithstanding subsection (H), a member who is ten years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 100% joint-and-survivor option, if:
  1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
  2. The member submits a DRO to the ASRS which requires the ex-spouse to be the contingent annuitant on the member's account.
- J. For members whose original retirement date is on or after March 6, 2016, notwithstanding subsection (H), a member who is 24 years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 66 2/3% joint-and-survivor option, if:
  1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
  2. The member submits a DRO to the ASRS which requires the ex-spouse to be the contingent annuitant on the member's account.
- K. Notwithstanding subsection (F), for purposes of determining whether a member is eligible to participate in a joint-and-survivor option, the ASRS shall calculate the difference in a member's age and the contingent annuitant's age based on the birthdates of the member and the contingent annuitant.

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-26 renumbered and amended as Section R2-8-126 effective May 21, 1982 (Supp. 82-3). Amended subsections (A) through (D) effective October 18, 1984 (Supp. 84-5). Amended subsections (A) through (D) effective July 24, 1985 (Supp. 85-4). Amended by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Amended by final rulemaking at 19 A.A.R. 332, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 22 A.A.R. 3081, effective December 3, 2016 (Supp. 16-4).

**Table 1. Repealed****Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 1 repealed, new Table 1 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 2. Repealed****Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 2 repealed, new Table 2 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 3. Repealed****Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 3 repealed, new Table 3 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 4. Repealed****Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 4 repealed, new Table 4 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90

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days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 5. Repealed****Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 5 repealed, new Table 5 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 6. Repealed****Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 6 repealed, new Table 6 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 7. Repealed****Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 7 repealed, new Table 7 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 8. Repealed****Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 8 repealed, new Table 8 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 9. Repealed****Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 9 repealed, new Table 9 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 10. Repealed****Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 10 repealed, new Table 10 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90

days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 11. Repealed****Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 11 repealed, new Table 11 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Exhibit A. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 1. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 2. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 3. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days







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**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit L, Table 7. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit M, Table 1. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit M, Table 2. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit M, Table 3. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days

(Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit M, Table 4. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit M, Table 5. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit M, Table 6. Repealed****Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT****R2-8-201. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Coverage" means a medical and/or dental insurance plan a retired member, Disabled member, or contingent annuitant obtains through the ASRS or an Employer.
2. "Contingent annuitant" means the same as in A.R.S. § 38-711(8) and the person is eligible for Coverage.
3. "Disabled" means the member has a disability and is receiving long-term disability benefits pursuant to A.R.S. § 38-797 et seq.
4. "Family calculation" means the family Coverage premium described in A.R.S. § 38-783(B).
5. "Joint & survivor" means the annuity option described in A.R.S. § 38-760(B)(1).
6. "Net premium" means the amount of the Coverage premium reduced by the amount of the Premium Benefit provided by the ASRS.
7. "Original retirement date" means the same as in R2-8-126.
8. "Optional premium benefit" means the election, upon retirement, to have the Premium Benefit paid on behalf of

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the member's Contingent Annuitant upon death of the member pursuant to A.R.S. § 38-783.

9. "Period-certain" means the annuity option described in A.R.S. § 38-760(B)(2).
10. "Premium benefit" means the amount the ASRS provides on behalf of a retired member or Disabled member in order to offset the Coverage premium of the retired or Disabled member pursuant to A.R.S. § 38-783.
11. "Single calculation" means the single Coverage premium calculation described in A.R.S. § 38-783(A).
12. "Subsidized" means the same as in A.R.S. § 38-783(M)(4).

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

**R2-8-202. Premium Benefit Eligibility and Benefit Determination**

- A. A retired member or Disabled member who has five or more years of service and who elects to maintain Coverage is eligible for a Premium Benefit as follows:
  1. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member only, is eligible for a Single Calculation of the Premium Benefit as described in R2-8-204(A);
  2. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is not a retired member or Disabled member is eligible for a Family Calculation of the Premium Benefit as described in R2-8-204(B).
  3. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is a retired member or Disabled member is eligible for the greater of:
    - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
    - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
  4. A retired member or Disabled member who is enrolled as a dependent on an active member's insurance plan is eligible for a Single Calculation of the Premium Benefit described in R2-8-204(A) if:
    - a. The retired member has an Original Retirement Date prior to August 2, 2012; or
    - b. The Disabled member became Disabled prior to August 2, 2012;
  5. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and multiple dependents, some of whom are retired members or Disabled members, is eligible for the greater of:
    - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
    - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
- B. Pursuant to A.R.S. § 38-783(E), a retired member who returns to work as an active member with an Employer and elects to maintain Coverage is eligible to receive a Premium Benefit if the member has an Original Retirement Date prior to August 2, 2012.
- C. Pursuant to A.R.S. § 38-783(E), a Disabled member who elects to maintain Coverage is eligible to receive a Premium

Benefit if the Disabled member became Disabled prior to August 2, 2012.

- D. A member who receives a lump sum distribution from the ASRS upon retirement is eligible to receive a Premium Benefit pursuant to this Article.
- E. Notwithstanding any other Section, a retired member who has an Original Retirement Date on or after August 2, 2012, or a Disabled member who became Disabled on or after August 2, 2012 is eligible to receive a Premium Benefit pursuant to this Article, only if Coverage is not Subsidized.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Amended by emergency rulemaking at 10 A.A.R. 4259, effective September 30, 2004 (Supp. 04-3). Amended by final rulemaking at 10 A.A.R. 4346, effective October 5, 2004 (Supp. 04-3). Section amended and Table 1 repealed by final rulemaking at 13 A.A.R. 4581, effective February 2, 2008 (Supp. 07-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

**R2-8-203. Payment of Premium Benefit**

- A. Every month, the ASRS shall provide a Premium Benefit to the Employer on behalf of a retired member, Disabled member, or Contingent Annuitant who maintains Coverage and is eligible to receive a Premium Benefit pursuant to R2-8-202.
- B. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration or the ASRS, the ASRS shall reduce the retired member's pension amount by the amount of the retired member's Net Premium for Coverage pursuant to this Article, unless the Net Premium exceeds the pension amount.
- C. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the ASRS and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the retired member's insurance company and the ASRS shall:
  1. Not reduce the retired member's pension amount; and
  2. Remit payment of the Premium Benefit to the retired member's insurance company.
- D. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the Arizona Department of Administration and the ASRS shall:
  1. Not reduce the retired member's pension amount; and
  2. Remit payment of the Premium Benefit to the Arizona Department of Administration.
- E. If a Disabled member who is eligible to receive a Premium benefit pursuant to R2-8-202 maintains Coverage with the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the Arizona Department of Administration, unless the Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
- F. If a Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with the ASRS, the ASRS shall remit the Premium Benefit to the Disabled member's insurance company and the Disabled member

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shall be responsible for remitting the Net Premium to the Disabled member's insurance company.

- G. If a retired member or Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with an Employer other than the ASRS or the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the retired member's or Disabled member's Employer, unless the retired member or Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
- H. If a retired member or Disabled member is eligible to receive a Premium Benefit pursuant to R2-8-202, the ASRS shall provide the lesser of the following for any one retired member or Disabled member:
  1. The actual cost of the Coverage premium; or
  2. The greatest Premium Benefit calculation for which the retired member or Disabled member is eligible pursuant to R2-8-202.
- I. If a retired member is eligible to receive a Premium Benefit pursuant to R2-8-202 and the member retires from the ASRS in addition to retiring from another State retirement system or plan described in A.R.S. § 38-921, each month, the ASRS shall remit any Premium Benefit for which the retired member is eligible under this Article to the other State retirement system or plan from which the member retired.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

**R2-8-204. Premium Benefit Calculation**

- A. A Single Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or non-Medicare status.
- B. A Family Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or Non-Medicare status, and the Medicare or Non-Medicare status of any dependents for which the retired member or disabled member has obtained Coverage.
- C. A Contingent Annuitant who is eligible to receive an Optional Premium Benefit pursuant to R2-8-207 shall receive an Optional Premium Benefit amount based on:
  1. The retired member's years of service and optional retirement benefit election pursuant to A.R.S. § 38-760; and
  2. The Contingent Annuitant's Coverage and Medicare or non-Medicare status.
- D. Notwithstanding R2-8-203(H), if a Contingent Annuitant is a retired member, the Contingent Annuitant may be entitled to receive more than one Premium Benefit.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

**R2-8-205. Premium Benefit Documentation**

- A. Every year, prior to the effective date of Coverage, an Employer shall report to the ASRS all the Coverage plans and premium rates the Employer offers to its retired or Disabled employees.

- B. An Employer shall inform the ASRS of any changes to the retired member's, Disabled member's, or Contingent Annuitant's Coverage, including enrollment in Coverage, maintained through the Employer within 30 days of the changes taking effect.
- C. Using the Employer's secure ASRS website account, or another ASRS approved method, an Employer shall submit the following health insurance enrollment, change, and/or deletion information pursuant to subsection (B):
  1. The retired member's, Disabled member's, or Contingent Annuitant's social security number;
  2. The retired member's, Disabled member's, or Contingent Annuitant's full name;
  3. The retired member's, Disabled member's, or Contingent Annuitant's residential mailing address and telephone number;
  4. The retired member's, Disabled member's, or Contingent Annuitant's date of birth;
  5. The Coverage in which the retired member, Disabled member, or Contingent Annuitant is enrolling;
  6. The type of change that is being made to the Coverage;
  7. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
    - a. First and last name;
    - b. Social security number;
    - c. Date of birth; and
    - d. Medicare number, if applicable.
  8. The old and new premium amounts for Coverage;
  9. The effective date of the change, deletion, and/or enrollment;
  10. The Employer's name and telephone number;
  11. A certification by the Employer representative's dated signature that the information is current and correct.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

**R2-8-206. Six-Month Reimbursement Program**

- A. For a retired member or Disabled member who is eligible for a Premium Benefit pursuant to R2-8-202(A)(4) or (B), the ASRS shall remit the Premium Benefit to the retired member or Disabled member pursuant to subsection (B).
- B. Pursuant to subsection (A), the ASRS shall remit the Premium Benefit to the retired member or Disabled member every six months, payable in July and January. For purposes of this Section, the Premium Benefit shall be the aggregate amounts of the Premium Benefit the retired member or Disabled member is entitled to receive during the previous six months.
- C. In order to receive a Premium Benefit payment pursuant to subsection (B), a retired member or Disabled member shall submit to the ASRS the Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form after the last day of the last month for which the retired member or Disabled member is seeking reimbursement.
- D. The Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form that a retired member or Disabled member submits pursuant to subsection (C) shall include the following information:
  1. The retired member's or Disabled member's social security number;
  2. The retired member's or Disabled member's full name;

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3. The retired member's or Disabled member's mailing address and phone number;
4. The retired member's or Disabled member's date of birth;
5. The retired member's or Disabled member's status with the ASRS
6. The retired member's or Disabled member's status with the retired member's or Disabled member's Employer.
7. The following Coverage information for the Coverage policy holder:
  - a. First and last names;
  - b. Social security number;
  - c. Date of birth;
  - d. Effective date of Coverage;
8. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
  - a. First and last name;
  - b. Social security number;
  - c. Date of birth;
  - d. Effective date of Coverage;
9. Six-month reimbursement totals identified by:
  - a. The month and year the premium is due for Coverage;
  - b. The total medical plan premium per month;
  - c. The total dental plan premium per month;
  - d. The employee's out-of-pocket payroll deduction for a medical premium per month;
  - e. The employee's out-of-pocket payroll deduction for a dental premium per month;
  - f. The employee's total out-of-pocket payroll deduction for medical and dental premiums per month;
10. The Employer's name;
11. The Employer's phone number;
12. The Employer's email address;
13. The name of the Employer's representative; and
14. The dated signature of the Employer's representative.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

**R2-8-207. Optional Premium Benefit**

- A. A member who retires on or after January 1, 2004 is eligible to elect the Optional Premium Benefit to be effective on the date of the retired member's retirement and may designate a Contingent Annuitant to receive the Optional Premium Benefit upon the death of the retired member if:
  1. The retired member elects a retirement option under A.R.S. § 38-760; and
  2. The retired member elects to maintain Coverage.
- B. A retired member who returns to active membership for 60 consecutive months or more before retiring again, may elect or re-elect the Optional Premium Benefit pursuant to subsection (A).
- C. A retired member who does not return to active membership for 60 consecutive months or more before retiring again is not eligible to elect the Optional Premium Benefit pursuant to subsection (A) unless the retired member elected the Optional Premium Benefit to be effective on the date of the retired member's Original Retirement Date.
- D. In order to elect, re-elect, or terminate the Optional Premium Benefit pursuant to subsection (A), the retired member shall submit to the ASRS the Optional Premium Benefit Program Election or Termination form containing the following information:
  1. The retired member's Social Security Number;
  2. The retired member's full name and gender;
  3. The retired member's current mailing address;
  4. The retired member's date of birth;
  5. The retired member's email address;
  6. The retired member's phone number;
  7. Whether the retired member is electing, declining, or terminating the Optional Premium Benefit;
  8. The following information for the Contingent Annuitant if the retired member is electing or re-electing the Optional Premium Benefit:
    - a. The Social Security Number;
    - b. The full name;
    - c. The mailing address;
    - d. The phone number;
    - e. The date of birth; and
    - f. The gender and relationship to the retired member; and
  9. Certification of understanding by the retired member's dated signature of the following statements:
    - a. I have a one-time election at the time of retirement for this benefit, and have a retirement date on or after January 1, 2004;
    - b. I must elect a Joint & Survivor or Period-Certain annuity option;
    - c. If I elect to participate, my Contingent Annuitant must either be participating or eligible to participate in my retiree health care plan at the time of my death;
    - d. I must provide a Social Security Number and proof of birth date for my Contingent Annuitant;
    - e. The Premium Benefit will be actuarially reduced for the remainder of my benefit and my Contingent Annuitant's benefit as long as the Optional Premium Benefit is elected; and
    - f. I may rescind the election at any time and be eligible for the unreduced Premium Benefit payable as provided by law.
- E. In order to elect or re-elect the Optional Premium Benefit, a member shall submit the Optional Premium Benefit Program Election or Termination form to the ASRS prior to the member's retirement date.
- F. A Contingent Annuitant the retired member designates to receive the Optional Premium Benefit upon the retired member's death is eligible to receive a Premium Benefit if:
  1. The retired member designates the Contingent Annuitant as the primary beneficiary on the member's retirement account;
  2. The Contingent Annuitant is enrolled in a Coverage plan at the time of the member's death or the Contingent Annuitant enrolls in a Coverage plan within six months of the retired member's death pursuant to A.R.S. § 38-782(A); and
  3. The Contingent Annuitant is eligible to receive at least one monthly payment.
- G. Upon the death of a retired member who elected the Optional Premium Benefit pursuant to subsection (A), the ASRS shall provide the Optional Premium Benefit on behalf of the retired member's Contingent Annuitant who is eligible to receive the Optional Premium Benefit pursuant to subsection (F).
- H. Notwithstanding subsection (G), the amount of the Optional Premium Benefit the ASRS provides on behalf of a Contingent Annuitant shall not exceed the actual amount of the Coverage premium.

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- I. Unless otherwise indicated by law, the Optional Premium Benefit shall not terminate upon the death of the retired member if a Contingent Annuitant is eligible for the Optional Premium Benefit pursuant to subsection (F).

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

**ARTICLE 3. LONG-TERM DISABILITY****R2-8-301. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Attending Physician" means a provider:
  - a. Who is a qualified medical provider or other legally qualified practitioner of a healing art that the claims administrator recognizes or is required by law to recognize;
  - b. Whose medical training and clinical experience are qualified to treat the member's disabling condition;
  - c. Whose diagnosis and treatment is consistent with the diagnosis of the disabling condition, according to guidelines established by medical, research, and rehabilitative organizations;
  - d. Who is licensed to practice in the jurisdiction where care is being given;
  - e. Who is practicing within the scope of the license; and
  - f. Who is not related to the member by blood or marriage.
2. "Direct Care" means the member is actively receiving treatment from a provider for the member's disability at least once per calendar year.
2. "Estimated Social Security disability income amount" means the same as in R2-8-801(2).
3. "Legal proceeding" means an appeal of an appealable agency decision at the Office of Administrative Hearings pursuant to A.R.S. § 41-1092 et seq. or an appeal of a Social Security determination at the Social Security Administration, or any other review by a formal body, which determines the rights and responsibilities of the member or survivor.
4. "LTD" means the Long-Term Disability program described in A.R.S. § 38-797 et seq.
5. "LTD benefit" means the amount of funds the member receives from the ASRS or the ASRS contracted LTD claims administrator, for the period of time a member has an eligible disability as described in A.R.S. § 38-797.07(A)(11).
6. "LTD contribution" means the amount of funds the member remits to the ASRS from the member's compensation as payment for the LTD program.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

**R2-8-302. Application for Long-Term Disability Benefit**

- A. In order to claim an LTD benefit, a disabled member shall submit to the disabled member's Employer all the completed forms prescribed by the ASRS contracted LTD claims administrator within 12 months of the date the disabled member became disabled.

istrator within 12 months of the date the disabled member became disabled.

- B. Pursuant to A.R.S. § 38-797.07(D), in order to continue receiving an LTD benefit, a disabled member shall submit documentation regarding the disabled member's ongoing disability and occupation as required by the ASRS contracted LTD claims administrator to determine the disabled member's continuing eligibility for an LTD benefit.
- C. Pursuant to A.R.S. § 38-797.07(11), in order to submit an application for an LTD benefit, a member must provide objective medical evidence from an Attending Physician.
- D. Pursuant to A.R.S. § 38-797.07(7)(b)(i), in order to continue receiving an LTD benefit, the disabled member must be under the Direct Care of a doctor.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

**R2-8-303. Long-Term Disability Calculation**

- A. The ASRS contracted LTD claims administrator shall calculate an LTD benefit for a member using the member's monthly compensation as described in A.R.S. § 38-797(11).
- B. For a member whose monthly compensation is \$0 as of the date of disability, the ASRS shall pay a monthly benefit of \$50 unless the benefit is reduced pursuant to R2-8-807 or required to be reduced pursuant to A.R.S. § 38-797.07(A)(2).
- C. The ASRS shall reduce a member's LTD benefit in accordance with A.R.S. § 38-797.07(A).

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

**R2-8-304. Payment of Long-Term Disability Benefit**

- A. The ASRS contracted LTD claims administrator shall begin providing an LTD benefit to an eligible disabled member no sooner than six months after the date the disabled member became disabled.
- B. Notwithstanding subsection (A), the ASRS contracted LTD claims administrator may begin providing an LTD benefit to an eligible disabled member sooner than six months if the disability is related to the member's disability that occurred within six months immediately preceding the disability.
- C. The ASRS contracted LTD claims administrator may provide an eligible disabled member's LTD benefit to a third party pursuant to A.R.S. § 38-797.09.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

**R2-8-305. Social Security Disability Appeal**

- A. Upon request by the ASRS contracted LTD claims administrator, a member who claims an LTD benefit pursuant to R2-8-302(A) shall submit a Social Security disability income application as prescribed by the ASRS contracted LTD claims administrator.
- B. In order to continue receiving an LTD benefit, a member whose application for Social Security disability income has been denied or terminated must appeal the most recent determination of denial or termination through a hearing before an administrative law judge pursuant to A.R.S. § 38-

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797.07(A)(10)(a) until the ASRS contracted LTD claims administrator or the Social Security Claims Administrator determines the member is not eligible for a Social Security benefit.

- C. Within 10 days after a member receives notice of the status of the member's Social Security disability income application, the member shall notify:
1. The ASRS of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS, if the member is not receiving an LTD benefit; or
  2. The ASRS contracted LTD claims administrator of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS contracted LTD claims administrator, if the member is not receiving an LTD benefit.
- D. A member who disagrees with an LTD determination by the ASRS contracted LTD claims administrator may submit an appeal pursuant to 2 A.A.C. 8, Article 4.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

**R2-8-306. Approval of Social Security Disability**

Upon receipt of a Social Security disability income benefit, a member shall immediately remit to:

1. The ASRS the amount of the Social Security disability income benefit necessary to offset the LTD benefit; or
2. The ASRS contracted LTD claims administrator the amount of the Social Security disability income benefit necessary to offset the LTD benefit.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

**ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD****R2-8-401. Definitions**

The following definitions apply to this Article, unless otherwise specified:

1. "Appealable agency action" has the same meaning as in A.R.S. § 41-1092.
2. "Board" means, if established, a Committee designated by the Board to take action on appeals as described in A.R.S. § 38-714(E)(1) or, if a Committee is not established, the same as in A.R.S. § 38-711(6).
3. "Final administrative action" has the same meaning as in A.R.S. § 41-1092 and is rendered by the Board.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1). Amended by final rulemaking at 23 A.A.R. 2749, effective November 13, 2017 (Supp. 17-3).

**R2-8-402. General Procedures**

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

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

**R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action**

- A. After receipt of an agency decision, a person who is not satisfied with the agency decision, may submit a letter of appeal:
1. To the ASRS's vendor for long-term disability benefits, if the appeal relates to a long-term disability decision; or
  2. To the ASRS Member Services Division Assistant Director, or such director's designee, if the appeal relates to an agency decision other than a long-term disability decision.
- B. Upon receipt of a letter of appeal, the long-term disability vendor, or the Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal notifying the person of:
1. The decision the agency is making in response to the letter of appeal; and
  2. The person's right to appeal the agency response by submitting a letter of appeal to the ASRS Director or such director's designee.
- C. A person who is not satisfied with the agency response pursuant to subsection (B) may submit a letter of appeal to the ASRS Director or such director's designee within 60 days of the date on the agency response letter.
- D. Within 30 days of the date the ASRS receives a letter of appeal pursuant to subsection (C), the ASRS director or such director's designee shall send a response letter by certified mail to the person requesting the appeal that includes:
1. The agency action the ASRS is taking in response to the letter of appeal; and
  2. Notice of Appealable Agency Action, as required pursuant to A.R.S. § 41-1092.03 informing the person requesting the appeal, that the person has a right to appeal the agency action by submitting a Request for Hearing pursuant to subsections (E) and (F).
- E. For an appealable agency action, a person who is not satisfied with an agency action pursuant to subsection (D) may file a Request for a Hearing, in writing, with the ASRS. The date the Request is filed is established by the ASRS date stamp on the face of the first page of the Request. The Request shall include the following:
1. The name and mailing address of the member, employer, or other person filing the Request;
  2. The name and mailing address of the attorney for the person filing the Request, if applicable;
  3. A concise statement of the reasons for the appeal.
- F. The person requesting a hearing shall file the Request for a Hearing with the ASRS within 30 days after receiving a response letter including a Notice of an Appealable Agency Action, pursuant to subsection (E).
- G. Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03(B).
- H. Pursuant to subsection (B):
1. The long-term disability vendor shall send a response letter to the person requesting the appeal within 120 days of the date the long-term disability vendor receives the letter of appeal; and
  2. The Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal within 30 days of the date the ASRS receives the letter of appeal.

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**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1).

**R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings**

A recommended decision from the Office of Administrative Hearings that is sent to ASRS at least 30 days before the Board's next regular monthly meeting, shall be reviewed by the Board at that monthly meeting. At the monthly meeting, the Board shall render a decision to accept, reject, or modify the findings of fact, conclusions of law and recommendations in whole or in part. If the Board modifies or rejects a recommended decision, the Board shall state the reasons for the modification or rejection. The Board shall deliver the Board's final decision to the Office of Administrative Hearings within five days after the monthly meeting at which the Board made the final decision.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

**R2-8-405. Motion for Rehearing Before the Board; Motion for Review of a Final Decision**

- A. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party in an appealable agency action may file with the Board a Motion for Rehearing Before the Board, in writing, specifying the particular grounds for rehearing before the Board.
- B. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party of an appealable agency action may file with the Board a Motion for Review of a Final Decision, in writing, specifying the particular grounds for reviewing the Board's final administrative decision.
- C. A party may amend a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or the amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion or the amended motion, and may provide for oral argument.
- D. The Board may grant a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision for any of the following causes that materially affects the moving party's rights:
  1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;
  2. Misconduct of the Board, the hearing officer, or the prevailing party;
  3. Accident or surprise that could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the 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 process of the action; or
  7. That the decision, or findings of fact, is not justified by the evidence or is contrary to law.
- E. The Board may affirm or modify the final administrative decision or grant a rehearing before the Board or review of final administrative decision to all or any of the parties on all or part

of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.

- F. Not later than 10 days after the final administrative decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its final administrative 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 a rehearing or review shall specify the grounds on which it is granted.
- G. When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.
- H. The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.
- I. If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Board's final decisions.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1).

**ARTICLE 5. PURCHASING SERVICE CREDIT****R2-8-501. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Active duty" means full-time duty in a branch of the United States uniformed service, other than Active Reserve Duty.
2. "Active reserve duty" means participating in required meetings and annual training in a Reserve or National Guard branch of the United States uniformed service.
3. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
  - a. Eligible Member's Current Years of Credited Service;
  - b. Eligible Member's age as of the date the Eligible Member submits to the ASRS a request to purchase service pursuant to this Article;
  - c. Amount of Service Credit the member wishes to purchase; and
  - d. Member's current annual compensation.
4. "Authorized representative" means an individual who has been delegated the authority to act on behalf of a Custodian, Trustee, Plan Administrator, or a member, if the member's IRA or 403(b) is not maintained by the member's Employer.

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5. "Current years of credited service" means the amount of credited service a member has earned or purchased, and the amount of Service Credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase Service Credit for which the member has not yet paid.
6. "Custodian" means a financial institution that holds financial assets for guaranteed safekeeping.
7. "Direct rollover" means distribution of Eligible Funds made payable to the ASRS as a contribution for the benefit of an eligible member from a retirement plan listed in A.R.S. § 38-747(H)(2) or (H)(3).
8. "Eligible funds" means payments listed in A.R.S. § 38-747(H)(2) and (H)(3).
9. "Eligible member" means a member who is eligible to purchase service pursuant to A.R.S. §§ 38-742, 38-743, 38-744, or 38-745.
10. "Forfeited service" means credited service for which the ASRS has returned retirement contributions to the member under A.R.S. § 38-740.
11. "IRC" means the same as "Internal Revenue Code" in A.R.S. § 38-711(18).
12. "Irrevocable PDA" means an irrevocable "Payroll Deduction Authorization" contract between an Eligible Member, an Employer, and the ASRS that requires the Employer to withhold payments from an Eligible Member's pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747.
13. "Leave of absence service" means an approved leave of absence without pay as specified in A.R.S. § 38-744.
14. "LTD" means the same as in R2-8-301.
15. "Military Call-up service" means a member is called to Active Duty in a branch of the United States Uniformed Services.
16. "Military service" means Active Duty or Active Reserve Duty with any branch of the United States Uniformed Services or the Commissioned Corps of the National Oceanic and Atmospheric Administration.
17. "Military service record" means a United States Uniformed Services or National Oceanic and Atmospheric Administration document that provides the following information:
  - a. The member's full name;
  - b. The member's Social Security number;
  - c. Type of discharge the member received; and
  - d. Active Duty dates, if applicable; or
  - e. Active Reserve Duty dates, if applicable; and
  - f. Point history for Active Reserve Duty dates, if applicable.
18. "Other public service" means previous employment listed in A.R.S. § 38-743(A).
19. "PDA pay-off invoice" means written correspondence from the ASRS to an Eligible Member that specifies the amount necessary to be paid by the Eligible Member to complete an Irrevocable PDA to receive the total credited service specified in the Irrevocable PDA.
20. "Plan administrator" means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).
21. "Service credit" means Forfeited Service, Leave of Absence Service, Military Service and Military Call-up Service under A.R.S. § 38-745, and Other Public Service that an Eligible Member may purchase.
22. "SP invoice" means a written correspondence from the ASRS informing an Eligible Member of the amount of money required to purchase a specified amount of Service Credit.
23. "Termination pay" means an Employer's payment to the ASRS of an Eligible Member's pay received as a result of terminating employment to purchase Service Credit as specified in A.R.S. § 38-747(B)(2).
24. "Three full calendar months" means the first day of the first full month through the last day of the third consecutive full month.
25. "Transfer employment" means to terminate employment with one Employer with which an Eligible Member has an Irrevocable PDA:
  - a. After accepting an offer to work for a new Employer;
  - b. While working as an active member for a different Employer; or
  - c. Before returning to work with any Employer within 120 days of terminating employment.
26. "Trustee-to-Trustee transfer" means a transfer of assets to the ASRS as authorized in A.R.S. § 38-747(I), from a retirement program from which, at the time of the transfer, a member is not eligible to receive a distribution.
27. "Uniformed services" means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard Reserve, and the Commissioned Corps of the Public Health Service.
28. "Window credit" means overpayments made on previously purchased Service Credit by members of the ASRS as provided by Laws 1997, Ch. 280, § 21, and Laws 2003, Ch. 164, § 3.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-502. Request to Purchase Service Credit and Notification of Cost**

- A. An Eligible Member may request to purchase Service Credit electronically. The Eligible Member shall verify at the time of request, the following information for the Eligible Member:
  1. Name;
  2. Mailing address;
  3. Date of birth;
  4. Marital status;
  5. Gender;
  6. Primary email address;
  7. Primary phone number; and
  8. Which category of Service Credit the Eligible Member is requesting to purchase.
- B. An Eligible Member who requests to purchase Service Credit pursuant to subsection (A) shall acknowledge the following statements of understanding:
  1. Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement plan with an intent to defraud the plan is guilty of a class 6 felony per Arizona Revised Statutes Section 38-793; and

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2. This transaction is subject to audit. If any errors or misrepresentations are discovered as a result of an audit, the Eligible Member's total credited service with the ASRS will be adjusted as necessary and if the Eligible Member is retired, the Eligible Member's retirement benefit will also be adjusted. Any overpayment(s) will be refunded. However, if a payment made with a rollover or pre-tax dollars is returned to the Eligible Member, there may be tax consequences as a result of this refund.
- C.** Upon receipt of the documentation required by this Article from the Eligible Member and if the Eligible Member's request to purchase Service Credit meets the requirements of this Article, the ASRS shall provide the following to the Eligible Member:
1. A SP Invoice stating the cost to purchase the amount of Service Credit the member is eligible to purchase;
  2. Instructions for electing method of payment; and
  3. The date payment election is due.
- D.** An Eligible Member who requests to purchase Service Credit pursuant to this section shall elect one or more methods of payment and submit the election to the ASRS by the date payment election is due.
- E.** An Eligible Member who elects to purchase Service Credit using after-tax payments shall acknowledge the following information:
1. After-tax payments must be from the Eligible Member and remitted to the ASRS by the Eligible Member;
  2. After-tax payments cannot be used to purchase political subdivision employment with a United States territory, commonwealth, overseas possession, or insular area; and
  3. If the Eligible Member joined the ASRS on or after July 1, 1999, §§ 415(b) and 415(c) of the IRC limit the after-tax money the Eligible Member can use to purchase Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-503. Requirements Applicable to All Service Credit Purchases**

- A.** To purchase Service Credit at the amount provided in an SP Invoice, an Eligible Member shall purchase the Service Credit by check or money order, or request an Irrevocable PDA, Direct Rollover, Trustee-to-Trustee Transfer, or Termination Pay as specified in this Article, by the due date specified by the method of payment the Eligible Member elected.
- B.** An Eligible Member may purchase all of the Service Credit or a portion of the Service Credit. If the Eligible Member wishes to purchase only a portion of the Service Credit, the Eligible Member shall specify:
1. Either the number of years or partial years of Service Credit the Eligible Member wishes to purchase; or
  2. The cost for the number of years or partial years of Service Credit the Eligible Member wishes to purchase, not exceeding the years or partial years and cost specified on the SP Invoice.
- C.** The ASRS shall not consider more than one active request at a time from a member to purchase Service Credit in a single category. The categories are:
1. Leave of Absence Service;
  2. Military Service;

3. Forfeited Service; and
4. Other Public Service.

- D.** An Eligible Member may cancel an active request by notifying the ASRS in writing.
- E.** If an Eligible Member is entitled to a Window Credit, the Eligible Member may apply the Window Credit to purchase Service Credit. To apply a Window Credit to a purchase of Service Credit, the Eligible Member shall make a request to the ASRS in writing by the date payment election is due as specified on the SP Invoice and include the following information:
1. The amount the Eligible Member wants to apply, and
  2. The Eligible Member's dated signature.
- F.** On or before the due date specified on the SP Invoice, an Eligible Member may request an extension of a due date for purchasing Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-504. Service Credit Calculation for Purchasing Service Credit**

- A.** An Eligible Member who purchases Service Credit shall receive one month of credited service for one or more days of service in a calendar month.
- B.** Pursuant to A.R.S. 38-739(B), an Eligible Member who purchases Service Credit shall receive a proportionate amount of credited service based on the length of the Eligible Member's service year.
- C.** Notwithstanding any other provision, an Eligible Member whose membership date is on or after July 20, 2011, cannot purchase more than five years of Service Credit for each of the following based on the length of the Eligible Member's service year:
1. Leave of Absence Service;
  2. Military Service; and
  3. Other Public Service.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-505. Restrictions on Purchasing Overlapping Service Credit**

The ASRS shall not permit an Eligible Member to purchase Service Credit that, when added to credited service earned in any plan year, results in more than:

1. One year of credited service in any plan year, or
2. One month of credited service in any one calendar month.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-506. Cost Calculation for Purchasing Service Credit**

- A.** For Service Credit for Leave of Absence Service, Military Service, and Other Public Service, the ASRS shall calculate, as of the date of the request to purchase Service Credit:

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1. The Actuarial Present Value of the future retirement benefit for the Eligible Member including the Service Credit that the Eligible Member requests to purchase, and
  2. The Actuarial Present Value of the future retirement benefit for the Eligible Member without the Service Credit that the Eligible Member requests to purchase.
- B.** The cost for purchasing the Service Credit that the Eligible Member requests to purchase is the difference between the Actuarial Present Value in subsection (A)(1) and the Actuarial Present Value in subsection (A)(2).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-507. Required Documentation and Calculations for Forfeited Service Credit**

- A.** An Eligible Member who requests to purchase Service Credit for Forfeited Service under A.R.S. § 38-742 shall provide the ASRS:
1. The name of an Employer, if known, for which the Eligible Member is requesting to purchase Service Credit for Forfeited Service; and
  2. The year and month the Eligible Member believes the ASRS returned retirement contributions.
- B.** Upon receipt of payment as specified in subsection (D), the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.
- C.** Notwithstanding subsection (B), if an Eligible Member has more than one return of contributions pursuant to A.R.S. § 38-740, the Eligible Member may elect to purchase Forfeited Service for any of the return of contributions and the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.
- D.** The amount the Eligible Member shall pay to purchase Service Credit for previously Forfeited Service is the amount of retirement contributions that the ASRS returned, plus interest on that amount from the date on the return of retirement contributions check to the date of redeposit at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit**

- A.** An Eligible Member who requests to purchase Service Credit for Leave of Absence Service under A.R.S. § 38-744 shall provide to the ASRS an Approved Leave of Absence form that includes:
1. The following information completed by the Eligible Member:
    - a. The start date and end date of the approved leave of absence;
    - b. The date the Eligible Member returned to work or a statement of why employment was not resumed;
    - c. The name of the Employer;
    - d. Whether the Eligible Member participated in another public retirement system during this leave of absence; and

- e. If the Eligible Member participated in another public retirement system during the leave of absence, whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the other public retirement system; and
- 2.** Acknowledgement of the following statements of understanding:
- a. The Eligible Member understands that up to one year of Service Credit may be purchased for each approved leave of absence, if the Eligible Member returns to work for the Employer that approved the leave of absence unless employment could not be resumed because of disability or nonavailability of a position;
  - b. The Eligible Member authorizes the Employer to provide any necessary personal information to ASRS in order to process this request; and
  - c. The Eligible Member certifies that if the Eligible Member participated in another public retirement system during the approved leave of absence, the Eligible Member is not receiving, and is not eligible to receive, a benefit from the other public retirement system for the time during the approved leave of absence; and
- 3.** The Eligible Member's dated signature.
- B.** Pursuant to A.R.S. § 38-744, a member who participated in another public retirement system during the leave of absence, and is receiving a benefit or is eligible to receive a benefit from the other public retirement system, is not an Eligible Member for purposes of this section.
- C.** If the information provided by the Eligible Member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the Eligible Member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer's secure ASRS account.
- D.** Upon submitting the information specified in subsection (B), the Employer shall acknowledge the following statements of understanding:
1. The Employer has verified all the dates for the approved leave of absence period are correct; and
  2. The contact individual has the legal power to bind the Employer in transactions with the ASRS.
- E.** The amount the Eligible Member shall pay to purchase Service Credit for an approved leave of absence is determined as provided in R2-8-506.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-509. Required Documentation and Calculations for Military Service Credit**

- A.** An Eligible Member who requests to purchase Service Credit for Military Service under A.R.S. § 38-745(A) and (B) shall provide to the ASRS:
1. A copy of the Eligible Member's Military Service Record within 30 days of the Eligible Member's request to purchase Service Credit; and
  2. A Military Service form that contains:
    - a. Whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the military.

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- b. The branch of the Uniformed Services the Eligible Member was in;
  - c. Whether the Eligible Member was on Active Duty or Active Reserve Duty;
  - d. The start date and end date of the Eligible Member's Military Service for which the Eligible Member is requesting to purchase Service Credit;
  - e. Acknowledgement that the Eligible Member will submit to the ASRS:
    - i. Proof of honorable separation for each type of Military Service listed on the form; and
    - ii. The Eligible Member's Military Service Record that supports all of the service listed on the form;
  - f. Acknowledgement of the following statements of understanding:
    - i. The Eligible Member understands that the service listed on this form does not include time that the Eligible Member either volunteered or was ordered into Active Duty service as part of a military call-up while employed by an Employer. This service is purchased under Military Call-up Service and requires a Military Call-up form to be completed by the Eligible Member's Employer; and
    - ii. The Eligible Member understands that any time the Eligible Member has listed on this form for Reserve or National Guard time reflects the months that the Eligible Member attended at least one drill or assembly for each month listed.
- B.** The amount the Eligible Member pays to purchase Service Credit for Military Service is determined as provided in R2-8-506.
- C.** The ASRS determines the amount of Service Credit an Eligible Member receives for Active Duty and Active Reserve Duty time by the time listed on the Military Service form, if the service listed is supported by the information contained in the Eligible Member's Military Service Record.
- D.** If the ASRS has not received complete and correct documents pursuant to this section within 30 days of the request to purchase Service Credit, the ASRS shall cancel the Eligible Member's request to purchase Service Credit.
- Historical Note**
- New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).
- R2-8-510. Required Documentation and Calculations for Military Call-up Service Credit**
- A.** An Eligible Member who meets the requirements under A.R.S. § 38-745(D) shall receive up to 60 months of Service Credit, not to exceed 5 years of Service Credit for Military Call-up Service under A.R.S. § 38-745(D) through (K). In order to determine the amount of contributions the Employer owes to purchase Service Credit for Military Call-up Service, the Eligible Member's Employer shall provide to the ASRS a copy of the Eligible Member's Military Service Record and a completed Military Call-up form that includes the following:
- 1. The Eligible Member's full name;
  - 2. The Eligible Member's Social Security number;
  - 3. The start date of Military Call-up Service;
  - 4. The end date of Military Call-up Service;
  - 5. The date the Eligible Member returned to work for the Employer;
  - 6. The salary for each pay period in each fiscal year while the Eligible Member was on military call-up, including any salary increases the Eligible Member would have received had the Eligible Member not left work due to military call-up;
  - 7. The name of a contact individual for the Employer, and that individual's business telephone number;
  - 8. The contact individual's dated signature;
  - 9. If applicable, the dates that the Eligible Member was hospitalized and released from the hospital as a result of participating in a military call-up.
  - 10. If applicable, the date the Eligible Member became disabled during or as a result of participating in a military call-up;
  - 11. If applicable, the date of the Eligible Member's death during or as a result of participating in a military call-up; and
  - 12. Acknowledgement of the following statements of understanding:
    - a. All the dates and payroll information for the Military Call-up Service are correct;
    - b. The Eligible Member:
      - i. Was honorably separated from Active Duty and returned to the same Employer within 90 days of either discharge from Active Duty or release from service-related hospitalization; or
      - ii. Was disabled and unable to return to work; or
      - iii. Died during or as a result of Active Duty.
    - c. The Employer must pay both the employee and Employer contributions in a lump sum upon the Eligible Member returning to employment, receipt of a declaration of disability, or receipt of a death certificate. These contributions are based on the salary the Eligible Member would have earned if the Eligible Member had not volunteered or been ordered into Active Duty;
    - d. The Eligible Member may receive a maximum of 60 months of Service Credit for Military Call-up Service pursuant to A.R.S. § 38-745; and
    - e. The contact individual has the legal power to bind the Employer in transactions with the ASRS.
- B.** An Employer shall make the request to purchase Service Credit for Military Call-up Service within 30 days after the earlier of the dates listed in A.R.S. § 38-745(E).
- C.** The ASRS calculates the amount the Employer pays to purchase Military Call-up Service pursuant to A.R.S. § 38-745(G) by multiplying the Eligible Member's salary per pay period at the time Active Duty commences, by the contribution rate in effect for the period of Active Duty. Included in the calculation are any salary increases the Eligible Member would have received if the Eligible Member had not left work to participate in a military call-up.
- D.** The ASRS shall send the Employer a statement of cost for purchase of the Service Credit for Military Call-up Service based on the calculation in subsection (C). Within 90 days from the date on the ASRS statement of cost, the Employer shall pay to the ASRS the amount on the statement. If the Employer fails to make full payment within 90 days, interest shall accrue on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect on the date of the statement of cost as specified in R2-8-118(A). The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- E.** If an Employer remits retirement or long-term disability contributions on behalf of an Eligible Member while the Eligible

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Member is on military call-up, the Employer shall reverse the contributions after the ASRS receives the information in subsection (A).

- F. If an Employer remits retirement contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, and the Eligible Member does not return to the Employer after separation from active Military Service, the ASRS shall apply the retirement contributions to the Eligible Member's credited service.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-511. Required Documentation and Calculations for Other Public Service Credit**

- A. An Eligible Member who requests to purchase Service Credit for Other Public Service under A.R.S. § 38-743 shall provide to the ASRS a completed Other Public Service form, signed and dated by the Eligible Member, that includes the following:
1. The name and mailing address of the Other Public Service employer;
  2. The position the Eligible Member held while working for the Other Public Service employer;
  3. The start date and end date of the Eligible Member's employment with the Other Public Service employer;
  4. The actual months and years the Eligible Member was employed with the Other Public Service employer;
  5. A statement of whether the Eligible Member participated in the Other Public Service employer's retirement plan;
  6. If the Eligible Member participated in the Other Public Service employer's retirement plan, the name of the retirement plan, identifying whichever one of the following applies:
    - a. The approximate date the Eligible Member took a return of retirement contributions;
    - b. The plan is non-contributory and the Eligible Member is not eligible for benefits from the plan; or
    - c. That, if not using all of the retirement contributions as a rollover, the Eligible Member will request a return of retirement contributions and forfeit all rights to any benefits from the plan and provide the ASRS with documentation that the Eligible Member has forfeited all rights to benefits from the plan no later than the due date specified on the SP Invoice; and
  7. Acknowledgement that if an audit determines that the Eligible Member is eligible for a benefit from the Other Public Service employer's retirement plan, the Eligible Member is required to take necessary steps to forfeit the benefit, and if the forfeiture is not completed within 90 days of being notified of the audit results, the Service Credit purchase listed on this application will be revoked and any funds paid to purchase the Service Credit will be refunded to the member.
- B. The amount the Eligible Member shall pay to purchase Service Credit for Other Public Service is determined as provided in R2-8-506.
- C. Notwithstanding R2-8-512, the ASRS shall not accept after-tax monies for the purchase of Service Credit for Other Public Service with a territory, commonwealth, overseas possession or insular area pursuant to A.R.S. § 38-743.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order**

- A. An Eligible Member may purchase Service Credit by personal check in the Eligible Member's name, cashier's check, or money order remitted by the Eligible Member.
- B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives a check, cashier's check, or money order made payable to the ASRS in the amount to purchase the requested Service Credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-513. Purchasing Service Credit by Irrevocable PDA**

- A. An Eligible Member may purchase Service Credit by Irrevocable PDA.
- B. If the Eligible Member elects to pay for Service Credit by Irrevocable PDA, the Eligible Member shall elect the terms of the Irrevocable PDA and submit the Irrevocable PDA to the ASRS and the Employer with the following:
1. Acknowledgements:
    - a. This Irrevocable PDA is binding and irrevocable;
    - b. This Irrevocable PDA shall remain in effect until the earlier of:
      - i. The authorized payroll deductions are completed; or
      - ii. The Eligible Member terminates employment.
    - c. The ASRS cannot terminate the Irrevocable PDA due to financial hardship;
    - d. The amount of Irrevocable PDA payments the Eligible Member makes is subject to federal laws;
    - e. The cost to purchase Service Credit by Irrevocable PDA includes an administrative interest charge at the Assumed Actuarial Investment Earnings Rate in effect at the time of the authorization as specified in R2-8-118(A);
    - f. Payments specified in this Irrevocable PDA are in addition to the regular contributions required pursuant to A.R.S. §§ 38-736 and 38-797.05;
    - g. The ASRS shall apply credited service to the Eligible Member's account upon receipt of payments authorized by the Eligible Member under this Irrevocable PDA; and
    - h. The ASRS shall not transfer, refund, or disburse the administrative interest that the ASRS charges pursuant to subsection (B)(1)(e); and
  2. Statements of Understanding:
    - a. It is the Eligible Member's responsibility to ensure the Eligible Member's Employer properly deducts payments and submits contributions as provided by the terms of the Irrevocable PDA;
    - b. Payments specified by the terms of this Irrevocable PDA shall be made directly to the ASRS from the Eligible Member's Employer and the Eligible Member does not have the option of receiving such payments directly from the Employer;

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- c. The Eligible Member's Employer shall make payments pursuant to this Irrevocable PDA after other mandatory deductions are made;
  - d. The Eligible Member's Employer cannot accept an election to change this Irrevocable PDA;
  - e. The Eligible Member has up to 14 days to request the ASRS calculate the remaining balance of this Irrevocable PDA after the earlier of:
    - i. Terminating employment;
    - ii. Terminating LTD without returning to work with an Employer; or
    - iii. The effective ASRS retirement date;
  - f. The Eligible Member must complete a purchase of the remaining balance on this Irrevocable PDA by the due date specified on the PDA Pay-off Invoice;
  - g. It is the Eligible Member's responsibility to notify the ASRS of any changes in the Eligible Member's employment that may affect the status of this Irrevocable PDA;
  - h. If the Eligible Member terminates employment and returns to work with an Employer within 120 days of terminating employment, this Irrevocable PDA must continue with the new Employer pursuant to R2-8-513.01; and
  - i. If the Eligible member terminates employment and does not return to work with an Employer within 120 days of terminating employment, the ASRS shall terminate this Irrevocable PDA pursuant to R2-8-513.01.
- C.** By submitting the Irrevocable PDA to the ASRS, the Irrevocable PDA is deemed to be signed by the Eligible Member.
- D.** At the time the Eligible Member elects the Irrevocable PDA, the Eligible Member may elect to use Termination Pay towards the balance of the Irrevocable PDA if the Eligible Member terminates employment. If the Eligible Member elects to use Termination Pay, the Eligible Member shall submit the Irrevocable PDA to the ASRS with the following information:
- 1. A statement that the Eligible Member:
    - a. Understands and agrees that the Eligible Member must continue working at least Three Full Calendar Months after the date of submission of the form before Termination Pay may be used on a pre-tax basis;
    - b. Understands that if the Termination Pay exceeds the balance owed on the Irrevocable PDA, the overage will be returned to the Employer to be distributed to the Eligible Member;
    - c. Understands that the election to use Termination Pay is binding and irrevocable;
    - d. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
    - e. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
    - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay;
    - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
    - h. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
  - 2. Whether the Eligible Member is electing either all Termination Pay or a specified amount of Termination Pay to be applied to the balance of the Irrevocable PDA.
- E.** The ASRS shall:
- 1. Charge interest on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect at the time the Eligible Member submitted the request to purchase service as specified in R2-8-118(A);
  - 2. Limit the payroll deduction time period to a maximum of 520 payments; and
  - 3. Require a minimum payment of \$10.00 per payroll period, or payment in an amount to purchase at least .001 years of Service Credit per payroll period, whichever is greater.
- F.** The Employer shall implement the payroll deduction on the first pay period after receiving the Irrevocable PDA.
- G.** If a deduction is not made under an Irrevocable PDA within six months after the Eligible Member submits the authorization, the authorization lapses and the Eligible Member may make another request, which is recalculated based on the new request date unless the failure to begin deductions is due to an ASRS error.
- H.** A period of leave of absence, LTD, or military call-up shall not cancel the Irrevocable PDA. The Employer shall resume deductions immediately upon the Eligible Member's return to that Employer. The period during which the Eligible Member is on leave of absence, on LTD, or leaves work because of a military call-up is not included in the payment time limitation under subsection (D)(2). If the Eligible Member does not return to active working status, whether due to termination of employment or retirement, the Eligible Member may elect to purchase the balance of unpaid service under the Irrevocable PDA at the time of termination or retirement as specified in this Section.
- I.** Deductions made pursuant to an Irrevocable PDA continue until the:
- 1. Irrevocable PDA is completed;
  - 2. Eligible Member retires, whether or not the Eligible Member continues employment as allowed in A.R.S. §§ 38-766.01 and 38-764(I);
  - 3. Eligible Member terminates all ASRS employment without transferring employment; or
  - 4. Date of the Eligible Member's death.
- J.** If an Eligible Member retires or terminates employment from all Employers without transferring employment as stated in R2-8-513.01 before all deductions are made as authorized by the Irrevocable PDA, the ASRS shall cancel the Eligible Member's Irrevocable PDA unless the Eligible Member notifies the ASRS of the Eligible Member's intent to purchase the remaining amount within 14 days after the earlier of either termination or retirement.
- K.** When the Eligible Member notifies the ASRS of retirement or termination from all ASRS employment and requests to pay off the Irrevocable PDA, the ASRS shall send the Eligible Member a PDA Pay-off Invoice through the Eligible Member's secure ASRS account. The ASRS shall calculate the amount owed by the Eligible Member.
- L.** By the date payment election is due, the Eligible Member shall ensure that the ASRS receives the information specified in R2-8-502(C).
- M.** The Eligible Member may purchase the remaining Service Credit by one or more of the following methods by the due date specified on the PDA Pay-off Invoice:

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1. By any method specified in R2-8-512;
2. By making a request to the ASRS for a rollover or transfer under R2-8-514 and completing the rollover or transfer by the due date specified on the PDA Pay-off Invoice; or
3. By Termination Pay under R2-8-519, if the Eligible Member authorized this option at the time the Eligible Member signed the Irrevocable PDA.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-513.01. Irrevocable PDA and Transfer of Employment to a Different Employer**

- A. If an Eligible Member Transfers Employment, the Eligible Member's new Employer shall continue to make deductions pursuant to an Irrevocable PDA.
- B. If an Eligible Member terminates employment without having accepted an offer to work with an Employer, the ASRS shall terminate an Irrevocable PDA.
- C. Notwithstanding subsection (B), if a retirement contribution is due from a new Employer within 120 days from the Eligible Member's termination date with the previous Employer, the ASRS shall determine that the Eligible Member Transferred Employment, unless the Eligible Member notified the ASRS of the termination of employment.
- D. If an Eligible Member who has elected Termination Pay pursuant to R2-8-513(D) Transfers Employment, the ASRS shall not accept any Termination Pay that the ASRS receives from the Eligible Member's previous Employer.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-513.02. Termination Date**

For the purpose of an Irrevocable PDA, the date an Eligible Member is considered terminated from an Employer is:

1. For an Eligible Member terminating employment, the Eligible Member's last pay period end date with that Employer;
2. For an Eligible Member on military call-up who does not return to the same Employer:
  - a. 90 days from the date of separation from military call-up;
  - b. 90 days from the date released from the hospital, if injured while on military call-up; or
  - c. The date the Eligible Member has been hospitalized for two years for injuries sustained as a result of participating in a military call-up.
3. For an Eligible Member on leave of absence without pay who does not return to the same Employer, the date the Employer required the Eligible Member to return to work;
4. For an Eligible Member who is unable to work because of a disability, the later of:
  - a. The date the Eligible Member's request for long-term disability benefits are denied;
  - b. The date the Eligible Member no longer has leave with pay available; or

- c. For an Eligible Member on long-term disability who does not return to the same Employer or Transfer Employment, the date long-term disability benefits are terminated.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-514. Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer**

- A. An Eligible Member may purchase Service Credit by Direct Rollover or Trustee-to-Trustee Transfer pursuant to this Article.
- B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives the payment for the service purchase and a completed Direct Rollover/Transfer Certification to Purchase Service Credit form.
- C. An Eligible Member who chooses to purchase Service Credit shall provide the following to the ASRS:
  1. The name of the financial institution or plan;
  2. Whether the Eligible Member is choosing to rollover/transfer the entire balance of their account and if not, the amount of the rollover/transfer;
  3. Acknowledgement of the following information:
    - a. After-tax funds are only acceptable from 401(a) and 403(b) plans and must be listed separately from the portion that is pre-tax on the payment as after-tax amounts. This information must be provided to the ASRS with the payment.
    - b. The only fund types that the ASRS accepts are:
      - i. 401(a);
      - ii. 401(k) pre-tax only;
      - iii. 403(b);
      - iv. Governmental 457 pre-tax only;
      - v. 403(a) pre-tax only;
      - vi. 408 Traditional IRA pre-tax only;
      - vii. 408(k) SEP IRA pre-tax only;
      - viii. 408(p) Simple IRA pre-tax only and only if the Eligible Member participated for at least 2 years in this plan;
  - c. The ASRS shall not accept the following fund types:
    - i. Roth funds;
    - ii. Funds already distributed to the Eligible Member from a retirement plan listed in subsection (C)(3)(b);
    - iii. Inherited IRA;
    - iv. Coverdale Education Savings Account funds;
    - v. Hardship distributions;
    - vi. Funds not includable in gross income;
    - vii. Funds required under § 401(a)(9) of the IRC because the Eligible Member have attained age 70½;
    - viii. One of a series of substantially equal periodic payments made at least annually for the Eligible Member's life;
    - ix. One of a series of substantially equal periodic payments made for 10 years or more;
    - x. After-tax contributions from any plan other than a 401(a) or 403(b) qualified plan;
  - d. The funds must be sent as a Direct Rollover from a plan listed in subsection (C)(3)(b) and issued to the ASRS for the benefit of the Eligible Member. If the payment is issued to anyone other than the ASRS,

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including the Eligible Member, then within 60 days of the plan issuing the payment, the Eligible Member must place the payment into a plan specified in subsection (C)(3)(b) to be reissued directly to the ASRS.

- e. It is the Eligible Member's responsibility to contact the administrator of the plan from which the Direct Rollover will be made and have it initiated. The Eligible Member must also ensure all rollovers are completed by the due date. If the ASRS does not receive payment by the due date, the invoice will expire and the payment will be returned to the Eligible Member.
  - f. If the ASRS accepts a rollover and later determines that it was not eligible, the ASRS will distribute the invalid payment directly to the Eligible Member. Any taxes, penalties, and interest that the IRS, any taxing authority, or financial institution may assess against the Eligible Member due to an invalid payment are solely the Eligible Member's responsibility.
  - g. The plan from which the Eligible Member is rolling over funds must be solely in the Eligible Member's name. The Eligible Member may be a spousal beneficiary of a deceased person or an alternate payee on the plan from which the Eligible Member is rolling over funds.
- D.** An Eligible Member who chooses to purchase Service Credit pursuant to this section shall submit a Direct Rollover/Transfer Certification to Purchase Service Credit form that includes:
- 1. The Eligible Member's full name;
  - 2. The last 4 digits of the Eligible Member's Social Security number;
  - 3. The Eligible Member's signature certifying that the Eligible Member understands the requirements, limitations, and entitlements for the rollover/transfer that is being used to purchase Service Credit, and has read and understands the Direct Rollover/Transfer Certification to Purchase Service Credit form and any accompanying instructions and information;
  - 4. The Authorized Representative's name and title;
  - 5. The Authorized Representative's telephone number; and
  - 6. Certification by the Authorized Representative's dated signature that:
    - a. The plan is either:
      - i. A qualified pension, profit sharing, or 401(k) plan described in IRC § 401(a), or a qualified annuity plan described in IRC § 403(a);
      - ii. A deferred compensation plan described in IRC § 457(b) maintained by a state of the United States, a political subdivision of a state of the United States, or an agency or instrumentality of a state of the United States;
      - iii. An annuity contract described in IRC § 403(b); or
      - iv. An IRA described in A.R.S. § 38-747(H)(3);
    - b. The rollover/transfer specified on the form from which the pre-tax funds are being rolled over or transferred is intended to satisfy the requirements of the applicable section of the IRC;
    - c. The Authorized Representative is not aware of any plan provision or any other reason that would cause the plan/IRA not to satisfy the applicable section of the IRC; and

d. The funds will be sent to the ASRS as a direct plan rollover, IRA rollover, or a Trustee-to-Trustee Transfer.

- E. The Eligible Member shall contact the Plan Administrator to have the funds distributed and transferred to the ASRS. Unless the ASRS receives a check for the correct amount from the plan and all documents required by this Article by the due date specified by the method of payment the Eligible Member elected, the ASRS shall cancel the request to purchase Service Credit.
- F. The Eligible Member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.
- G. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the Eligible Member.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Citations to subsection (C)(3)(b) corrected in subsections (C)(3)(c)(ii) and (C)(3)(d) (Supp. 20-1).

**R2-8-515. Repealed****Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-516. Expired****Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

**R2-8-517. Expired****Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

**R2-8-518. Repealed****Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

**R2-8-519. Purchasing Service Credit by Termination Pay**

- A. To purchase Service Credit using Termination Pay, an Eligible Member shall elect to use Termination Pay by the date payment election is due.
- B. An Eligible Member who elects to use Termination Pay pursuant to this section, shall provide the ASRS with the Eligible

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Member's anticipated termination date which cannot be more than six months from the date the ASRS issues the SP Invoice and must be at least Three Full Calendar Months after the date the Eligible Member elects and submits Termination Pay as a method of payment.

- C. An Eligible Member who elects to use Termination Pay pursuant to this section, shall provide the ASRS with a Termination Pay Authorization for the Purchase of Service Credit form with the following information:
1. The name of the Employer that will be submitting the Termination Pay to the ASRS;
  2. Whether the Eligible Member elects to use all Termination Pay or a specific amount of Termination Pay;
  3. Signature of the Eligible Member, certifying that the Eligible Member understands that:
    - a. The Eligible Member is required to continue working at least Three Full Calendar Months after the date the Eligible Member submits the Termination Pay Authorization for the Purchase of Service Credit form before Termination Pay may be used on a pre-tax basis;
    - b. If the Eligible Member terminates employment more than six months after the date on the SP Invoice, the Eligible Member may purchase the Service Credit at a newly calculated rate and possibly at a higher cost;
    - c. The terms elected in the Termination Pay Authorization for the Purchase of Service Credit form are binding and irrevocable;
    - d. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
    - e. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
    - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay, as provided in the Termination Pay Authorization for the Purchase of Service Credit form; and
    - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
    - h. If the Termination Pay exceeds the balance due on the SP Invoice, the ASRS will return the difference to the Eligible Member's Employer to be distributed to the Eligible Member;
    - i. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
    - j. The ASRS will send a notification to the Eligible Member's Employer two weeks prior to the Eligible Member's termination date, as indicated on the Termination Pay Authorization form, to notify the Employer that the Eligible Member's Termination Pay must be sent directly to the ASRS.
- D. The ASRS shall not apply Termination Pay to an SP Invoice covered by an Irrevocable PDA in effect at the time of termination, unless the Eligible Member elected the Termination Pay pursuant to R2-8-513(D) at the time the member authorized the Irrevocable PDA.
- E. If an Eligible Member elects to use Termination Pay to purchase Service Credit, the ASRS shall not apply any other form of payment to the Service Credit purchase until the ASRS receives the Termination Pay.

- F. Notwithstanding any other section, if an Eligible Member dies prior to terminating employment, the ASRS shall not accept Termination Pay.
- G. If an Eligible Member Transfers Employment, the ASRS shall not accept Termination Pay from the Eligible Member's previous Employer.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA**

- A. If an Eligible Member terminates employment without transferring employment as specified in R2-8-513.01 while purchasing Service Credit by an Irrevocable PDA and requests return of retirement contributions pursuant to A.R.S. § 38-740, the ASRS shall return any principal payments made for the purchase of Service Credit including interest earned on those principal payments at the interest rate specified in R2-8-118(A), column 3.
- B. If an Eligible Member dies while purchasing Service Credit, the ASRS shall credit the Eligible Member's account with:
  1. The Service Credit for which the ASRS received payment pursuant to a PDA before the Eligible Member's death;
  2. The principal payments made by the Eligible Member; and
  3. Interest earned on payment through the date of distribution at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).
- C. If an Eligible Member dies while purchasing Service Credit, the ASRS shall not permit the survivor or an estate to purchase the remaining balance.
- D. The ASRS shall not transfer, disburse, or refund the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.
- E. The ASRS shall not credit a member's account with the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-521. Adjustment of Errors**

- A. If the ASRS determines an error has been made in the information provided by the member or in the calculations made by the ASRS, the ASRS shall make an adjustment to the member's account and return ineligible payments, if any.
- B. The ASRS shall notify the member in writing of any adjustments.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING****R2-8-601. Definitions**

The following definitions apply to this Article unless otherwise specified:

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1. "Rulemaking record" means a file the ASRS maintains as specified in A.R.S. § 41-1029.
2. "Oral proceeding" means a public gathering the ASRS holds for the purpose of receiving comment and answering questions about a proposed rule as specified in A.R.S. § 41-1023.
3. "Presiding officer" means an individual selected by the ASRS Director to oversee oral proceedings.
4. "Substantive policy statement" means the same as in A.R.S. § 41-1001(22).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

**R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements**

Except on a state holiday, a person may review a rulemaking record or the directory of substantive policy statements at the Phoenix office of the ASRS, Monday through Friday, from 8:00 a.m. until 5:00 p.m.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-603. Petition for Rulemaking**

- A.** A person submitting a petition to the ASRS to make or amend a rule under A.R.S. § 41-1033 shall include the following in the petition:
1. The name and current address of the person submitting the petition;
  2. An identification of the rule to be made or amended;
  3. The suggested language of the rule;
  4. The reason why a new rule should be made or a current rule should be amended with supporting information, including:
    - a. An identification of the persons who would be affected by the rule and how the persons would be affected; and
    - b. If applicable, statistical data with references to attached exhibits;
  5. The signature of the person submitting the petition; and
  6. The date the person signs the petition.
- B.** The ASRS shall send a written notice of the ASRS's decision regarding the Petition for Rulemaking to the person within 60 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement**

- A.** A person submitting a petition to the ASRS under A.R.S. § 41-1033 requesting that the ASRS review an agency practice or substantive policy statement that the person alleges constitutes a rule shall include the following in the petition:
1. The name and current address of the person submitting the petition,
  2. The reason the person alleges that the agency practice or substantive policy statement constitutes a rule,
  3. The signature of the person submitting the petition, and

4. The date the person signs the petition.

- B.** The person who submits a petition under subsection (A) shall attach a copy of the substantive policy statement or a description of the agency practice to the petition.
- C.** The ASRS shall send a written notice of the ASRS's decision regarding the petition to the person within 60 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-605. Objection to Rule Based Upon Economic, Small Business and Consumer Impact**

- A.** A person submitting an objection to a rule based upon the economic, small business and consumer impact under A.R.S. § 41-1056.01 shall include the following in the objection:
1. The name and current address of the person submitting the objection;
  2. Identification of the rule;
  3. Either evidence that the actual economic, small business and consumer impact:
    - a. Significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule with supporting information attached as exhibits; or
    - b. Was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule with supporting information attached as exhibits; or
    - c. Reflects that the ASRS did not select the alternative that 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.
  4. The signature of the person submitting the objection; and
  5. The date the person signs the objection.
- B.** The ASRS shall respond to the objection as specified in A.R.S. § 41-1056.01(C).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-606. Oral Proceedings**

- A.** A person requesting an oral proceeding under A.R.S. § 41-1023(C) shall submit a written request to the ASRS that includes:
1. The name and current address of the person making the request;
  2. If applicable, the name of the public or private organization, partnership, corporation or association, or the name of the governmental entity the person represents; and
  3. Reference to the proposed rule including, if known, the date and issue of the Arizona Administrative Register in which the Notice of Proposed Rulemaking was published.
- B.** The ASRS shall record an oral proceeding by either electronic or stenographic means and any CDs, cassette tapes, transcripts, lists, speaker slips, and written comments received shall become part of the official record.

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- C. A presiding officer shall perform the following acts on behalf of the ASRS when conducting an oral proceeding as prescribed under A.R.S. § 41-1023:
1. Provide a method for a person who attends the oral proceeding to voluntarily note the person's attendance;
  2. Provide a Request to Present Oral Comment form that includes space for:
    - a. The name of the person submitting the Request to Present Oral Comment form,
    - b. The entity the person represents, if applicable, and
    - c. The rule on which the person wishes to comment or about which the person has a question;
  3. Open the proceeding by identifying the rules to be considered, the location, date, time, purpose of the proceeding, and the agenda;
  4. Explain the background and general content of the proposed rulemaking;
  5. Provide for public comment as specified in A.R.S. § 41-1023(D); and
  6. Close the oral proceeding by announcing the location where written public comments are to be sent and specifying the close of record date and time.
- D. A presiding officer may limit comments to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to prevent undue repetition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**R2-8-607. Petition for Delayed Effective Date**

- A. A person who wishes to delay the effective date of a rule under A.R.S. § 41-1032 shall file a petition with the ASRS prior to the proposed rule's close of record date. The petition shall contain the:
1. Name and current address of the person submitting the petition;
  2. Identification of the proposed rule;
  3. Need for the delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted;
  4. Reason why the public interest will not be harmed by the delayed effective date;
  5. Signature of the person submitting the petition; and
  6. Date the person signs the petition.
- B. The ASRS shall send a written notice of the ASRS's decision to the person within 30 days of receipt of the Petition for Delayed Effective Date.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

**ARTICLE 7. CONTRIBUTIONS NOT WITHHELD****R2-8-701. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "218 agreement" means a written agreement between the state, political subdivision, or political subdivision entity and the Social Security Administration, under the provisions of § 218 of the Social Security Act, to provide Social Security and Medicare or Medicare-only coverage to employees of the state, political subdivision, or political subdivision entity.

2. "Documentation" means a pay stub, completed W-2 form, completed Verification of Contributions Not Withheld form, Employer letter or spreadsheet, completed State Personnel Action Request Form, Social Security Earnings Report, employment contract, payroll record, timesheet, or other Employer-provided form that includes:
  - a. Whether the employee was covered under the Employer's 218 Agreement prior to July 24, 2014,
  - b. The number of hours the member worked for the Employer per pay period, and
  - c. The amount and type of compensation earned by the member within each pay period.
3. "Eligible service" means employment with an Employer:
  - a. That is no more than 15 years before the date the ASRS receives written credible evidence that less than the correct amount of contributions were paid into the ASRS or the ASRS otherwise determines that less than the correct amount of contributions were made as specified in A.R.S. § 38-738(C); and
  - b. In which the member was Engaged to Work for an Employer.
4. "Engaged to Work" means the same as in R2-8-1001.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-702. General Information**

- A. The Employer shall pay the Employer's portion of the contributions the ASRS determines is owed under R2-8-706 whether or not the member pays the member's portion of the contributions.
- B. The person who initiates the claim that contributions were not withheld for Eligible Service has the burden to prove a contribution error was made.
- C. The ASRS shall not waive payment of contributions or interest owed under this Article.
- D. If a member is not able to establish eligibility for purchasing service credit pursuant to this Article, the member may be eligible to purchase service pursuant to A.R.S. § 38-743 and Article 5 of this Chapter.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-703. Employer's Discovery of Error**

If an Employer determines that any amount of contributions have not been withheld for a member for a period of Eligible Service, the Employer shall notify the ASRS by submitting through the Employer's secure ASRS account a Verification of Contributions Not Withheld form with the following information:

1. The member's full name;
2. The member's Social Security number;
3. The range of dates that any contribution was not withheld;
4. The member's position title during the date range listed in subsection (3);
5. The amount and type of compensation the member was entitled to receive, and the number of hours the member

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worked for the Employer per pay period for each fiscal year;

6. The member's hire date;
7. Whether the member was Engaged to Work for the Employer;
8. Whether the position was covered under the Employer's 218 Agreement for periods prior to July 24, 2014; and
9. The dated signature of the Employer's authorized agent certifying:
  - a. All the dates and salary information is correct;
  - b. The person submitting this form has the legal power to enter into binding transactions with the ASRS;
  - c. Acknowledgement the Employer will receive an invoice for the contributions owed for Eligible Service only, as well as the accumulated interest on the contributions that were not withheld for both the member and Employer contributions; and
  - d. Acknowledgement the member will receive an invoice for their contributions owed.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-704. Member's Discovery of Error**

- A. If a member believes that an Employer has not withheld contributions for the member for a period of Eligible Service, the member shall:
  1. Notify the member's Employer that the Employer has not withheld contributions correctly by contacting the Employer directly; or
  2. Submit to the ASRS a Contributions Not Withheld Request form through the member's secure ASRS account with the following:
    - a. The name of the Employer that should have remitted contributions;
    - b. The range of dates that any contribution was not withheld;
    - c. The member's position title during the date range listed in subsection (b);
    - d. Whether the member was Engaged to Work for the Employer; and
    - e. Dated signature of the member certifying the member understands:
      - i. The ASRS will be providing the member's Social Security number to the Employer for verification; and
      - ii. If the member's Employer cannot verify this request, it is the member's responsibility to provide Documentation of Eligible Service.
- B. If the information provided by the eligible member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the eligible member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer's secure ASRS account, along with the information identified in R2-8-703.
- C. If the Employer refuses to fill out the Verification of Contributions Not Withheld form, or if the member disputes the information the Employer completes on the form, the member shall provide the ASRS with the Documentation the member believes supports the allegation that contributions should have been withheld.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-705. ASRS' Discovery of Error**

If the ASRS determines, as specified in A.R.S. § 38-738(B)(7), that all contributions have not been withheld for a member for a period of Eligible Service, the ASRS shall notify the Employer in writing and shall request the Employer submit through the Employer's secure ASRS account a Verification of Contributions Not Withheld form pursuant to R2-8-703.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-706. Determination of Contributions Not Withheld**

- A. Upon receipt of the information listed in R2-8-703, R2-8-704, or R2-8-705, the ASRS shall review the information to determine whether or not member contributions should have been withheld by the Employer, the length of time those contributions should have been withheld, and the amount of contributions that should have been withheld.
- B. Except for a member who met the requirements to be an active member while simultaneously contributing to another retirement plan listed in subsection (B)(2), for purposes of this Article, the ASRS shall determine that contributions should not have been withheld for the period of service in question if:
  1. An Employer remits an accurate ACR amount pursuant to R2-8-116; or
  2. The employee participates in:
    - a. Another Arizona retirement plan listed in A.R.S. Title 38, Chapter 5, Articles 3, 4, or 6; or
    - b. In an optional retirement plan listed in A.R.S. Title 15, Chapter 12, Article 3 or A.R.S. Title 15, Chapter 13, Article 2.
- C. Except for returning to work under A.R.S. § 38-766.01, the presence of a contract between a member and the Employer does not alter the contribution requirements of A.R.S. §§ 38-736 and 38-737.
- D. If there is any discrepancy between the Documentation provided by the Employer and the Documentation provided by the member, a document used in the usual course of business prepared at the time in question is controlling.
- E. The ASRS shall provide to each, the Employer and the member, an invoice with the following:
  1. The amount of Eligible Service for which contributions were not withheld,
  2. The dollar amount of the contributions to be paid to the ASRS by the Employer,
  3. The interest on the Employer contributions and member contributions to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-738,
  4. The amount of the delinquent interest late charge to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-735, and
  5. The dollar amount of contributions to be paid to the ASRS by the member.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section

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amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-707. Submission of Payment**

- A.** Within 90 days from the date on the statement identified in R2-8-706(E), the Employer shall pay to the ASRS the amount due to be paid by the Employer. An Employer who makes payment under A.R.S. § 38-738(B)(3) is not liable for additional interest that may accrue as a result of a member's failure to remit payment required by A.R.S. § 38-738(B)(1). If the ASRS does not receive full payment of the Employer's amount due within 90 days after the ASRS notifies the Employer of the amount due, the full amount due will accrue interest as provided in A.R.S. § 38-738. The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- B.** The member shall make payment to the ASRS pursuant to A.R.S. § 38-738 by the due date specified on the member's invoice identified in R2-8-706(E).
- C.** If the ASRS does not receive full payment of the member's amount due by the due date specified on the member's invoice identified in R2-8-706(E), the full amount due will accrue interest, as provided in A.R.S. § 38-738.
- D.** A member does not receive service credit or credit for salary until both the Employer and member portions of the contributions and all interest has been paid pursuant to A.R.S. § 38-738.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-708. Expired****Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2982, effective September 15, 2016 (Supp. 16-3).

**R2-8-709. Repealed****Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**ARTICLE 8. RECOVERY OF OVERPAYMENTS****R2-8-801. Definitions**

For purposes of this article, the following definitions apply, unless specified otherwise:

1. "DRO" means the same as in R2-8-120.
2. "Estimated Social Security disability income amount" and "Revised Social Security disability income amount" mean the amount of funds the ASRS is entitled to collect pursuant to R2-8-802.
3. "LTD" means long-term disability program as described in A.R.S. § 38-797 et seq.
4. "LTD benefit" means the same as in R2-8-301
5. "Overpayment" means:

- a. Any funds the ASRS distributes in excess of the amount to which the recipient is legally entitled; and
- b. Any estimated social security disability income amount or revised social security disability income amount the ASRS is entitled to collect pursuant to A.R.S. § 38-765.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-802. Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount**

- A.** The ASRS contracted LTD claims administrator shall determine a member's estimated Social Security disability income amount as follows:
1. Prior to the death, retirement, or forfeiture of a member, the estimated Social Security disability income amount shall be equal to the member's full monthly LTD benefit reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9); and
  2. Upon the member's death, retirement, or forfeiture, the estimated Social Security disability income amount shall be equal to the total amount of the member's LTD benefit, reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9).
- B.** A member or survivor who disputes the estimated Social Security disability income amount based on the conclusions of a legal proceeding may request a revised Social Security disability income amount by submitting supporting documentation from the legal proceeding to the ASRS contracted LTD claims administrator within 30 days of the date of conclusion of the legal proceeding.
- C.** Pursuant to subsection (B), the ASRS or the ASRS contracted LTD claims administrator shall determine whether the estimated Social Security disability income amount needs to be revised based on the conclusions of the legal proceeding.
- D.** If the ASRS or the ASRS contracted LTD claims administrator determines the estimated Social Security disability income amount was inaccurate, the ASRS or the ASRS contracted LTD claims administrator shall calculate a revised Social Security disability income amount based on the supporting documentation provided by the member or survivor pursuant to subsection (B).
- E.** Pursuant to subsection (B), if the revised Social Security disability amount is less than the amount of the estimated Social Security disability benefit, the ASRS or the ASRS contracted LTD claims administrator shall:
1. Refund a portion of the amount of the estimated Social Security disability benefit that the ASRS retained upon forfeiture of the member in order to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount, or
  2. Adjust the member's retirement benefits or the survivor's benefits to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount.
- F.** If a member or survivor is not satisfied with the determination on the request for a revised Social Security disability income amount, the member or survivor may appeal the determination pursuant to 2 A.A.C. 8, Article 4.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-803. Reimbursement of Overpayments**

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- A. Upon the ASRS discovering that it has made an overpayment to a member, survivor, or alternate payee, the ASRS shall send a letter to notify the necessary person that an overpayment was provided and the person shall reimburse the ASRS in the amount of the overpayment.
- B. A person who reimburses the ASRS for an overpayment shall do so by remitting a check, made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.
- C. If the ASRS is unable to collect the amount of an overpayment by reducing future payments to members, survivors, or alternate payees as provided in this Article, the ASRS shall allow the appropriate person to reimburse the ASRS for the amount of the overpayment by making payments over the course of as many months as the number of months in which an overpayment was made by the ASRS, not to exceed 36 months.
- D. A person may request to reimburse the amount of the overpayment to the ASRS sooner than provided in this Article.
- C. The ASRS shall reduce a member's or alternate payee's monthly annuity as follows in order to offset any overpayments which have not been reimbursed or collected pursuant to this Article:
  1. The ASRS shall reduce the member's monthly annuity by up to 10% for 36 months, if the amount of the overpayment can be collected by the ASRS within that time.
  2. If the amount of the overpayment cannot be collected pursuant to subsection (C)(1), the ASRS will notify the member that the member must make payment arrangements within 60 days of the date on the notice. If the member does not make payment arrangements within 60 days of the date on the notice, the ASRS shall actuarially reduce the amount of the member's monthly annuity.
- D. Notwithstanding subsection (B), the ASRS shall not reduce a member's or alternate payee's monthly annuity by an estimated Social Security disability income amount while the member is pursuing a Social Security disability income determination pursuant to R2-8-305, if the member submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-804. Collection of Overpayments from Forfeiture**

- A. Unless a member cancels a forfeiture request by submitting written notice to the ASRS within 30 days of the request to forfeit, the ASRS shall reduce a member's refund amount in order to offset the member's overpayment amount pursuant to subsection (B).
- B. The ASRS shall reduce the member's refund amount by the amount of any overpayment and the ASRS shall:
  1. Pursue collection of any remaining overpayment amount pursuant to this Article; and
  2. Distribute the remaining refund amount to the member pursuant to R2-8-115.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-805. Collection of Overpayments from Retirement Benefit**

- A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B. Upon retirement, the ASRS shall reduce the amount of a member's retirement benefit by the amount of any overpayments that have not been reimbursed to the ASRS, pursuant to R2-8-803 as follows:
  1. If the member elects to receive a lump sum or partial lump sum benefit, the amount of the lump sum or partial lump sum shall be reduced by the amount of the overpayment to no less than \$5.00 and the ASRS shall pursue overpayment collections for any remaining overpayment amount pursuant to this Article;
  2. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment is equal to or less than the amount of the member's first annuity disbursement minus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of any overpayment to no less than \$5.00;
  3. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment exceeds the amount of the member's first annuity disbursement plus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of the overpayment to no less than \$5.00 and pursue collection pursuant to subsection (C).

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-806. Collection of Overpayments from Survivor Benefit**

- A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B. If a member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS shall reduce the necessary person's amount of benefits pursuant to subsection (C).
- C. The ASRS shall collect the amount of any remaining overpayment by reducing the necessary person's monthly annuity over the same number of months in which the overpayment was made, up to 3 months for each month an overpayment was made by the ASRS.
- D. If the ASRS is unable to collect the amount of any overpayment pursuant to subsection (C), the ASRS shall pursue collection of any remaining overpayment amount pursuant to this Article.
- E. Notwithstanding subsection (C), the ASRS shall not reduce a survivor's monthly annuity by an estimated Social Security disability income amount while the survivor is pursuing a Social Security disability income determination on behalf of the member pursuant to R2-8-305, if the survivor submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income to which the member was entitled.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-807. Collection of Overpayments from LTD Benefit**

Upon disability of the member, the ASRS shall reduce the amount of the disabled member's LTD benefit by the amount of any overpayment the member received from the ASRS and has not reimbursed pursuant to this Section.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

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Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

**R2-8-808. Collection of Overpayments by the Attorney General**

If a member does not reimburse the ASRS for an overpayment pursuant to R2-8-802, the ASRS may submit the overpayment amount for collection by the Arizona Attorney General's Office.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-809. Collection of Overpayments by the Arizona Department of Revenue**

If a member does not reimburse the ASRS for an overpayment pursuant to R2-8-802, the ASRS may submit the overpayment amount for collection by the Arizona Department of Revenue.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**R2-8-810. Collection of Overpayments by Garnishment or Levy**

Pursuant to A.R.S. § 38-723, the ASRS may collect the amount of any overpayment that has not been reimbursed or collected pursuant to this article by garnishing wages and/or placing a levy on the appropriate person's bank account.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

**ARTICLE 9. EXPIRED****R2-8-901. Expired****Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

**R2-8-902. Expired****Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

**R2-8-903. Expired****Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

**R2-8-904. Expired****Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

**R2-8-905. Expired****Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

**ARTICLE 10. MEMBERSHIP****R2-8-1001. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "218 Agreement" means the same as in R2-8-701.
2. "218 Resolution" means written authorization for a potential Employer to provide Social Security and Medicare or Medicare-only coverage to employees under the provisions of § 218 of the Social Security Act.
3. "Acceptable Documentation" means the same as in R2-8-115.
4. "Designated Employer Administrator" means an individual designated by the Employer and who has authorized access to the Employer's secure ASRS account in order to fulfill the Employer's responsibilities.
5. "Engaged To Work" means the earlier of:
  - a. The date the employee begins rendering services for the Employer and the Employer intends the employee to work for at least 20 hours a week for at least 20 weeks in a fiscal year or;
  - b. The week an employee renders services to an Employer for at least 20 hours a week for at least 20 weeks in a fiscal year.
6. "Leasing An Employee From A Third Party" means the same as "Leased from a third party" in R2-8-116.
7. "State Social Security Administrator" means the ASRS staff designated by the Board to approve 218 Agreements.
8. "Week" means 12:00 a.m. on Sunday through 11:59 p.m. on the following Saturday.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

**R2-8-1002. Employee Membership**

- A. For purposes of active member eligibility, an employee of an Employer becomes a member of the ASRS pursuant to A.R.S. § 38-711(23) when the employee is Engaged To Work for the Employer.
- B. If the Employer does not provide an accurate date for which an employee was Engaged To Work pursuant to subsection (A), the ASRS shall determine that an employee's membership effective date will be the member's hire date, if provided by the Employer and within 30 days of the first pay period end date after the hire date, for which the Employer was required to submit contributions.
- C. If the Employer does not provide a hire date pursuant to subsection (B), the effective date is the first pay period end date of contributions received for that member.
- D. Unless a member terminates employment or retires from the ASRS, for purposes of determining active member eligibility, a member will continue to be an active member for the remainder of a fiscal year in which the employee met the requirements to be an active member in the ASRS with that Employer pursuant to A.R.S. § 38-711.
- E. Within 30 days of employment, an employee who is eligible for ASRS membership pursuant to A.R.S. § 38-711(23) shall create a secure ASRS account and submit to the ASRS through the employee's secure ASRS account the following information:
  1. The Employee's full name;
  2. The Employee's Social Security number;
  3. The Employee's date of birth;
  4. The Employee's gender;
  5. The Employee's marital status;

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6. The Employee's primary phone number;
  7. The Employee's personal email address;
  8. The Employee's current mailing address; and
  9. The Employee's designated beneficiary.
- F.** Within 30 days of a change in the member's name, the member shall submit to the ASRS through the member's secure ASRS account a Change of Name form that contains:
1. The member's full name that is on file with the ASRS;
  2. The member's Social Security number;
  3. The member's current mailing address;
  4. The member's date of birth;
  5. The member's personal email address;
  6. The member's primary phone number;
  7. The member's gender;
  8. The member's marital status;
  9. The member's retired, active, inactive, or LTD status with the ASRS;
  10. The member's new full name;
  11. The type of legal document establishing the member's new name;
  12. A copy of the legal document establishing the member's new name; and
  13. The member's dated signature.
- G.** Within 30 days of a change in the member's contact information, the member shall notify the ASRS of the change.
- H.** If an employee of an Employer meets the requirements of A.R.S. § 38-727(A)(8), the employee may elect to not participate in the ASRS.
- I.** Within 30 days after employment, an Employer whose employee is 65 years of age or older as of the date of employment and who has elected not to participate in the ASRS pursuant to subsection (H), shall submit to the ASRS through the Employer's secure ASRS account a 65+ Membership Waiver form that contains:
1. The employee's full name;
  2. The employee's Social Security number;
  3. The employee's current mailing address;
  4. The employee's date of birth;
  5. The employee's dated signature acknowledging the following statements:
    - a. The employee is electing to waive any rights to ASRS membership and the employee will not be eligible for any retirement, disability, or health insurance benefits offered by the ASRS;
    - b. The employee is not a member of the ASRS as of the date of employment; and
    - c. The employee understands that this election is irrevocable for the remainder of the employee's employment with that Employer and the time the employee works under this election is not eligible for purchase in the ASRS;
  6. The Employer's name;
  7. The date employee's employment began; and
  8. The name and dated signature of the Employer's representative.
- J.** A corrected and completed 65+ Membership Waiver form must be resubmitted to the ASRS pursuant to subsection (I) within 14 days of the date the ASRS notifies the employee that the 65+ Membership Waiver form is incorrect or incomplete.
- Historical Note**  
New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).
- R2-8-1003. Charter School Employer Membership**
- A.** Pursuant to A.R.S. § 15-187(C), a charter school in Arizona is considered a political subdivision that is eligible to participate in the ASRS if the charter school is sponsored by:
1. A state university;
  2. A community college district;
  3. A group of community college districts;
  4. The state board of education; or
  5. The state board for charter schools.
- B.** In order to participate as an Employer in the ASRS, a charter school shall notify the ASRS in writing of the charter school's intent to join the ASRS and provide:
1. A copy of the current and active Charter Contract, including any amendments, which is approved by the entity sponsoring the charter school pursuant to subsection (A);
  2. Documentation showing the name and location of all schools authorized by the Charter Contract identified in subsection (B)(1); and
  3. Documentation showing the charter school board's approval to pursue ASRS membership and complete ASRS requirements for membership.
- C.** Upon receipt of the information contained in subsection (B), the ASRS shall determine if the charter school is eligible to participate in the ASRS. If the charter school is not eligible to participate in the ASRS, the ASRS shall send the charter school a notice of ineligibility. If the charter school is eligible to participate, the ASRS shall provide the charter school a Potential New Employer Letter.
- D.** In order to participate as an Employer in the ASRS, an eligible charter school shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the charter school acknowledging there is no current retirement plan.
  2. Two ASRS Agreements showing:
    - a. The legal name and current mailing address of the charter school as sponsored pursuant to subsection (A);
    - b. What amount of prior service the charter school shall purchase for employees pursuant to R2-8-1006;
    - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
    - d. The name, title, email address, and telephone number of the designated authorized agent for the charter school;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The ASRS Agreement is binding and irrevocable;
    - g. The effective date of the ASRS Agreement;
    - h. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
    - i. The dated signature of the designated authorized agent for the charter school.
  3. Two ASRS Resolutions showing:
    - a. The legal name of the charter school as sponsored pursuant to subsection (A);
    - b. The charter school is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;

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- c. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
  - d. The designated authorized agent for the charter school;
  - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
  - f. The dated and notarized signature of the designated authorized agent.
4. Two 218 Agreements either electing or declining coverage. If the charter school is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
  5. Two 218 Resolutions, if the charter school is electing coverage pursuant to subsection (D)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.
- E.** Upon receipt of Acceptable Documentation identified in subsection (D), the ASRS may approve the charter school's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (D) to the charter school.
- F.** Any charter school that is established under the charter contract of a participating charter school shall participate in the ASRS.
- Historical Note**
- New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).
- R2-8-1004. Other Political Subdivision and Political Subdivision Entity Employer Membership**
- A.** A political subdivision or political subdivision entity, other than a charter school, may be eligible to participate in the ASRS pursuant to A.R.S. §§ 38-711 and 38-729 if it notifies the ASRS in writing of the political subdivision's or political subdivision entity's intent to join the ASRS and provides to the ASRS:
1. A copy of the current legal authority establishing the political subdivision or political subdivision entity;
  2. Documentation showing the name and location of the political subdivision or political subdivision entity; and
  3. Documentation showing the political subdivision or political subdivision entity has taken the necessary legal action to be eligible to participate pursuant to A.R.S. § 38-729.
- B.** Upon receipt of the information contained in subsection (C), the ASRS shall determine if the political subdivision or political subdivision entity is eligible to participate in the ASRS. If the political subdivision or political subdivision entity is not eligible to participate in the ASRS, the ASRS shall send the political subdivision or political subdivision entity a notice of ineligibility. If the political subdivision or political subdivision entity is eligible to participate, the ASRS shall provide the political subdivision or political subdivision entity a Potential New Employer Letter.
- C.** In order to participate as an Employer in the ASRS, an eligible political subdivision or political subdivision entity shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the political subdivision or political subdivision entity acknowledging there is no current retirement plan.
  2. Two ASRS Agreements showing:
    - a. The legal name and current mailing address of the political subdivision or political subdivision entity;
    - b. What amount of prior service the political subdivision or political subdivision entity shall purchase for employees pursuant to R2-8-1006;
    - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
    - d. The name, title, email address, and telephone number of the designated authorized agent for the political subdivision or political subdivision entity;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The ASRS Agreement is binding and irrevocable;
    - g. The effective date of the ASRS Agreement;
    - h. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
    - i. The dated signature of the designated authorized agent for the political subdivision or political subdivision entity.
  3. Two ASRS Resolutions showing:
    - a. The legal name of the political subdivision or political subdivision entity;
    - b. The political subdivision or political subdivision entity is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
    - c. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
    - d. The designated authorized agent for the political subdivision or political subdivision entity;
    - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
    - f. The dated and notarized signature of the designated authorized agent.
  4. Two 218 Agreements either electing or declining coverage. If the political subdivision or political subdivision entity is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
  5. Two 218 Resolutions, if the political subdivision or political subdivision entity is electing coverage pursuant to subsection (C)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.
- D.** Upon receipt of Acceptable Documentation identified in subsection (B), the ASRS may approve the political subdivision's

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or political subdivision entity's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (B) to the political subdivision or political subdivision entity.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

**R2-8-1005. Employer Reporting**

- A.** An Employer shall submit contribution information and contribution payments pursuant to A.R.S. § 38-735, through the Employer's secure ASRS account.
- B.** Within 14 days of receiving the information contained in subsection R2-8-1002(E)(1) through (E)(3), the Employer shall:
1. Verify the information the employee provided;
  2. Confirm the employee meets membership requirements pursuant to A.R.S. § 38-711; and
  3. Submit the verified information to the ASRS through the Employer's secure ASRS account.
- C.** For an Employer whose employee elects to participate in an Optional Retirement Plan in lieu of the ASRS pursuant to A.R.S. §15-1628, within 30 days of electing to participate in an Optional Retirement Plan, the Employer shall submit to the ASRS through the Employer's secure ASRS account the:
1. Employee's full name;
  2. Employee's Social Security number;
  3. Date of the employee's employment; and
  4. Date of the employee's Optional Retirement Plan election.
- D.** For an Employer who has submitted information pursuant to subsection (C), within 30 days of that employee terminating employment with that Employer, the Employer shall notify the ASRS through the Employer's secure ASRS account of the employee's termination date.
- E.** Within 14 days before the effective date of joining the ASRS, an Employer shall submit an initial online authorization and designation form in writing to the ASRS with the following information:
1. The Employer's name;
  2. The following information for the person authorized by the Employer to approve the Employer's Designated Employer Administrator:
    - a. The person's full name;
    - b. The person's title;
    - c. The person's phone number;
    - d. The person's email address;
    - e. The person's dated signature affirming that person has the authority to approve the Employer's Designated Employer Administrator;
  3. The full name of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  4. The title of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  5. The phone number of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  6. The email address of the individual the Employer is designating as the Employer's Designated Employer Administrator;
  7. The dated signature of the individual the Employer is designating as the Employer's Designated Employer Administrator.
- F.** An Employer's Designated Employer Administrator shall establish a new Employer's Designated Employer Administrator as needed through the Employer's secure ASRS account.
- G.** Within 30 days of an Employer no longer having an Employer's Designated Employer Administrator, the Employer shall submit in writing an initial online authorization and designation form pursuant to subsection (E).
- H.** Within 30 days of change in the Employer's address, the Employer shall notify the ASRS of the change through the Employer's secure ASRS account.
- I.** Within 10 days of any change in the name or ownership of the Employer, the Employer shall provide written notice of the change to the ASRS through the Employer's secure ASRS account by providing the Employer's previous account information and the changes to that information.
- J.** Within 30 days of any change in the character of an Employer's organizational structure, the Employer shall send to the ASRS through the Employer's secure ASRS account, written notice of the previous organizational structure and the effective changes to the Employer's organizational structure.
- K.** Within 30 days of Leasing An Employee From A Third Party, an Employer shall submit the following information:
1. The employee's full name;
  2. The number of hours per week the employee works for the Employer;
  3. The title of the employee's position;
  4. A copy of the agreement showing the Employer Leasing An Employee From A Third Party; and
  5. Whether the employee is retired from the ASRS.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

**R2-8-1006. Prior Service Purchase Cost for New Employers**

- A.** Pursuant to A.R.S. § 38-729, upon the effective date of joining the ASRS, an Employer may elect to purchase service credit for a period of employment prior to the effective date of joining the ASRS for employees Engaged To Work for the Employer on the effective date of joining the ASRS who are members of the ASRS as of the effective date of joining the ASRS.
- B.** The ASRS may provide to a potential Employer an estimated cost to purchase service credit pursuant to this Section. In order for the ASRS to estimate the cost to purchase service credit pursuant to this Section, a potential Employer shall provide the following information to the ASRS for each employee of the potential Employer who is Engaged To Work for the potential Employer and for whom the potential Employer intends to purchase service credit pursuant to this Section:
1. The employee's full name;
  2. The employee's date of birth;
  3. The employee's Social Security number;
  4. The employee's current salary; and
  5. The date the employee began employment with the potential Employer.
- C.** An Employer who elects to purchase service credit pursuant to this Section shall submit the following information for each member for which the Employer is purchasing service credit:
1. Member's full name;
  2. Member's date of birth;
  3. Member's Social Security number;
  4. Member's date of employment;
  5. Documentation showing the Member is Engaged To Work for the Employer as of the effective date of joining the ASRS;

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6. Member's current salary as of the effective date of joining the ASRS; and
  7. The number of years the Employer is electing to purchase for the member pursuant to this Section or the dollar amount the Employer is electing to pay to purchase service for the member pursuant to this Section.
- D.** The cost to purchase service credit pursuant to this Section shall be determined using an actuarial present value calculation.
- E.** An Employer who elects to purchase service credit pursuant to this Section shall submit payment for the full cost of the service purchase to the ASRS within 90 days of the date of notification by the ASRS.
- F.** If an Employer who elects to purchase service credit pursuant to this Section does not submit payment for the full cost of the service purchase within 90 days of the date of notification, the Employer is not eligible to purchase service credit pursuant to this Section.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

**ARTICLE 11. TRANSFER OF SERVICE CREDIT****R2-8-1101. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
  - a. Member's Current Years of Credited Service;
  - b. Member's age as of the date the Member submits to the ASRS a request to transfer service credit pursuant to this Article; and
  - c. Member's most recent annual compensation.
2. "Current years of credited service" means:
  - a. For Transfer In Service, the amount of credited service a member has earned or purchased, and the amount of service credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase service credit for which the member has not yet paid; and
  - b. For transferring service credit to the Other Retirement Plan, the amount of credited service a member has earned or purchased, but does not include service credit for which the member has not yet paid.
3. "Irrevocable PDA" means the same as in R2-8-501.
4. "Funded Actuarial Present Value" means the Actuarial Present Value reduced to the extent funded on market value basis as of the most recent actuarial evaluation of the ASRS.
5. "Member's accumulated contribution account balance" means the sum of all the member's retirement contributions and any principal payments made for:
  - a. The purchase of service credit;
  - b. Contributions not withheld; and
  - c. Previous transfers of service credit.
6. "Other retirement plan" means the state retirement plans specified in A.R.S. § 38-921, other than the ASRS, or a retirement plan of a charter city as specified in A.R.S. § 38-730.
7. "Other Retirement Plan's cost" means the amount determined by the ASRS pursuant to R2-8-1102(D).
8. "Other public service" means the same as in R2-8-501.
9. "Transfer in service" means credited service with the Other Retirement Plan that a member is eligible to trans-

fer to the ASRS pursuant to A.R.S. §§ 38-730 and 38-921.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-1102. Required Documentation and Calculations for Transfer In Service Credit**

- A.** A member who is eligible to Transfer In Service credit, may request to transfer service credit by providing a Transfer In form to the ASRS with the following:
1. The name of the Other Retirement Plan;
  2. The date the member either terminated employment with an employer of the Other Retirement Plan or ceased to participate in the Other Retirement Plan;
  3. The date the member began employment with the employer through which the member was participating in the Other Retirement Plan;
  4. The number of years the member participated in the Other Retirement Plan;
  5. Acknowledgement the member agrees that:
    - a. Knowingly making a false statement or falsifying or permitting falsification of any record of the ASRS with an intent to defraud ASRS is a Class 6 felony, pursuant to A.R.S. § 38-793; and
    - b. The Transfer In Service credit transaction is subject to audit and if any errors are discovered, the ASRS shall adjust a member's account, or if the member is already retired, adjustments to the member's account may affect the member's retirement benefit.
- B.** Upon receipt of the information specified in subsection (A), the ASRS shall submit the information to the Other Retirement Plan and request:
1. The Other Retirement Plan's Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922;
  2. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
  3. The amount of service credit the member has accumulated in the Other Retirement Plan; and
  4. The start date and end date for the member's participation in the Other Retirement Plan.
- C.** Upon receipt of the information specified in subsection (B), the ASRS shall calculate the Actuarial Present Value as specified in R2-8-506 necessary to transfer full service credit to the ASRS.
- D.** The ASRS shall calculate the Other Retirement Plan's Cost as follows:
1. If the ASRS Actuarial Present Value is greater than the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
    - a. The Other Retirement Plan's Funded Actuarial Present Value; or
    - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
  2. If the ASRS Actuarial Present Value is less than or equal to the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
    - a. The ASRS Actuarial Present Value; or
    - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan.
- E.** The ASRS shall compare the Other Retirement Plan's Cost to the ASRS Actuarial Present Value calculated pursuant to subsection (C) and:

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1. If the Other Retirement Plan's Cost is less than the ASRS Actuarial Present Value, then the member may elect to transfer service credit to the ASRS and:
    - a. Pay the difference between the Other Retirement Plan's Cost and the ASRS Actuarial Present Value; or
    - b. Accept a proportionately reduced amount of service credit;
  2. If the Other Retirement Plan's Cost is greater than or equal to the ASRS Actuarial Present Value, then the member may elect to transfer the service to the ASRS pursuant to subsection (F).
- F.** Upon completion of the comparison specified in subsections (D) and (E), the ASRS shall send the member a transfer in invoice notifying the member of the member's options to complete the transfer of service credit through the member's secure ASRS account.
- G.** The member may elect to complete a transfer of service credit pursuant to this section by submitting the member's election by the election due date specified on the transfer in invoice.
- H.** Upon receipt of the member's election to complete a transfer of service credit, the ASRS shall send the transfer in invoice to the Other Retirement Plan and the Other Retirement Plan shall make payment to the ASRS by submitting a check made payable to the ASRS for the Other Retirement Plan's Cost specified on the transfer in invoice by the payment due date specified on the transfer in invoice.
- I.** If a member elects to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E), the member shall elect the method of payment by the payment due date specified on the transfer in invoice.
- J.** A member may elect to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E) by any one or more methods specified in R2-8-512, R2-8-513, R2-8-514, or R2-8-519.
- K.** For a member who elects to accept a proportionately reduced amount of service pursuant to subsection (E)(1)(b), the ASRS shall calculate the proportionately reduced amount of service credit based on the member's service credits in the Other Retirement Plan multiplied by the ratio of the Other Retirement Plan's Cost to the ASRS Actuarial Present Value.
- L.** The member shall submit payment to transfer service credit pursuant to this section by the payment due date specified on the transfer in invoice.
- M.** If the member does not submit payment for the total difference in the calculations pursuant to R2-8-1102(E) by the payment due date specified on the transfer in invoice, the member may be eligible to purchase the remaining service credit as Other Public Service, and the member is not eligible to purchase the remaining service credit based on the cost specified in the transfer in invoice.
1. The ASRS Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922; and
  2. The Member's Accumulated Contribution Account Balance in the ASRS.
- B.** Upon completing the calculations specified in subsection (A), the ASRS shall submit the calculations and member information to the Other Retirement Plan with a due date for the Other Retirement Plan to submit a fund request to the ASRS pursuant to subsection (C).
- C.** If a member elects to transfer service credit to the Other Retirement Plan, the member shall ensure that the Other Retirement Plan submits a fund request on the Other Retirement Plan's letterhead by the due date specified in subsection (B) to the ASRS with the following information:
  1. The member's full name;
  2. The last four digits of the member's Social Security number;
  3. The name of the Other Retirement Plan; and
  4. The Actuarial Present Value necessary to transfer full service credit to the Other Retirement Plan.
- D.** Upon receipt of the information specified in subsection (C), the ASRS shall compare the calculations specified in subsection (A) to the Other Retirement Plan's Actuarial Present Value specified in subsection (C) and transfer funds as follows:
  1. If the Other Retirement Plan's Actuarial Present Value specified in subsection (C) is greater than the ASRS Funded Actuarial Present Value specified in subsection (A), then the ASRS shall transfer the greater of:
    - a. The ASRS Funded Actuarial Present Value specified in subsection (A); or
    - b. The Member's Accumulated Contribution Account Balance in the ASRS.
  2. If the Other Retirement Plan's Actuarial Present Value specified in subsection (C) is less than or equal to the ASRS Funded Actuarial Present Value, then the ASRS shall transfer the greater of:
    - a. The Other Retirement Plan's Actuarial Present Value specified in subsection (C); or
    - b. The Member's Accumulated Contribution Account Balance in the ASRS.
- E.** Transferring service credit to the Other Retirement Plan pursuant to this section constitutes a withdrawal from ASRS membership and results in a forfeiture of all other benefits under ASRS.
- F.** Notwithstanding subsection (E), pursuant to A.R.S. § 38-750, a transferred employee who continues an Irrevocable PDA after transferring service credit to the Other Retirement Plan may be eligible to:
  1. Transfer service credit associated with the remaining balance of the Irrevocable PDA for which the transferred employee paid for the purchase of service credit plus interest at the Assumed Actuarial Investment Earnings Rate pursuant to A.R.S. § 38-922, not including any administrative interest charge the transferred employee paid pursuant to an Irrevocable PDA; or
  2. Receive a return of contributions plus interest as specified in R2-8-118(A), column 3, pursuant to A.R.S. § 38-740.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

**R2-8-1103. Transferring Service to Other Retirement Plans**

- A.** Upon receipt of a request to transfer a member's service credit from the ASRS to the Other Retirement Plan, the ASRS shall calculate:

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

### 38-714. Powers and duties of ASRS and board

A. ASRS shall have the powers and privileges of a corporation, shall have an official seal and shall transact all business in the name "Arizona state retirement system", and in that name may sue and be sued.

B. The board is responsible for supervising the administration of this article by the director of ASRS.

C. The board is responsible for the performance of fiduciary duties and other responsibilities required to preserve and protect the retirement trust fund established by section 38-712.

D. The board shall not advocate for or against legislation providing for benefit modifications, except that the board shall provide technical and administrative information regarding the impact of benefit modification legislation.

E. The board may:

1. Determine the rights, benefits or obligations of any person under this article and any member under articles 2.1 and 7 of this chapter and afford any person dissatisfied with a determination a hearing on the determination. The board may delegate the duty and authority to act on the board's behalf to a committee of the board for the purposes of this paragraph and title 41, chapter 6, article 10 relating to any decision made under this paragraph by that committee of the board.

2. Determine the amount, manner and time of payment of any benefits under this article.

3. Recommend amendments to this article and articles 2.1 and 7 of this chapter that are required for efficient and effective administration.

4. Adopt, amend or repeal rules for the administration of the plan, this article and articles 2.1 and 7 of this chapter.

F. Beginning June 30, 2016, the board shall determine which of the generally accepted actuarial cost methods shall be used in the annual actuarial valuation of the plan.

G. The board and ASRS are not subject to title 41, chapter 6, except title 41, chapter 6, article 10, for actuarial assumptions and calculations, investment strategy and decisions and accounting methodology.

H. The board shall submit to the governor and legislature for each fiscal year no later than eight months after the close of the fiscal year a report of its operations and the operations of ASRS. The report shall follow generally accepted accounting principles and generally accepted financial reporting standards and shall include:

1. A report on an actuarial valuation of ASRS assets and liabilities.

2. Any other statistical and financial data that may be necessary for the proper understanding of the financial condition of ASRS and the results of board operations.

3. On request of the governor or the legislature, a list of investments owned. This list shall be provided in an electronic format.

4. An estimate of the aggregate fees paid for private equity investments, including management fees and performance fees.

I. The board shall:

1. Prepare and publish a synopsis of the annual report for the information of ASRS members.

2. Contract for a study of the mortality, disability, service and other experiences of the members and employers participating in ASRS. The study shall be conducted for fiscal year 1990-1991 and for at least every fifth fiscal year thereafter. A report of the study shall be completed within eight months after the close of the applicable fiscal year and shall be submitted to the governor and the legislature.

3. Conduct an annual actuarial valuation of ASRS assets and liabilities.

J. The auditor general may make an annual audit of ASRS and transmit the results to the governor and the legislature.

### 38-760. Optional forms of retirement benefits

A. On retirement, members may elect an optional form of retirement benefit as provided in this section.

B. The optional retirement benefits available under this section include the following:

1. Joint and survivor annuity in a reduced amount payable to the retiring member during life, with the provisions that after the member's death all, two-thirds or one-half of the retirement income, as the member elects, shall be continued during the lifetime of the contingent annuitant designated by the retiring member subject to the restrictions prescribed in section 38-764. The amount of retirement income shall be the actuarial equivalent of the retirement income to which the member would be entitled under normal or early retirement. The election in a manner prescribed by the board shall name the contingent annuitant. The election may be revoked at any time before the member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board as follows:

(a) If a different contingent annuitant is named, the annuity of the member under the same joint and survivor annuity option previously elected shall be adjusted to the actuarial equivalent of the original annuity, based on the age of the new contingent annuitant. The adjustment shall include all postretirement increases in retirement income that are authorized by law after the member's date of retirement. Payment of this adjusted annuity shall continue under the provisions of the option previously elected by the member.

(b) If the member rescinds the election, the member shall thereafter receive a straight life annuity equal to what the member would otherwise be entitled to receive if the member had not elected the joint and survivor annuity option, including all postretirement increases in retirement income that are authorized by law after the date of retirement. The increased payment shall continue during the remainder of the member's lifetime.

(c) If a member whose original date of retirement is before July 1, 2008 rescinds the joint and survivor annuity option previously elected and receives the straight life annuity pursuant to subdivision (b) of this paragraph, the member may again elect the same joint and survivor annuity option previously elected subject to the same restrictions prescribed in subdivision (a) of this paragraph.

(d) A member whose original date of retirement is on or after July 1, 2008 may exercise a one-time election to rescind the joint and survivor annuity option elected by the member if the contingent annuitant dies or ceases to be a contingent annuitant pursuant to the terms of a qualified domestic relations order.

(e) If the member's contingent annuitant is the member's current spouse, the member shall obtain the consent of the contingent annuitant pursuant to section 38-776 before the member names a new contingent annuitant or before the member rescinds the election, except that consent is not required if the rescission is pursuant to subdivision (d) of this paragraph.

2. A period certain and life annuity actuarially reduced with payments for five, ten or fifteen years that are not dependent on the continued lifetime of the member but whose payments continue for the member's lifetime beyond the five, ten or fifteen year period. At the time of electing this option the member shall name a period certain beneficiary or beneficiaries who are entitled to receive the payments for any portion of the period certain beyond the lifetime of the member. The member may name a different beneficiary at any time. If no beneficiary survives the member, any remaining payments are the property of the member's estate. A member who retires after August 9, 2001 and before July 1, 2008 may rescind the election of a period certain and life annuity. If the member rescinds the election of a period certain and life annuity, the member shall thereafter receive a straight life annuity equal to what the member would otherwise be entitled to receive if the member had not elected the period certain and life annuity option, including all postretirement increases in retirement income that are authorized by law after the date of retirement. The increased payment shall continue during the remainder of the member's lifetime. If the member reverts to a straight life annuity pursuant to this paragraph, the member may again elect a period certain and life annuity subject to the same provisions of the period certain and life annuity previously elected by the member. If the member's contingent annuitant is the member's current spouse, the member shall obtain the consent of the contingent annuitant pursuant to section 38-776 before the member

rescinds the election of a period certain and life annuity or again elects a period certain and life annuity. A member whose original date of retirement is on or after July 1, 2008 may exercise a one-time election to rescind the period certain and life annuity option elected by the member if the beneficiary dies or ceases to be a beneficiary pursuant to the terms of a qualified domestic relations order or at the expiration of the member's period certain term.

3. Beginning on July 1, 2002, a lump sum payment equal to not more than thirty-six months of the member's retirement benefits based on the actuarial equivalent of the retirement income to which the member would be entitled under normal or early retirement. The member's benefit shall be actuarially reduced to provide for the lump sum payment. The lump sum payment shall be made at the time of retirement. If a member has received an overpayment pursuant to section 38-765 or 38-797.08, ASRS shall withhold the overpayment amount plus any required income tax withholding from the partial lump sum. Any benefit increase granted to a member who elects a lump sum payment pursuant to this paragraph is subject to the following conditions:

(a) If the benefit increase is a percentage increase of the member's retirement benefit, the increase shall be based on the actuarially reduced retirement benefit of the member.

(b) If the benefit increase is pursuant to section 38-767, the amount of the member's benefit increase shall be calculated without regard to the lump sum payment pursuant to this paragraph.

4. Other forms of actuarially reduced optional benefits prescribed by the board.

C. A member who is married at the time of retirement shall elect a monthly benefit in the form of a joint and survivor annuity pursuant to subsection B, paragraph 1 of this section, and the member's current spouse shall be the contingent annuitant unless the member's current spouse consents to a waiver of this requirement pursuant to section 38-776 or the election would violate another law, an existing contract or a court order. If the married member does not elect a type of joint and survivor annuity for the member's current spouse and the member's current spouse has not waived the requirements of this subsection, ASRS shall cancel the member's retirement. The member may reapply for retirement at any time in a manner established by ASRS.

### 38-762. Survivor benefits before retirement; definition

A. On the death of any active or inactive member before retirement, the designated beneficiary of the member shall be paid a survivor benefit equal to the sum of both of the following:

1. The member's contribution and interest and the employer's contribution and interest to the defined benefit plan established by this article for credited service that a member earned by working for an employer, plus all contributions and interest made for the purchase of military service, leave without pay or other public service credit. This amount excludes payments made by an employer pursuant to section 38-738, subsection B, paragraph 3, unless the member has made the payment required by section 38-738, subsection B, paragraph 1.
2. The amount of the member's employee account and the member's employer account together with supplemental credits, if any, transferred from the defined contribution program administered by ASRS to the defined benefit program established by this article.

B. Subsection A, paragraphs 1 and 2 of this section shall be accumulated at compound interest at a rate determined by the board through the day of the payment of the benefit.

C. In lieu of a single payment, a designated beneficiary who is eligible for a survivor benefit pursuant to subsection A of this section may elect to receive the actuarial equivalent of the survivor benefit as monthly income for life, if the resulting monthly amount is greater than or equal to the amount determined by the board under section 38-764, subsection F.

D. If a member dies before distribution of the member's benefits commences, the member's entire benefits shall be distributed within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

E. If a deceased member did not designate a beneficiary or the beneficiary named by a member predeceases the member, ASRS shall pay the member's survivor benefit to the following persons in the following order of priority:

1. The member's surviving spouse.
2. The member's surviving natural or adopted children in equal shares.
3. The member's surviving parents in equal shares.
4. The member's estate.

F. Any payment pursuant to this section is payment for the account of the member or the member's beneficiary and all persons entitled to payment and, to the extent of the payment, is a full and complete discharge of all liability of the board or ASRS, or both, under or in connection with ASRS.

G. For the purposes of this section, "designated beneficiary" means any individual designated by the member as the member's beneficiary.

### 38-763. Survivor benefits after retirement

A. Except as provided in subsection B of this section, if a member dies after distribution of retirement benefits commences, ASRS shall continue to distribute the remaining portion of retirement benefits within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

B. On the death of a retired member who is receiving benefits, the estate or beneficiary of the member is entitled to receive at least the amount of the member's contribution to ASRS plus interest, as determined by the director, less the benefits received by the member. This amount is payable either as a lump sum or at the same periodic rate in effect at the time of the member's death, as determined by the estate or beneficiary.

### 38-764. Commencement of retirement; payment of retirement benefits; lump sum payments

A. Retirement is deemed to commence on a date elected by the member. That date shall not be earlier than the day following the date of termination of employment, the date ASRS receives the member's completed retirement application or the date specified by the member pursuant to subsection I of this section.

B. Except as provided in subsection C of this section, all retirement benefits:

1. Are normally payable in monthly installments beginning on the commencement of retirement as prescribed in subsection A of this section.

2. Continue to and include the first day of the month in which death occurs or continue until the date of their cessation in accordance with any optional method of payment that may have been elected.

C. In the case of incapacity of a retired member or contingent annuitant, or in the case of any other emergency, as determined by the board, the board may make the payment to or on behalf of the retired member or contingent annuitant or to another person or persons the board determines to be lawfully entitled to receive payment. The payment is payment for the account of the retired member or contingent annuitant and all persons entitled to payment and, to the extent of the payment, is a full and complete discharge of all liability of the board or ASRS, or both, under or in connection with ASRS.

D. Except as provided in subsection E of this section, at the request of a retired member, a retired member's guardian or a court appointed conservator, the board may pay any increase in retirement benefits or the entire retirement benefit in a lump sum payment based on the actuarial present value of the benefit or the increase in the benefit if the payment of the benefits would result in ineligibility, reduction or elimination of social service programs provided to the member by this state, its political subdivisions or the federal government.

E. The board may pay the entire retirement benefit in a lump sum pursuant to subsection D of this section only if continued membership in ASRS will result in additional requests for lump sum payments based on cost of living adjustments or the establishment of minimum benefit awards.

F. If any benefit that is payable as a series of periodic payments amounts to less than a threshold amount determined by the board, the board, in its sole discretion and based on uniform rules it establishes, may order the amount to be paid in a lump sum. A member who receives a lump sum payment pursuant to this subsection remains a member of ASRS and is eligible for the coverage provided pursuant to section 38-782 and the payment pursuant to section 38-783, but is not eligible for a benefit increase pursuant to section 38-767.

G. All distributions of retirement benefits to a member shall be distributed within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

H. A member may elect to cancel the effective date of retirement within thirty days of retirement or before the member's receipt of retirement benefits, whichever is later.

I. A member who attains a normal retirement date may retire at any time without terminating employment if the member is employed for less than the hours required for active membership pursuant to section 38-711, paragraph 23, subdivision (b).

**D-2**

**DEPARTMENT OF HEALTH SERVICES**

Title 9, Chapter 16, Article 4, Registration of Environmental Health Sanitarians

**Amend:** R9-16-401, R9-16-402, R9-16-405, R9-16-407



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** September 1, 2020

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

**FROM:** Council Staff

**DATE:** August 13, 2020

**SUBJECT:** Department of Health Services  
Title 9, Chapter 16, Article 4

**Amend:** R9-16-401, R9-16-401, R9-16-405, R9-16-407

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### **Summary:**

This Notice of Final Rulemaking from the Department of Health Services (Department) seeks to make changes to rules in Title 9, Chapter 16, Articles 4 relating to Registration of Environmental Health Sanitarians. Pursuant to A.R.S. 36-136.01, the Department is required to establish a Sanitarians Council and establish rules for the registration of sanitarians. The Council is required to provide the classification of sanitarians, including the examination of applicants for registration as sanitarians. The Department contracted the National Environmental Health Associations (NEHA) to provide applicants with a written examination.

NEHA informed the Department it would be transitioning away from the written-paper examination to an online computer-based examination only. The Department is therefore seeking to amend the rules to allow for transition to a computer-based examination. Additionally, the amendments would also add a definition for "testing center" and changes to the initial application administrative completeness review timeframe. The proposed changes are less burdensome than the current rules and provide greater benefits to applicants.

The Department received an exemption from the rulemaking moratorium in Executive Order 2010-01 to complete this rulemaking on September 5, 2019.

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

Yes, the Department cites both general and specific statutory authority for these rules.

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

No, 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?**

Not applicable. The Department states that it did not review or rely on a study in conducting this expedited rulemaking.

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

The rulemaking prescribes measures necessary to provide standards for persons who are applicants required to pass a sanitarian examination prior to obtaining registration as an environmental health sanitarian in Arizona pursuant to 9 A.A.C. 16, Article 4. The amended rules are less burdensome than current rules; provide greater benefits to counties, applicants, the public, and the Department; and have no impact on public health, safety, or the environment and do not affect public involvement or participation.

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 the benefits outweigh any potential costs associated with this rulemaking, and that there is no less intrusive or less costly alternative for achieving the purpose of the rulemaking.

No new FTEs are required due to this rulemaking. The Department anticipates incurring moderate costs, while all stakeholders are expected to benefit from the rulemaking.

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

Stakeholders are identified as the Department, County health departments, applicants seeking registration as an environmental health sanitarian, and the general public.

All stakeholders are expected to benefit from the rulemaking. The Department anticipates incurring a moderate cost for technical resources, rules analyst and program staff, to review and amend current rules; establish and maintain Article 4 rulemaking webpage;

and organize and meet with stakeholders to ensure the Department is aware of their concerns and amend the draft rules when appropriate. The Department expects to receive a moderate benefit for no longer administering the sanitarian examinations for approved applicants. The Department expects program staff, who had been administering the sanitarian examinations, to assume other program tasks-responsibilities. Additionally, the Department anticipates that counties may receive a benefit for employees seeking registration as an environmental health sanitarian having more testing dates, times, and locations available rather than being limited to the Department's sanitarian examination schedule that only offers the sanitarian examination four times a year. The Department does not expect the general public to incur any costs or receive benefits related to the rulemaking.

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

No. The Department states that it made only minor, technical changes between the Notice of Proposed Rulemaking and the NFR. Upon review, Council staff agrees. These changes do not result in rules that are "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 public or stakeholder 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?**

The Department believes the registration issued to an individual is a general permit in that the registration specifies the individual and the tasks/services the individual is authorized by registration to provide, however, a individual is not limited to providing tasks/services in any one location. The Department believes the rules are exempt from the general permit requirement pursuant to A.R.S. § 41-1037(A)(3).

Upon review of the rules, Council staff agrees with the Department that it is exempt from the general permit requirement pursuant to A.R.S. § 41-1037(A)(3)

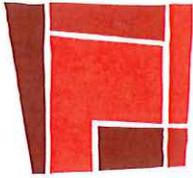
10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. The Department indicates there is no corresponding federal law.

**11. Conclusion**

As stated above, the Department is seeking to amend its rules to allow for transition to computer-based examinations for health sanitarians. The amended would result in less burdensome rules, and provide greater benefits to counties, applicants, the public, and the Department.

The Department is requesting an immediate effective date for the new rules under A.R.S. 41-1032(A)(4) and (5). Upon review of the applicable statutes, Council staff finds that the Department demonstrates an adequate justification for an immediate effective date. Council staff recommends approval of this rulemaking with an immediate effective date.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

July 20, 2020

**VIA EMAIL:** [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsin, Chair

Governor's Regulatory Review Council

100 North 15th Avenue, Suite 305

Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 16, Article 4, Regular Rulemaking

Dear Ms. Sornsin:

1. The close of record date: July 15, 2020
2. Whether the rulemaking relates to five-year-review report and, if applicable, the date the report was approved by the Council:  
The rulemaking for 9 A.A.C. 8, Article 1, does not relate to a five-year-review report.
3. Whether the rulemaking establishes a new fee and, if so, the statutes 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:  
The Department is requesting an immediate 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 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:

1. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of each rule;
2. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;

3. General and specific statutes authorizing the rules, including relevant statutory definitions; and

The Department's point of contact for questions about the rulemaking documents is Teresa Koehler at [Teresa.Koehler@azdhs.gov](mailto:Teresa.Koehler@azdhs.gov).

Sincerely,



Robert Lane  
Director's Designee

RL:tk

Enclosures

Douglas A. Ducey | Governor    Cara M. Christ, MD, MS | Director

**NOTICE OF FINAL RULEMAKING**  
**TITLE 9. HEALTH SERVICES**  
**CHAPTER 16. DEPARTMENT OF HEALTH SERVICES – OCCUPATIONAL LICENSING**  
**ARTICLE 4. REGISTRATION OF ENVIRONMENTAL HEALTH SANITARIANS**

**PREAMBLE**

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action**

R9-16-401	Amend
R9-16-402	Amend
R9-16-405	Amend
R9-16-407	Amend
  
- 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. §§36-136(A)(7) and 36-136(G)  
Implementing statutes: A.R.S. § 36-136.01
  
- 3. The effective date of the rules:**

The Arizona Department of Health Services (Department) requests an immediate effective date for the new rules under A.R.S. § 41-1032 (A)(4) and (5). By prescribing measures necessary to provide standards for persons who are applicants required to pass a sanitarian examination prior to obtaining registration as an environmental health sanitarian in Arizona pursuant to 9 A.A.C. 16, Article 4. The amended rules are less burdensome than current rules; provide greater benefits to counties, applicants, the public, and the Department; and have no public impact on public health, safety, or environment and do not affect public involvement or public participation process.
  
- 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: 25 A.A.R. 3322, November 15, 2019  
Notice of Proposed Rulemaking: 26 A.A.R. 1171, June 12, 2020
  
- 5. The agency's contact person who can answer questions about the rulemaking:**

Name: Eric Thomas, Chief  
Address: Arizona Department of Health Services  
Division of Public Health Services, Public Health Preparedness,  
Office of Environmental Health

150 N. 18th Ave., Suite 140  
Phoenix, AZ 85007-3248

Telephone: (602) 364-3142  
Fax: (602) 364-3146  
E-mail: [Eric.Thomas@azdhs.gov](mailto:Eric.Thomas@azdhs.gov)

or

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

Telephone: (602) 542-1020  
Fax: (602) 364-1150  
E-mail: [Robert.Lane@azdhs.gov](mailto: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:**

Arizona Revised Statutes (A.R.S.) § 36-136.01 requires the Department to establish a sanitarians council and establish rules for the registration of sanitarians. The current rules contain definitions; examination, registration, and renewal registration requirements; continuing education requirements; time-frames; registered sanitarian's responsibilities; and criteria for the denial, suspension, or revocation of a sanitarian registration. Additionally, the council is required to provide for the classification of sanitarians, including the examination of applicants for registration as sanitarians. As such, for licensure as an environmental health sanitarian, the Department contracted with the National Environmental Health Association (“NEHA”) to provide applicants with a written examination prescribed in 9 A.A.C. 16, Article 4, Registration of Environmental Health Sanitarians. NEHA was incorporated in 1937 as a national professional society for environmental health practitioners used to establish a standard of excellence for its developing profession. Their standard, known as the Registered Environmental Health Specialist/Registered Sanitarian credential, is recognized by all states and many states use and accept the NEHA sanitarian examination for licensure. While under contract with NEHA until December 2019, the Department administered NEHA written-paper examinations four times each calendar year. In mid-2018, NEHA informed the Department that NEHA would be transitioning away from written-paper examinations to only computer-based examinations. The last written-paper examination administered by the Department occurred in January 2020. The Department at

this time has an agreement with NEHA for Arizona applicants to take the NEHA examination through a third party testing center. The Department plans to maintain a passing examination score of 630 rather than use the NEHA passing examination score of 650. The Department received an exception from the rulemaking moratorium established by Executive Order 2019-01 on September 5, 2019 and has amended the rules through this regular rulemaking to update rules to allow for transition to computer-based examination. The amended rules also add a definition for “testing center” and changes initial application administrative completeness review timeframe. The amended rules conform to the rulemaking format and style requirements of the Governor’s Regulatory Review Council and the Office of the Secretary of State.

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

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

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

Not applicable

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

As used in the 2020 Economic, Small Business, and Consumer Impact Statement, annual costs and benefits associated with the 9 A.A.C. 16, Article 4 rulemaking are designated as minimal when more than \$0 and less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater. A cost or benefit is indicated as significant when meaningful or important and not readily subject to quantification. No new FTEs are required due to this rulemaking. The Department identifies affected persons as the Department, county health departments, applicants seeking licensure as a registered environmental health sanitarian, and the general public. The Department anticipates incurring a moderate cost for technical resources, rules analyst and program staff, to review and amend current rules; establish and maintain Article 4 rulemaking webpage; and organize and meet with stakeholders to ensure the Department is aware of their concerns and amend the draft rules when appropriate and expects to receive a moderate benefit for no longer administering the sanitarian examinations for approved applicants. The Department expects program staff, who had been administering the sanitarian examinations, to assume other program tasks-responsibilities. Additionally, the Department anticipates that counties may receive a benefit for employees seeking a registration as an environmental health

sanitarian having more testing dates, times, and locations available rather than being limited to the Department's sanitarian examination schedule that only offers the sanitarian examination four times a year. Likewise, the Department anticipates that applicant's may receive a moderate benefit for also having more testing dates, times, and locations available. The Department does not expect the general public to incur any costs or receive benefits related to the rulemaking. The Department has determined that the benefits outweigh any potential costs associated with this rulemaking.

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

The Department made two changes to the rules between the proposed rulemaking and the final rulemaking. In R9-16-405(H), the Department corrected spacing between “~~organization~~” and “sanitarian...” The Department also corrected a typographic error in R9-16-407(F)(1)(ii); the Department changed “R9-16-405(J)” to “R9-16-405(I).”

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

During the formal 30-day public comment period, the Department did not receive any 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:**

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:**

A.R.S. § 36-136.01(B) provides that “A person shall not be employed as a sanitarian by the state or any political subdivision of the state unless that person is registered by the Department as a sanitarian of the class determined by the council to be appropriate for the performance of the functions of that person's employment.” The Department believes the registration issued to an individual is a general permit in that the registration specifies the individual and the tasks/services the individual is authorized by registration to provide, however, a individual is not limited to providing tasks/services in any one location. The Department believes that under A.R.S. § 41-1037(A)(3) that a general permit is not applicable.

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

**exceed the requirements of federal law:**

There are no federal rules applicable to the subject of the rule.

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

No analysis comparing competitiveness was received by the Department.

- 13. Incorporated by reference and their location in the rules:**

Not applicable

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

The rule was not previously made as an emergency rule.

- 15. The full text of the rules follows:**

## **ARTICLE 4. REGISTRATION OF ENVIRONMENTAL HEALTH SANITARIANS**

### Section

- R9-16-401. Definitions
- R9-16-402. Eligibility and Responsibilities for a Registered Environmental Health Sanitarian
- R9-16-405. Application for Sanitarian Examination and Registration
- R9-16-407. Time-frames
- Table 4.1 Time-frames (in calendar days)

## ARTICLE 4. REGISTRATION OF ENVIRONMENTAL HEALTH SANITARIANS

### R9-16-401. Definitions

The following definitions apply in this Article, unless otherwise specified:

1. "Accredited" means that an educational institution is recognized by the U.S. Department of Education as providing standards necessary to meet acceptable levels of quality for its graduates to gain admission to other reputable institutions of higher learning or to achieve credentials for professional practice.
2. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
3. "Applicant" means an individual who submits an application packet or renewal application packet for registration as an environmental health sanitarian.
4. "Application packet" means the information, documents, and fees required by the Department to ~~apply for approval to:~~
  - a. Determine eligibility to ~~Take~~ take a sanitarian examination, and
  - b. Be registered as an environmental health sanitarian.
5. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run and including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
6. "Continuing education" means a course that provides instruction and training that is designed to develop or improve a registered environmental health sanitarian's professional competence in disciplines directly related to the practice of a registered environmental health sanitarian.
7. "Continuing education hour" means 50 to 60 minutes of continuous course work.
8. "Course" means a workshop, seminar, lecture, conference, or other learning program activities as approved by the Department.
9. "Department" means the Arizona Department of Health Services established in A.R.S. § 36-104 and the Sanitarians Council established in A.R.S. § 36-136.01.
10. "Environmental health" means the science and practice of preventing human injury and illness and promoting well-being by identifying sources that produce potential hazardous physical, chemical, and biological agents in air, water, soil, food, and other conditions;

and eliminating or minimizing exposure to the sources that adversely affect or may adversely affect human health.

11. "Environmental health sanitarian aide" means an individual who performs and assists with environmental health services as described and under the supervision of an individual in R9-16-403.
12. "Hazardous environmental agent" means a material, whether liquid, solid, gas, or sludge, that contains properties that make the material potentially harmful to public health or the environment.
13. "Immediate family member" means an individual related by birth, marriage, or adoption.
14. "License or licensed" means a permit, certificate, or similar form of approval issued by a state agency according to state law that an individual may practice in the profession indicated by the approval.
15. "Natural science" means a branch of science that deals with the physical world, including life, physical, and health sciences.
16. "Overall time-frame" has the same meaning as in A.R.S. § 41-1072.
17. "Practice of a registered environmental health sanitarian" means acting under the authority of R9-16-402.
18. "Registered environmental health sanitarian" means the same as a "registered sanitarian" in A.R.S. § 36-136.01.
19. "Renewal application packet" means the information, documents, and fees required by the Department to apply for a renewal registration as an environmental health sanitarian.
20. "Sanitarian examination" means a test that consists of questions related to environmental health including natural sciences, facility and system inspections, investigations, compliance, responding to emergencies, and promoting environmental public health awareness.
21. "Semester credit" means one earned academic unit of study or equivalent, with a grade of "C" or better, at an accredited college or university by:
  - a. Attending a 50 to 60 minute class session each calendar week for at least 16 weeks, or
  - b. Completing practical work for a class as determined by the accredited college or university.
22. "Substantive review time-frame" has the same meaning as in A.R.S. § 41-1072.
23. "Supervision" means being responsible for and providing direction to an individual who:

- a. Performs and assists a registered environmental health sanitarian with environmental health services as described in R9-16-403, and
- b. Is employed as an environmental health sanitarian aide in a position directly related to environmental health.

24. "Testing center" means a facility, approved by the Department that provides a proctored computer-based sanitarian examination.

**R9-16-402. Eligibility and Responsibilities for a Registered Environmental Health Sanitarian**

**A.** An individual is eligible to be a registered environmental health sanitarian, if the individual meets at least one of the following:

- 1. Has completed at least 30 semester credits at an accredited college or university in the natural sciences or the equivalent credits from a college or university from outside the United States or its territories verified by a Department-approved third party evaluation service;
- 2. Has completed at least five years of employment as a sanitarian aide in a position directly related to environmental health;
- 3. Has completed at least five years of active military service in the field of environmental health;
- 4. Is currently licensed as a sanitarian in another jurisdiction, has passed a sanitarian examination that is equivalent to this state's examination ~~with a score of 70% or more~~ as specified in A.R.S. § 36-136.01, and has completed at least one of the requirements identified in subsections (A)(1), (2), or (3); or
- 5. Has received a copy of ~~an official notice~~ sanitarian examination test results from a testing ~~organization approved by the Department~~ center that contains the sanitarian examination test results with a score of 70% or more and has completed at least one of the requirements identified in subsections (A)(1), (2), or (3).

**B.** An individual who is eligible to be a registered environmental health sanitarian according to subsection (A)(1) through (3) shall pass a sanitarian examination ~~administered by the Department~~ or administered by a testing organization approved by the Department center.

**C.** The practice of a registered environmental health sanitarian may include:

- 1. Investigate, sample, measure, and assess hazardous environmental agents;
- 2. Recommend and apply protective interventions that control hazards to health;
- 3. Develop, promote, and enforce guidelines, policies, rules, statutes, and regulations;
- 4. Perform system analysis;

5. Interpret research utilizing science and evidence to understand the relationship between health and environment; or
6. Interpret data and prepare technical summaries and reports.

**D.** A registered environmental health sanitarian shall:

1. Comply with A.R.S. § 41-1009;
2. Comply with A.A.C. Title 9, Chapter 8; and
3. Review and, as applicable, sign reports prepared by a sanitarian aide.

**R9-16-405. Application for Sanitarian Examination and Registration**

**A.** An individual may apply to take the sanitarian examination for registration as a sanitarian if the individual meets one of the eligibility requirements in ~~R9-16-402(A)~~ R9-16-402(A)(1) through (A)(3).

**B.** At least seven calendar days before a Sanitarians Council meeting, an applicant for environmental health sanitarian registration shall submit an application packet to the Department containing:

1. The following information in a Department-provided format:
  - a. The applicant's name, address, e-mail address, and telephone number;
  - b. If applicable, applicant's former names;
  - c. The applicant's social security number, required under A.R.S. §§ 25-320 and 25-502;
  - d. If applicable, the applicant's current employment information:
    - i. The employer's name, address, e-mail address, and telephone number;
    - ii. The applicant's position title; and
    - iii. The applicant's employment start date;
  - e. If an applicant meets the eligibility requirement in R9-16-402(A)(1), the following for each college or university where the applicant completed semester credits or the equivalent credits from a college or university:
    - i. The college or university's name, address, e-mail address, and telephone number;
    - ii. The number of natural science semester credits completed; and
    - iii. If applicable, the degree obtained;
  - f. If an applicant meets the eligibility requirement in R9-16-402(A)(2), the following for each employer during the five years the applicant was employed as a sanitarian aide:
    - i. The employer's name, address, e-mail address, and telephone number;

- ii. The name, title, e-mail address, and telephone number of a contact individual for the employer;
  - iii. The applicant's position and description of responsibilities; and
  - iv. The months and years of employment;
- g. If an applicant meets the eligibility requirement in R9-16-402(A)(3), the following for each active military service assignment during the five years the applicant held a military job position in the field of environmental health:
- i. The military branch name, address, e-mail address, and telephone number;
  - ii. The name, title, e-mail address, and telephone number of a contact individual from the military branch;
  - iii. The applicant's military job position and description of responsibilities; and
  - iv. The months and years of active military service assignments;
- h. If an applicant meets the eligibility requirement in R9-16-402(A)(4), the following for a sanitarian licensed in another state or jurisdiction:
- i. The state, county, and city that issued the applicant's current license as a sanitarian;
  - ii. The testing organization that administered the sanitarian examination;
  - iii. The name of the sanitarian examination;
  - iv. The sanitarian examination administration date;
  - v. The number of sanitarian examination questions;
  - vi. The sanitarian examination score;
  - vii. The other eligibility requirement in R9-16-402(A)(1), (2), or (3) through (A)(3) met by the applicant; and
  - viii. As applicable, the information required in subsection (B)(1)(e), (f), or (g);
- i. ~~Whether an applicant who is eligible according to subsection (B)(1)(e) through (g) has passed a sanitarian examination administered by a training organization approved by the Department.~~ If an applicant meets the eligibility requirement in R9-16-402(A)(5), ~~the following for an official notice from a Department-approved testing organization that contains a sanitarian examination test results with a score of 70% or more~~ an applicant shall provide the following information:

- i. The name of the testing ~~organization~~ center;
  - ii. The date the sanitarian examination was completed;
  - iii. The sanitarian examination score; and
  - iv. As applicable, the information required in subsection (B)(1)(e), (f), or (g);
- j. Whether the applicant is or has been licensed as a sanitarian in another state or jurisdiction;
- k. Whether the applicant has had an application for licensure as a sanitarian denied in a state or jurisdiction;
- l. If the applicant has had an application for licensure as a sanitarian denied, the:
  - i. Reason for denial;
  - ii. Date of the denial; and
  - iii. Name, address, and telephone number of the licensing agency that denied the applicant's application;
- m. Whether the applicant has had a license as a sanitarian suspended or revoked by a state or jurisdiction or entered into a consent agreement with a state or jurisdiction;
- n. If the applicant has had a license as a sanitarian suspended or revoked or entered into a consent agreement, the:
  - i. Reason for the suspension, revocation, or consent agreement;
  - ii. Date of the suspension, revocation, or consent agreement; and
  - iii. Name, address, and telephone number of the licensing agency that suspended, revoked, or entered into a consent agreement with the applicant;
- o. Whether the applicant has been convicted of a felony or a misdemeanor related to the functions of the applicant's employment or occupation as a sanitarian in this state or another state;
- p. If the applicant has been convicted of a felony or a misdemeanor in subsection (o):
  - i. The date of the conviction,
  - ii. The state or jurisdiction of the conviction,
  - iii. An explanation of the crime of which the applicant was convicted, and
  - iv. The disposition of the case;

- q. Whether the applicant agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-16-407;
  - r. An attestation that:
    - i. The applicant authorizes the Department to verify all information provided in the application packet, and
    - ii. The information submitted as part of the application packet is true and accurate; and
  - s. The applicant's signature and date of signature;
2. In addition to the application in subsection (B)(1), the following:
- a. A copy of applicant's Social Security card;
  - b. Proof of U.S. citizenship or alien status according to A.R.S. § 41-1080;
  - c. If applicable, a copy of an applicant's sanitarian license issued by another state or jurisdiction;
  - d. If an official transcript is issued by a college or university from outside of the United States or its territories, documentation from a third party evaluation service verifying equivalent credits identified in subsection ~~(d)~~ (B)(1)(e);
  - e. If applicable, a letter verifying an applicant's start and end dates of employment for each employer identified in subsection (B)(1)(f);
  - f. If applicable, a letter verifying an applicant's start and end dates of the military job position for each active military service assignment identified in subsection (B)(1)(g);
  - g. If applicable, documentation of the completed sanitarian examination, including the sanitarian examination test results, from the ~~Department approved~~ testing ~~organization~~ center or jurisdiction that administered the sanitarian examination required by another state or jurisdiction in subsection (B)(1)(h); and
  - h. If applicable, a copy of the official notice from a ~~Department approved~~ testing ~~organization~~ center in subsection (B)(1)(i); and
3. The nonrefundable \$25 application fee.
- C.** If an official transcript documents natural science semester credit hours identified in subsection (B)(1)(e), an applicant shall instruct the college or university to send the official transcript to the Department.
- D.** The Department shall review an application packet for an applicant to take a sanitarian examination according to R9-16-407 and Table 4.1.

**E.** The Department shall review a sanitarian examination for an applicant licensed by another state or jurisdiction for approval for the applicant to practice as a registered environmental health sanitarian according to R9-16-407 and Table 4.1.

**F.** ~~The Department shall:~~

- ~~1. Administer the sanitarian examination at least four times each calendar year;~~
- ~~2. By January 1 of each calendar year, provide the annual sanitarian examination schedule;~~
- ~~3. If a scheduled sanitarian examination requires rescheduling, provide a notice at least 14 calendar days before a scheduled sanitarian examination date in subsection (2) occurs that includes information about the revised sanitarian examination; and~~
- ~~4. By January 1 of each calendar year, provide a list of Department approved testing organizations.~~

**G.F.** An applicant approved to take a sanitarian examination shall:

- ~~1. Determine whether the applicant will take a sanitarian examination administered by the Department or administered by a testing organization approved by the Department;~~
  - ~~a. If the applicant determines to take a sanitarian examination administered by the Department, the applicant shall:~~
    - ~~i. Submit a nonrefundable \$140 sanitarian examination fee to the Department at least 30 calendar days before taking a scheduled sanitarian examination,~~
    - ~~ii. Take a scheduled sanitarian examination administered by the Department, and~~
    - ~~iii. Submit the completed sanitarian examination to the Department; or~~
  - ~~b. If the applicant determines to take a sanitarian examination administered by a testing organization approved by the Department, the applicant shall:~~
    - ~~i.1. Select a testing organization center from the Department approved list,~~
    - ~~ii.2. Take a scheduled sanitarian examination administered by the testing organization center, and~~
    - ~~iii.3. Pass the sanitarian examination with a score of 70% or more and submit a copy of the applicant's official notice from the testing organization that contains the sanitarian examination test results to the Department. and~~
- ~~2. Take the sanitarian examination within 6 months after the date the applicant received the notice of approval to take the sanitarian examination.~~
- ~~3. Pass the sanitarian examination with a score of 70% or more.~~

**H.G.** The Department shall review ~~a sanitarian examination~~ an application packet for approval for an applicant to practice as a registered environmental health sanitarian according to R9-16-407 and Table 4.1.

**I.H.** An applicant, who does not submit ~~a sanitarian examination or a copy of an official notice from a testing organization~~ sanitarian examination test results to the Department in subsection ~~(G)~~ (F) within 6 months after the date that the applicant received the notice of approval to take the sanitarian examination, shall submit a new application packet according to R9-16-405(B).

**J.I.** An applicant, who submits ~~a sanitarian examination or a copy of an official notice from a testing organization~~ sanitarian examination test results to the Department in subsection ~~(G)~~ (F) within 6 months after the date that the applicant received the notice of approval to take the sanitarian examination and does not score 70% or more, shall:

1. Have 12 months from the date of the approval letter the applicant received from the Department to ~~resubmit a sanitarian examination or~~ provide a copy of an official notice from a testing organization sanitarian examination test results in subsection ~~(G)~~ (F); and
2. Comply with ~~subsections~~ subsection (G)(1)(a) or (b) (F)(1) through (F)(3) to retake the sanitarian examination.

**R9-16-407. Time-frames**

**A.** The overall time-frame begins, for:

1. A sanitarian examination approval, on the date the Department receives an application packet in R9-16-405;
2. An environmental health sanitarian registration approval, on the date the Department receives ~~an official notice for an~~ the applicant's sanitarian examination test ~~result~~ results administered by:
  - a. A testing ~~organization~~ center described in R9-16-405(B)(1)(i) or ~~(G)~~ (F), or
  - b. A testing organization or jurisdiction that administered the sanitarian examination required by another state or jurisdiction described in R9-16-405(B)(1)(h);
3. A continuing education deferral approval, on the date the Department receives the continuing education deferral request in R9-16-404; and
4. A renewal registration approval, on the date the Department receives a renewal application packet in R9-16-406.

- B.** The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. The substantive review time-frame and the overall time-frame may not be extended by more than 25% of the overall time-frame.
- C.** Within the administrative completeness review time-frame in Table 4.1, the Department shall:
1. Provide a notice of administrative completeness to an applicant; or
  2. Provide a notice of deficiencies to an applicant, including a list of the missing information or documents.
- D.** If the Department provides a notice of deficiencies to an applicant:
1. The administrative completeness review time-frame and the overall time-frame are suspended after the date of the notice of deficiencies until the date the Department receives the missing information or documents from the applicant;
  2. If the applicant submits the missing information or documents to the Department within the time-frame in Table 4.1, the substantive review time-frame resumes on the date the Department receives the missing information or documents; and
  3. If the applicant does not submit the missing information or documents to the Department within the time-frame in Table 4.1, the Department shall consider the application or the request withdrawn.
- E.** If the Department issues a registration or notice of an approval during the administrative completeness review time-frame, the Department may not issue a separate written notice of administrative completeness.
- F.** Within the substantive review time-frame specified in Table 4.1, the Department:
1. Shall approve an:
    - i. Applicant's request for registration as an environmental health sanitarian or
    - ii. Applicant, who did not score 70% or more on the sanitarian examination, to resubmit a sanitarian examination according to ~~R9-16-405(J)~~ R9-16-405(I);
  2. Shall deny an applicant's request for registration as an environmental health sanitarian;
  3. May make a written comprehensive request for additional information or documentation; and
  4. May make supplemental requests for additional information and documentation if agreed to by the applicant.
- G.** If the Department provides a written comprehensive request for additional information or documentation or a supplemental request to the applicant:

1. The substantive review time-frame and overall time-frame are suspended from the date of the written comprehensive request or supplemental request until the date the Department receives the information and documents requested; and
2. The applicant shall submit to the Department the information and documents listed in the written comprehensive request within 15 calendar days after the date of the written comprehensive request or supplemental request.

**H.** The Department shall issue:

1. An approval to an applicant who submits:
  - a. An application packet to take a sanitarian examination that complies with the requirements in R9-16-405;
  - b. An application packet and a sanitarian examination with a score of 70% or more from a testing ~~organization approved by the Department~~ center that complies with the requirements in R9-16-405;
  - c. An application packet and a sanitarian examination test results from the testing organization or jurisdiction that administered the sanitarian examination that complies with the requirements in R9-16-405;
  - d. A continuing education deferral request that complies with the requirements in R9-16-404; and
  - e. An application for renewal registration that complies with the requirements R9-16-406; or
2. A denial to an applicant, including the reason for the denial and the appeal process in A.R.S. Title 41, Chapter 6, Article 10, if:
  - a. The applicant does not submit all of the information and documentation listed in a written comprehensive request or supplemental request for additional information or documentation; or
  - b. The applicant does not comply with A.R.S. § 36-136.01 and this Article.

**Table 4.1 Time-frames (in calendar days)**

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Written Comprehensive Request
Sanitarian Examination (R9-16-405)	A.R.S. § 36-136.01(B)	150	30	30	120	15

Initial Registration (R9-16-405)	A.R.S. § 36- 136.01(B)	<del>35</del> <u>40</u>	<del>5</del> <u>10</u>	15	30	15
Registration by Reciprocity (R9-16-405)	A.R.S. § 36- 136.01(C)	150	30	30	120	15
Deferred Continuing Education (R9-16-404)	A.R.S. § 36- 136.01(E)	45	30	15	15	15
Renewal Registration (R9-16-406)	A.R.S. § 36- 136.01(D)	75	60	15	15	15

**TITLE 9. HEALTH SERVICES**

**CHAPTER 16. OCCUPATIONAL LICENSING**

**ARTICLE 4. REGISTRATION OF ENVIRONMENTAL HEALTH SANITARIANS**

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

**July 2020**

# ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

## TITLE 9. HEALTH SERVICES

### CHAPTER 16. OCCUPATIONAL LICENSING

#### ARTICLE 4. REGISTRATION OF ENVIRONMENTAL HEALTH SANITARIANS

##### 1. An identification of the rulemaking

Arizona Revised Statutes (A.R.S.) § 36-136.01 authorizes the Arizona Department of Health Services (Department) to establish a sanitarians council and rules for the registration of sanitarians in the state of Arizona. Pursuant to A.R.S. § 36-136.01(B), “The council shall provide for the classification of sanitarians, establish standards for persons employed as sanitarians and provide for the examination of applicants for registration as sanitarians.” Pursuant to A.R.S. § 36-136.01(F), “The council shall charge and collect a nonrefundable examination fee established by the director by rules that does not exceed the cost of administering the examination.” The rules were originally promulgated in September 1976, were substantially amended effective May 16, 2002 and last amended effective October 05, 2017. The Department has for many years contracted with the National Environmental Health Association (“NEHA”) to provide written-paper examinations for the registration of environmental health sanitarians prescribed in 9 A.A.C. 16 Article 4, Registration of Environmental Health Sanitarians. NEHA was incorporated in 1937 as a national professional society for environmental health practitioners used to establish a standard of excellence for its developing profession. Their standard, known as the Registered Environmental Health Specialist/Registered Sanitarian credential, is recognized by the states and many states<sup>1</sup> use and accept the NEHA sanitarian examination for registration. The Department began administering NEHA written-paper examinations in 2002 and continued to administer until January 2020. In 2018, NEHA informed the Department that NEHA would be transitioning away from written-paper examinations to computer-based examinations administered by third party testing centers (testing center). At this time, NEHA examinations are administered by testing centers. The eligibility criteria to sit for the examination, the determination of a passing score, the number of continuing education requirements, and other requirements remain the responsibility of the Department. The Department provides for sanitarian examination pursuant to A.R.S. § 36-136.01(B) by agreement with NEHA for Arizona approved applicants to obtain a sanitarian examination with a testing center. In this rulemaking, requirements for sanitarian examination are updated and requirements related to the Department’s administration of the sanitarian examination and cost of examination removed. The Department will maintain the current passing examination score of 630 rather than using the NEHA passing examination score of 650. The Department

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<sup>1</sup> States using the [NEHA](#) examination for registering sanitarians includes: Arizona, Connecticut, Florida, Georgia, Illinois, Maryland, Massachusetts, Minnesota, Montana, Nevada, North Carolina, Ohio, Oregon, Washington, West Virginia, and Wisconsin. NEHA affiliates include 42 U.S. states: [NEHA Affiliates by State, Country or International](#).

received an exception from the rulemaking moratorium established by Executive Order 2019-01 and has updated the current rules to remove obsolete requirements, update examination requirements, and revise outdated language to improve the clarity and effectiveness of the rules.

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

**Persons directly affected by the rules:**

- The Department
- County health departments
- Applicants seeking registration as an environmental health sanitarian
- General public

**3. Cost and benefit analysis**

This analysis covers costs and benefits associated with the 9 A.A.C. 16, Article 4 rulemaking. No new FTEs are required due to this rulemaking. Annual cost/benefit changes are designated as minimal when more than \$0 and less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater. A cost or benefit is listed as significant when meaningful or important and not readily subject to quantification.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Benefit	Decreased Cost/ Increased Benefit
<b>A. State Agencies and Political Subdivisions</b>			
The Department	Requires technical resources to amend the rules:  Removes requirement for the Department to administer the sanitarian examination  Clarifies use of testing center requirement and adds testing center definition  Increases time-frame duration for initial registration	Moderate  None  None  None	Significant  Moderate  Significant  Significant
County health departments	Allows an individual eligible for registration as a sanitarian to take a sanitarian examination from a testing center	None	Significant
<b>B. Consumers</b>			
Applicants	Updates sanitarian examination	None	Significant

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Benefit	Decreased Cost/ Increased Benefit
seeking registration as an environmental health sanitarian	requirements Allows an individual eligible for registration as a sanitarian to take a sanitarian examination from a testing center	None	Minimal
General public	Requirement for approved applicants to use a testing center	None	Significant

- **The Department**

Under the current rules in 9 A.A.C. 16, Article 4, the Department and the Sanitarians Council approves applicants for sanitarian examination; administers the sanitarian examination; approves applicants for registration as a sanitarian, including applicants by way of reciprocity; approves registered environmental health sanitarians' requests to defer continuing education; and approves registered environmental health sanitarians' registration renewals. The Department, pursuant to A.R.S. § 36-136.01(F), also collects<sup>2</sup> a nonrefundable initial application fee of \$25 and an annual renewal application fee of \$10. In this rulemaking, the Department amends requirements in R9-16-401, R9-16-402, R9-16-405, R9-16-407, and Table 4.1. The changes include removing a requirement for the Department to administer sanitarian examinations, adding a “testing center” definition, clarifying a requirement for approved applicants to use a testing center, and increasing the administrative completeness review time-frame for an initial registration. The Department anticipates incurring a moderate cost for technical resources, rules analyst and program staff, to review and amend current rules; establish and maintain Article 4 rulemaking webpage; and organize and meet with stakeholders to ensure the Department is aware of their concerns and amend the draft rules when appropriate. The Department anticipates that the total cost to the Department for technical resources will most likely become less costly over time. The Department expects that the changes made through this rulemaking will provide a significant benefit to the Department for having rules that are more effective and understandable. Additionally, by clarifying requirements for sanitarian examinations administered by testing centers, the Department expects to receive a moderate benefit for program staff, who has been administering the sanitarian examinations, to assume other program tasks-responsibilities. However, the Department does not expect the benefit to cover the Department’s costs for applicants who wish to obtain a sanitarian registration or renewal registrations. In 2019, the Department completed 77 initial applications and renewed 528 sanitarian registrations. The Department estimates that the cost to complete an initial application is \$95 and to complete

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<sup>2</sup> The 9 A.A.C. 16, Article 4 Notice of Final Rulemaking at [8 A.A.R. 2444](#) provides verification that the fees stated above remain since rules promulgated in 2002.

a renewal application \$42. The Department estimates<sup>3</sup> that initial applications cost \$5,390 and the cost for the 528 renewal registrations is \$16,896. In 2019, the Department estimates that the cost for both initial and renewal applications is \$29,491 and the amount of fees collected is \$7,205. The Department's cost to register sanitarians exceeds the amount of fees collected.

In addition, A.R.S. § 36-136.01(B) requires "The council to...provide for the examination of applicants for registration as sanitarians." And A.R.S. § 36-136.01(F) requires "The council to charge and collect a nonrefundable examination fee...that does not exceed the cost of the examination." The Department believes that the amended requirement allowing approved applicants to select a testing center for administration of a sanitarian examination maintains the Department consistency with the statutes, specifically ensuring that: (1) "provide for the examination of applicants" and (2) "a nonrefundable examination fee...does not exceed the cost of the examination." In the Department's latest agreement with NEHA, the 2020 cost for the sanitarian examination is \$280 with understanding that over the next five years (through the end of 2024), the price of the sanitarian examination is not to exceed \$310. The sanitarian examination cost of \$280 covers examination content (\$50), examination delivery (\$150 - testing center), and NEHA staff time (\$80).

The Department also expects that clarifying the use of testing centers will have a significant benefit for having rules that are effective and understandable; similarly, increasing the administrative completeness review time-frame duration for an initial registration is expected to provide a significant benefit for allowing staff to have adequate time. In the 2017 Registration of Sanitarians rulemaking at 23 A.A.R 3038, the Department amended 4 of 5 approval time-frames listed in Table 4.1; the overall time-frames for four approvals were decreased between 30 to as much as 140 calendar days. The time-frame for an initial application administrative completeness review changed from 30 to 5 calendar days. Since the 2017 Registration of Sanitarians rulemaking, effective October 5, 2017, the Department has determined that program staff requires additional time for completing an initial application administrative completeness review. The Department believes changing the time-frame from 5 to 10 calendar days is reasonable. The Department verifies that other occupational licensing Articles in 9 A.A.C. 16 require 15 and 30 calendar days for completing an administrative completeness review. The Department expects that the benefit to the Department for having rules that are effective, consistent, and understandable to be significantly greater than the cost.

- **County health departments (CHDs)**

In 2019, Arizona CHDs conducted over 100,000 routine inspections at over 55,000 regulated facilities for food establishments, bathing places, trailer coach parks, public school grounds, camp grounds, children's camps,

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<sup>3</sup> 2019 fees collected for initial applications is  $(\$25)(77) = \$1,925$ ; fees collected for renewal is  $(\$10)(528) = \$5,280$ . The Department collected \$7,205. The Department cost for initial applications is  $(\$95)(77) = \$7,315$ ; cost for renewal is  $(\$42)(528) = \$22,176$ . The Department cost is \$29,491. The fees collected (\$7,205) do not cover the Department's costs (\$29,491); the Department has a shortage of \$22,286. The Department's cost of \$95 and \$42 were taken from the 2017 Registration of Sanitarians rulemaking. The Department expects the costs of \$95 and \$42 has most likely increased since 2017.

public accommodations, and bottled water facilities. The 2019 routine inspections conducted were completed by 198 Arizona registered environmental health sanitarians employed by the CHDs. The Department does not expect CHDs to incur additional costs related to the Article 4 rulemaking. Rather, the Department anticipates that CHDs will most likely receive a significant benefit for requirements that allow approved applicants to take a sanitarian examination at a testing center and that define and clarify the use of a “testing center.” In addition to having requirements that are clearer and less burdensome, additional benefit may come from allowing approved applicants, such as a county employee on probation, to choose a testing center that accommodates testing dates, times, and locations that allows the employee to obtain sanitarian registration prior to the end of the employee’s one-year probation period – securing the employee’s employment with the county. And rather than being limited to four attempts, an approved applicant may attempt taking the sanitarian examination an unlimited number of times within the timeframes designated by the Sanitarian Council. The Department anticipates that some CHDs may incur an increased sanitarian examination fee if a CHD, as part of employment, agrees to incur the cost of a sanitarian examination on behalf of an employee on probation. Initially, the Department considered that CHDs who incur the cost of a sanitarian examination on behalf of an employee might incur-receive a similar cost-benefit as applicants who are seeking registration as an environmental health sanitarian and pay for a sanitarian examination out-of-pocket. However, the Department does not consider the increased sanitarian examination fee paid by a CHD to be a direct-cost imposed by the rulemaking, since a CHD is not required by rule to pay a sanitarian examination fee for an approved applicant (employee). Lastly, the Department expects that CHDs may receive a significant benefit for the Department keeping the sanitarian examination passing test score at 630, rather than accepting a NEHA passing test score of 650.

- **Applicants seeking registration as a sanitarian**

During 2019, the Department administered 77 sanitarian examinations. The current rules require, the Department to administer the sanitarian examination four times each calendar year and to collect monies for an application and sanitarian examination from applicants wishing to be a registered environmental health sanitarian. The Department amended requirements in R9-16-405, Application for Sanitarian Examination and Registration, to simplify sanitarian examination requirements and clarify requirement for an applicant to select a testing center to administer the sanitarian examination. The Department expects approved applicants may receive a minimal benefit for not having to schedule a sanitarian examination during one of the four times when the Department administers sanitarian examinations. In addition, the Department anticipates that applicants may receive a minimal benefit for having the options to choose the time, date, and location of a testing center providing a sanitarian examination. The amended rule does not prevent applicants from taking a sanitarian examination directly through NEHA. An applicant who chooses to take a sanitarian examination through NEHA, as a non-member, will pay an application fee of \$130, a sanitarian examination fee of \$335, and a testing center (Pearson VUE) fee of \$110. In total, an applicant will pay NEHA – \$575. The Department

expects when given a choice, approved applicants are more likely to receive a significant benefit for choosing to pay the council a \$25 application fee and \$280 for a sanitarian examination arranged by the Department for all Arizona approved applicants wishing to take a sanitarian examination. Also, recall, from Subsection 1, an approved applicant taking a sanitarian examination from NEHA must have a passing test score of 650. The Department expects approved applicants will most likely receive a significant benefit for the Department's decision to keep a sanitarian examination passing test score of 630, rather than the NEHA passing testing score of 650. The Department does not anticipate that the amended rules will cause a decline in the number of applicants seeking registration as a sanitarian.

- **General public**

The Department anticipates that the amended rules that simplify the sanitarian examination requirements will not increase costs or decrease benefits for the general public. However, the Department does expect the requirement for approved applicants to use a testing center may provide a significant benefit to taxpayers, who under current rule, would have to incur a portion of approved applicants' sanitarian examination fees, since a sanitarian examination fee collected after January 2020 is less than the current cost of a NEHA sanitarian examination. The amended rule in R9-16-405 through the use of testing centers removes the probability that an approved applicant will pay less for a sanitarian examination than its cost. As stated previously in Subsection 3, the amended rule ensures that the cost of a sanitarian examination "...does not exceed the cost of the examination."

**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 amended rules require applicants seeking registration as a sanitarian, and who have not passed a sanitarian examination, to take a sanitarian examination administered by a testing center approved by the Department. The Department expects that some small businesses that are testing centers approved by the Department may see an increase in the number of examinations administered. The annual numbers of sanitarian examinations administered by the Department for the past three years are: 77 in 2019, 59 in 2018, and 74 in 2017. The total number of sanitarian examinations administered (210) divided by the number of years (three) results in a yearly average of 70 administered sanitarian examination. The Department uses the yearly average of administered sanitarian examinations (70) and the number of Pearson Vue (third party) testing centers in Arizona (three) to estimate the average impact on some small business. The estimated average impact to each of the three testing centers, considering all things equal, is moderate if each testing center administers 23.3 sanitarian examinations yearly. The Department anticipates that the 23.3 additional examinations administered by each testing center may not be substantial enough to merit hiring an additional employee. The Department expects testing centers administering computerized examinations will most likely include sanitarian examinations in already established testing times rather than increase the number of testing times to accommodate a small number of sanitarian examinations. The Department anticipates that the rulemaking will

most likely not have a substantial impact on private and public employment in businesses, agencies, and political subdivisions of this state.

**5. A statement of the probable impact of the rules on small businesses**

**a. Identification of the small businesses subject to the rules**

The amended rules are specific to sanitarian examinations and testing centers. The Department considered small businesses that maybe impacted by the amended rules and identified licensed food establishments, pursuant to 9 A.A.C. 8, Article 1, since registered environmental health sanitarians inspect this type of small business. However, since licensed food establishments comply with requirements in 9 A.A.C. 8, Food Recreation and Institutional Sanitation, Article 1, Food and Drink, the Department does not expect food establishments to be subject to this rulemaking. In the same way, small business identified in other Articles in 9 A.A.C. 8 are also inspected by registered environmental health sanitarians, and for the same reason as with licensed food establishment, the other types of small business, such as licensed lodging establishments that comply with requirements in 9 A.A.C. 8, Article 13, are not expected to be subject to the amended rules. Additionally, the Department considered testing centers as small businesses that may be subjected to the rules, and even though testing centers may received a minimal to moderate benefit from the amended rules; testing centers too are not subject to the rules in Article 4. The Department knows of no other small business that may be subject to the rules. The Department expects that the Department and applicants seeking registration as an environmental health sanitarian to be “subject to the rules.”

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

The Department does not expect small businesses, discussed above, to incur administrative or other cost related to the rulemaking since not subjected to the rules.

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

The Department knows of no small businesses affected by the amended rules and knows of no other methods that would reduce the impact on small businesses.

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

In addition to consumers and the general public identified in Subsection 3, the Department does not expect other private persons and consumers are directly affected by the rules. In summary of Subsection 3, the Department considers applicants seeking registration as a sanitarian and possible taxpayers as types of private persons and consumers directly affected by the rules. The Department anticipates that the amended rules; related to the sanitarian examination, definition “testing center,” and amended administrative completeness review time-frame, will not increase costs or decrease benefits for the general public. However, the Department expects that the requirement for approved applicants to pay a sanitarian examination fee equal to the cost of the sanitarian examination may

provide a significant benefit to the taxpayers who under current rules would incur costs greater than the amount collected.

**6. A statement of the probable effect on state revenues**

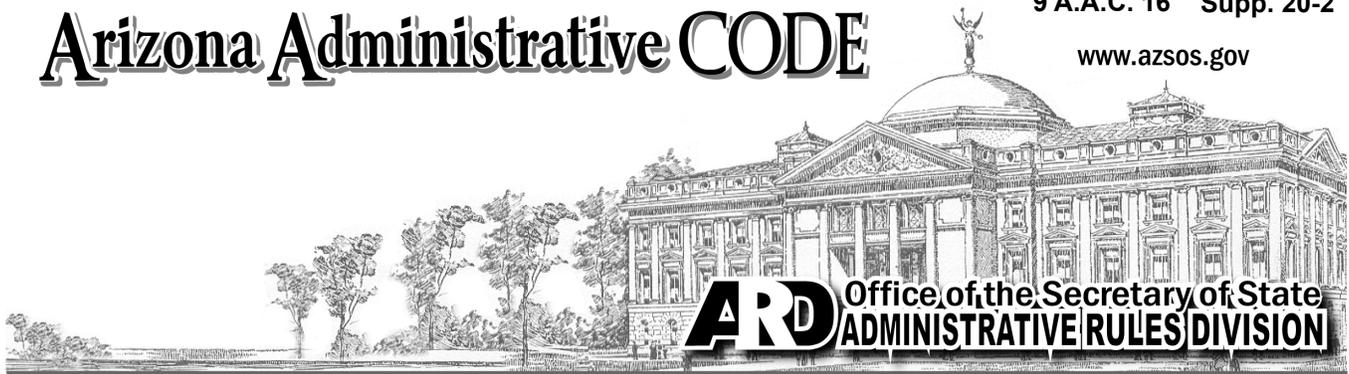
The amended rules are specific to requirements for sanitarian examinations and third-party testing centers. This rulemaking does not increase state revenues or decrease state revenues.

**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 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.



## TITLE 9. HEALTH SERVICES

### CHAPTER 16. DEPARTMENT OF HEALTH SERVICES - OCCUPATIONAL LICENSING

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

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

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**The release of this Chapter in Supp. 20-2 replaces Supp. 20-1, 1-50 pages**

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

## PREFACE

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

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION

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### RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

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

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

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

### AUTHENTICATION OF PDF CODE CHAPTERS

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

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### HOW TO USE THE CODE

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

### ARIZONA REVISED STATUTE REFERENCES

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

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

### SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

### EXEMPTIONS FROM THE APA

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

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

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

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

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

### EXEMPTIONS AND PAPER COLOR

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

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



Administrative Rules Division  
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**TITLE 9. HEALTH SERVICES**

**CHAPTER 16. DEPARTMENT OF HEALTH SERVICES - OCCUPATIONAL LICENSING**

**ARTICLE 1. LICENSING OF MIDWIFERY**

Article 1, consisting of Sections R9-16-101 through R9-16-112 and Exhibits A through E, adopted effective as noted in Section Historical Notes (Supp. 94-1).

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## CHAPTER 16. DEPARTMENT OF HEALTH SERVICES - OCCUPATIONAL LICENSING

## ARTICLE 1. LICENSING OF MIDWIFERY

## R9-16-101. Definitions

In addition to the definitions in A.R.S. § 36-751, the following definitions apply in this Article unless otherwise specified:

1. "Abnormal presentation" means the fetus is not in a head-down position with the crown of the head being the leading body part.
2. "Addiction" means a condition that results when a person ingests a substance that becomes compulsive and interferes with ordinary life responsibilities, such as work, relationships, or health.
3. "Amniotic" means the fluid surrounding the fetus while in the mother's uterus.
4. "Apgar score" means the number indicating a newborn's physical condition attained by rating selected body functions.
5. "Aseptic" means free of germs.
6. "Breech" means a complete breech, a frank breech, or an incomplete breech.
7. "Certified nurse midwife" means an individual who meets the criteria in 4 A.A.C. 19, Article 5 and is certified by the Arizona State Board of Nursing.
8. "Complete breech" means that at the time of birth the buttocks of a fetus is pointing downward with both legs folded at the knees and the feet near the buttocks.
9. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
10. "Cervix" means the narrow lower end of the uterus which protrudes into the cavity of the vagina.
11. "Consultation" means communication between a midwife and a physician or a midwife and a certified nurse midwife for the purpose of receiving a written or verbal recommendation and implementing prospective advice regarding the care of a pregnant woman or the woman's child.
12. "Current photograph" means an image of an individual, taken no more than 60 calendar days before the submission of the individual's application, in a Department-approved electronic format capable of producing an image that:
  - a. Has a resolution of at least 600 x 600 pixels but not more than 1200 x 1200 pixels;
  - b. Is 2 inches by 2 inches in size;
  - c. Is in natural color;
  - d. Is a front view of the individual's full face, without a hat or headgear that obscures the hair or hairline;
  - e. Has a plain white or off-white background; and
  - f. Has between 1 and 1 3/8 inches from the bottom of the chin to the top of the head.
13. "Dilation" means opening of the cervix during the mechanism of labor to allow for passage of the fetus.
14. "Effacement" means the gradual thinning of the cervix during the mechanism of labor and indicates progress in labor.
15. "Emergency care plan" means the arrangements established by a midwife for a client's transfer of care in a situation in which the health or safety of the client or newborn are determined to be at risk.
16. "Emergency medical services provider" has the same meaning as in A.R.S. § 36-2201.
17. "Episiotomy" means the cutting of the perineum, center, middle, or midline, in order to enlarge the vaginal opening for delivery.
18. "Fetus" means a child in utero from conception to birth.
19. "Frank breech" means that at the time of birth the buttocks of a fetus is pointing downward with both legs folded flat up against the head.
20. "Gestation" means the length of time from conception to birth, as calculated from the first day of the last normal menstrual period.
21. "Gravida" means the number of times the mother has been pregnant, including a current pregnancy, regardless of whether these pregnancies were carried to term.
22. "Incomplete breech" means that at the time of birth the buttocks of a fetus is pointing downward with one leg folded at the knee with the foot near the buttocks.
23. "Infant" has the same meaning as in A.R.S. § 36-694.
24. "Informed consent" means a document signed by a client, as provided in R9-16-109, agreeing to the provision of midwifery services.
25. "Intrapartum" means occurring from the onset of labor until after the delivery of the placenta.
26. "Jurisprudence test" means an assessment of an individual's knowledge of the:
  - a. Laws of this state concerning the reporting of births, prenatal blood tests, and newborn screening; and
  - b. Rules pertaining to the practice of midwifery.
27. "Ketones" means certain harmful chemical elements which are present in the body in excessive amounts when there is a compromised bodily function.
28. "Local registrar" means a person appointed by the state's registrar of vital statistics for a registration district whose duty includes receipt of birth and death certificates for births and deaths occurring within that district for review, registration, and transmittal to the state office of vital records according to A.R.S. Title 36, Chapter 3.
29. "Meconium" means the first bowel movement of the newborn, which is greenish black in color and tarry in consistency.
30. "Midwifery services" means health care, provided by a midwife to a mother, related to pregnancy, labor, delivery or postpartum care.
31. "Newborn" has the same meaning as in A.R.S. § 36-694.
32. "Para" means the number of births that are greater than 20 weeks of gestation, including viable and non-viable births, where multiples are counted as one birth.
33. "Parity" means the number of newborns a woman has delivered.
34. "Perineum" means the muscular region in the female between the vaginal opening and the anus.
35. "Physician" means an allopathic, an osteopathic, or a naturopathic practitioner licensed according to A.R.S. Title 32, Chapters 13, 14, or 17.
36. "Postpartum" means the six-week period following delivery of a newborn and placenta.
37. "Prenatal" means the period from conception to the onset of labor and birth.
38. "Prenatal care" means the on-going risk assessments, clinical examinations, and prenatal, nutritional, and anticipatory guidance offered to a pregnant woman.
39. "Prenatal visit" means each clinical examination of a pregnant woman for the purpose of monitoring the course of gestation and the overall health of the woman.
40. "Primigravida" means a woman who is pregnant for the first time.

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41. "Primipara" means a woman who has given birth to her first newborn.
42. "Quickening" means the first perceptible movement of the fetus in the uterus, occurring usually in the 16th to the 20th week of gestation.
43. "Rh" means a blood antigen.
44. "Serious mental illness" means a condition in an individual who is 18 years of age or older and who exhibits emotional or behavioral functioning, as a result of a mental disorder as defined in A.R.S. § 36-501, that:
  - a. Is severe and persistent, resulting in a long-term limitation of their functional capacities for primary activities of daily living such as interpersonal relationships, homemaking, self-care, employment and recreation; and
  - b. Impairs or substantially interferes with the capacity of the individual to remain in the community without supportive treatment or services of a long-term or indefinite duration.
45. "Substance abuse" means the continued use of alcohol or other drugs in spite of negative consequences.
46. "Shoulder dystocia" means the shoulders of the fetus are wedged in the mother's pelvis in such a way that the fetus is unable to be born without emergency action.
47. "Transfer of care" means that a midwife refers the care of a client or newborn to an emergency medical services provider, a certified nurse midwife, a hospital, or a physician who then assumes responsibility for the direct care of the client or newborn.
48. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday or a state-wide furlough day.

**Historical Note**

Section repealed, new Section adopted effective March 14, 1994 (Supp. 94-1). Section amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

**R9-16-102. Application for Initial Licensure**

- A. An applicant for an initial license to practice midwifery shall submit:
    1. An application in a format provided by the Department that contains:
      - a. The applicant's name, address, telephone number, and e-mail address;
      - b. The applicant's Social Security Number, as required under A.R.S. §§ 25-320 and 25-502;
      - c. Whether the applicant has ever been convicted of a felony or a misdemeanor in this or another state or jurisdiction;
      - d. If the applicant was convicted of a felony or misdemeanor:
        - i. The date of the conviction,
        - ii. The state or jurisdiction of the conviction,
        - iii. An explanation of the crime of which the applicant was convicted, and
        - iv. The disposition of the case;
      - e. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-107(C)(2);
      - f. An attestation that information required as part of the application has been submitted and is true and accurate; and
      - g. The applicant's signature and date of signature;
    2. A copy of the applicant's:
      - a. U.S. passport, current or expired;
      - b. Birth certificate;
      - c. Naturalization documents; or
      - d. Documentation of legal resident alien status;
  3. Documentation that demonstrates the applicant is 21 years of age or older if the documentation submitted in subsection (A)(2) does not demonstrate that the applicant is 21 years of age or older;
  4. Current documentation of completion of training in:
    - a. Adult basic cardiopulmonary resuscitation through a course recognized by the American Heart Association, and
    - b. Neonatal resuscitation through a course recognized by the American Academy of Pediatrics or American Heart Association;
  5. Documentation of a high school diploma, a high school equivalency diploma, an associate degree, or a higher degree;
  6. Documentation that the applicant is certified by the North American Registry of Midwives as a Certified Professional Midwife;
  7. A current photograph of the applicant;
  8. A non-refundable application fee of \$25; and
  9. A non-refundable testing fee of \$100 for a jurisprudence test administered by the Department.
- B. The Department shall review an application for an initial license to practice midwifery according to R9-16-107 and Table 1.1.
  - C. If an applicant receives notification of eligibility to take the jurisprudence test, the applicant:
    1. Shall take the jurisprudence test administered by the Department,
    2. Shall provide proof of identity by a government-issued photographic identification card upon the request of the individual administering the jurisprudence test,
    3. May take the jurisprudence test as many times as desired without paying an additional testing fee, and
    4. Shall score 80% or higher correct answers on the jurisprudence test to be eligible to receive an initial license to practice midwifery.
  - D. If an applicant scores 80% or higher correct answers on the jurisprudence test, the Department shall provide written notice to the applicant, within five working days after the date of the jurisprudence test, to submit to the Department:
    1. A licensing fee of \$25; and
    2. The documentation required in subsection (A)(4) or (6), if the training required in subsection(A)(4) or certification required in subsection (A)(6) is not current.
  - E. The Department shall issue an initial license to practice midwifery within five working days after receiving the applicable documentation and licensing fee required in subsection (D).
  - F. The Department shall provide to an applicant a written notice of denial that complies with A.R.S. § 41-1092.03(A) and inform the applicant that the applicant may reapply under subsection (A) if the applicant does not:
    1. Score 80% or higher correct answers on the jurisprudence test within 180 calendar days after the date of the notification of eligibility to take the jurisprudence test, or
    2. Submit to the Department the applicable documentation and licensing fee required in subsection (D) within 120 calendar days after the date of the notification in subsection (D).

**Historical Note**

Section repealed, new Section adopted effective March 14, 1994 (Supp. 94-1). Amended by final rulemaking at 8 A.A.R. 2896, effective June 18, 2002 (Supp. 02-2). Section R9-16-102 repealed; new Section R9-16-102 renum-

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bered from R9-16-103 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

**Exhibit A. Repealed****Historical Note**

Section repealed, new Section adopted effective March 14, 1994 (Supp. 94-1). Exhibit A repealed by final rulemaking at 8 A.A.R. 2896, effective June 18, 2002 (Supp. 02-2).

**R9-16-103. Renewal**

- A.** At least 30 calendar days and no more than 60 calendar days before the expiration date of a midwifery license, a midwife shall submit to the Department:
1. An application for renewal of a midwifery license in a format provided by the Department, that contains:
    - a. The midwife's name, address, telephone number, and e-mail address;
    - b. The midwife's license number;
    - c. Whether the midwife has been convicted of a felony or a misdemeanor in this or another state or jurisdiction in the previous two years;
    - d. If the midwife was convicted of a felony or misdemeanor:
      - i. The date of the conviction,
      - ii. The state or jurisdiction of the conviction,
      - iii. An explanation of the crime of which the midwife was convicted, and
      - iv. The disposition of the case;
    - e. Whether the midwife agrees to allow the Department to submit supplemental requests for information under R9-16-107(C)(2);
    - f. An attestation that the midwife has completed the continuing education requirement in R9-16-105;
    - g. An attestation that the midwife is complying with the requirements in A.R.S. § 32-3211;
    - h. An attestation that information required as part of the application has been submitted and is true and accurate; and
    - i. The midwife's signature and date of signature;
  2. Either:
    - a. Documentation that the midwife is currently certified by the North American Registry of Midwives as a Certified Professional Midwife; or
    - b. For a midwife who has been continuously licensed as a midwife by the Department since 1999, a copy of both sides of documentation showing the completion of current training in:
      - i. Adult basic cardiopulmonary resuscitation that meets the requirements in R9-16-102(A)(4)(a), and
      - ii. Neonatal resuscitation that meets the requirements in R9-16-102(A)(4)(b); and
  3. A non-refundable renewal fee of \$25.
- B.** The Department shall review an application for renewal of a license to practice midwifery according to R9-16-107 and Table 1.

**Historical Note**

Adopted effective March 14, 1994 (Supp. 94-1). Section R9-16-103 renumbered to R9-16-102; new Section R9-16-103 made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

**Exhibit B. Repealed****Historical Note**

Adopted effective March 14, 1994 (Supp. 94-1). Exhibit B repealed by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

**Exhibit C. Repealed****Historical Note**

Adopted effective March 14, 1994 (Supp. 94-1). Exhibit C repealed by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

**R9-16-104. Administration**

- A.** A midwife may submit a written request for the Department to:
1. Add the midwife's name, address, and telephone number to a list of licensed midwives on the Department's website; or
  2. Remove the midwife's name, address, and telephone number from a list of licensed midwives on the Department's website.
- B.** A midwife shall:
1. Notify the Department in a format provided by the Department within five working days after:
    - a. A client has died while under the midwife's care,
    - b. A stillborn child has been delivered by the midwife, or
    - c. A newborn delivered by the midwife has died within the first 6 weeks after birth; and
  2. Provide a summary of the:
    - a. Circumstances leading up to the event, and
    - b. Actions taken by the midwife in response to the event.
- C.** A midwife shall:
1. Maintain documentation of:
    - a. Completion of current training in:
      - i. Adult basic cardiopulmonary resuscitation that meets the requirements in R9-16-102(A)(4)(a), and
      - ii. Neonatal resuscitation that meets the requirements in R9-16-102(A)(4)(b);
    - b. Except as provided in R9-16-103(A)(2)(b), current certification as a Certified Professional Midwife by the North American Registry of Midwives; and
    - c. The continuing education required in subsection R9-16-105 for at least the previous three years; and
  2. Provide a copy of documentation required in subsection (C)(1) to the Department within 2 working days after the Department's request.

**Historical Note**

Adopted effective March 14, 1994 (Supp. 94-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

**R9-16-105. Continuing Education**

During the term of a midwifery license, the midwife shall obtain at least 20 continuing education units that:

1. Improve the midwife's ability to:
  - a. Provide services within the midwife's scope of practice,
  - b. Recognize and respond to situations outside the midwife's scope of practice, or
  - c. Provide guidance to other services a client may need; and
2. Have been approved as applicable to the practice of midwifery by the:
  - a. American Nurses Association,

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- b. American Congress of Obstetrics and Gynecologists,
- c. Midwives Alliance of North America,
- d. Arizona Medical Association,
- e. American College of Nurse Midwives,
- f. Midwifery Education Accreditation Council, or
- g. Another health professional organization.

**Historical Note**

Adopted effective March 14, 1994, except for subsections (B)(3) and (C) which are effective September 15, 1994 (Supp. 94-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

**Exhibit D. Repealed****Historical Note**

Adopted effective March 14, 1994 (Supp. 94-1). Exhibit D repealed by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

**R9-16-105.01. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2896, effective June 18, 2002 (Supp. 02-2). Section repealed by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

**Table 1. Repealed****Historical Note**

Table 1 made by final rulemaking at 8 A.A.R. 2896, effective June 18, 2002 (Supp. 02-2). Table 1 repealed by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

**R9-16-106. Name Change; Duplicate License**

- A. To request a name change on a midwifery license or a duplicate midwifery license, a midwife shall submit in writing to the Department:
  - 1. The midwife's name on the current midwifery license;
  - 2. If applicable, the midwife's new name;
  - 3. The midwife's address, license number, and e-mail address;
  - 4. As applicable:
    - a. Documentation supporting the midwife's name change, or
    - b. A statement that the midwife is requesting a duplicate midwifery license; and
  - 5. A non-refundable fee of \$10.00.
- B. Upon receipt of the written request required in subsection (A), the Department shall issue, as applicable:
  - 1. An amended midwifery license that incorporates the name change but retains the expiration date of the midwifery license, or
  - 2. A duplicate midwifery license.

**Historical Note**

Adopted effective March 14, 1994 (Supp. 94-1). Section R9-16-106 renumbered to R9-16-108; new Section R9-16-106 made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

**R9-16-107. Time-frames**

- A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of license granted by the Department is specified in Table 1.1. The applicant or midwife and the Department may agree in writing to extend the substantive review time-frame

and the overall time-frame. The substantive review time-frame and the overall time-frame may not be extended by more than 25 percent of the overall time-frame.

- B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of license granted by the Department is specified in Table 1.1.
  - 1. The administrative completeness review time-frame begins:
    - a. For an applicant submitting an application for initial licensure, when the Department receives the application packet required in R9-16-102(A); and
    - b. For a licensed midwife applying to renew a midwifery license, when the Department receives the application packet required in R9-16-103(A).
  - 2. If an application is incomplete, the Department shall provide a notice of deficiencies to the applicant or midwife describing the missing documentation or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice until the date the Department receives the documentation or information listed in the notice of deficiencies. An applicant or midwife shall submit to the Department the documentation or information listed in the notice of deficiencies within the time specified in Table 1.1 for responding to a notice of deficiencies.
  - 3. If the applicant or midwife submits the documentation or information listed in the notice of deficiencies within the time specified in Table 1.1, the Department shall provide a written notice of administrative completeness to the applicant or midwife.
  - 4. If the applicant or midwife does not submit the documentation or information listed in the notice of deficiencies within the time specified in Table 1.1, the Department shall consider the application withdrawn.
  - 5. When an application is complete the Department shall provide a notice of administrative completeness to the applicant or midwife.
  - 6. If the Department issues a notice of eligibility to take the jurisprudence test or a license during the administrative completeness review time-frame, the Department 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 specified in Table 1.1 and begins on the date of the notice of administrative completeness.
  - 1. If an application complies with the requirements in this Article and A.R.S. Title 36, Chapter 6, Article 7, the Department shall issue a notice of eligibility to take the jurisprudence test to an applicant or a license to a midwife.
  - 2. If an application does not comply with the requirements in this Article or A.R.S. Title 36, Chapter 6, Article 7, the Department shall make one comprehensive written request for additional information, unless the applicant or midwife has agreed in writing to allow the Department to submit supplemental requests for information. The substantive review time-frame and the overall time-frame are suspended from the date that the Department sends a comprehensive written request for additional information or a supplemental request for information until the date that the Department receives all of the information requested.
  - 3. An applicant or midwife shall submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental

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- request for information within the time specified in Table 1.1.
4. If the applicant or midwife does not submit the additional information within the time specified in Table 1.1 or the additional information submitted by the applicant or midwife does not demonstrate compliance with this Article and A.R.S. Title 36, Chapter 6, Article 7, the Department shall provide to the applicant a written notice of denial that complies with A.R.S. § 41-1092.03(A).
  5. If the applicant or midwife submits the additional information within the time specified in Table 1.1 and the

additional information submitted by the applicant or midwife demonstrates compliance with this Article and A.R.S. Title 36, Chapter 6, Article 7, the Department shall issue a notice of eligibility to take the jurisprudence test to an applicant or a license to a midwife.

**Historical Note**

Adopted effective March 14, 1994 (Supp. 94-1). Section R9-16-107 renumbered to R9-16-115; new Section R9-16-107 made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

**Table 1.1. Time-frames (in calendar days)**

Type of Approval	Statutory Authority	Overall Time-Frame	Administrative Completeness Review Time-Frame	Time to Respond to Notice of Deficiency	Substantive Review Time-Frame	Time to Respond to Comprehensive Written Request
Eligibility for Jurisprudence Test (R9-16-102)	A.R.S. §§ 36-753, 36-754, and 36-755	30	15	60	15	30
Midwifery License Renewal (R9-16-103)	A.R.S. § 36-754	30	15	30	15	15

**Historical Note**

Table 1.1 made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

**Exhibit E. Repealed**

**Historical Note**

Adopted effective March 14, 1994 (Supp. 94-1). Amended to correct printing errors (Supp. 99-4). Exhibit E repealed by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

**R9-16-108. Responsibilities of a Midwife; Scope of Practice**

- A. A midwife shall provide midwifery services only to a healthy woman, determined through a physical assessment and review of the woman’s obstetrical history, whose expected outcome of pregnancy is most likely to be the delivery of a healthy newborn and an intact placenta.
- B. Except as provided in R9-16-111(C) or (D), a midwife who is certified by the North American Registry of Midwives as a Certified Professional Midwife may accept a client for a vaginal delivery:
  1. After prior Cesarean section, or
  2. Of a fetus in a complete breech or frank breech presentation.
- C. Before providing services to a client, a midwife shall:
  1. Inform a client, both orally and in writing, of:
    - a. The midwife’s scope of practice, educational background, and credentials;
    - b. If applicable to the client’s condition, the midwife’s experience with:
      - i. Vaginal birth after prior Cesarean section delivery, or
      - ii. Delivery of a fetus in a complete breech or frank breech presentation;
    - c. The potential risks; adverse outcomes; neonatal or maternal complications, including death; and alternatives associated with an at-home delivery specific to the client’s condition, including the conditions described in subsection (C)(1)(b);
    - d. The requirement for tests specified in subsections (I) and (K)(4)(c), and the potential risks for declining a test, and, if a test is declined, the need for a written assertion of a client’s decision to decline testing;

- e. The requirement for consultation for a condition specified in R9-16-112; and
- f. The requirement for the transfer of care for a condition specified in R9-16-111; and
2. Obtain a written informed consent for midwifery services according to R9-16-109.
- D. A midwife shall establish an emergency care plan for the client that includes:
  1. The name, address, and phone number of:
    - a. The hospital closest to the birthing location that provides obstetrical services, and
    - b. An emergency medical services provider that provides service between the birthing location and the hospital identified in subsection (D)(1)(a);
  2. The hospital identified in subsection (D)(1)(a) is within 25 miles of the birthing location for a delivery identified in subsection (B);
  3. The signature of the client and the date signed; and
  4. The signature of the midwife and the date signed.
- E. A midwife shall ensure the client receives a copy of the emergency care plan required in subsection (D).
- F. A midwife shall implement the emergency care plan by immediately calling the emergency medical services provider identified in subsection (D)(1)(b) for any condition that threatens the life of the client or the client’s child.
- G. A midwife shall maintain all instruments used for delivery in an aseptic manner and other birthing equipment and supplies in clean and good condition.
- H. A midwife shall assess a client’s physical condition in order to establish the client’s continuing eligibility to receive midwifery services.
- I. During the prenatal period, the midwife shall:
  1. Until October 1, 2013, schedule or arrange for the following tests for the client within 28 weeks gestation:
    - a. Blood type, including ABO and Rh, with antibody screen;
    - b. Urinalysis;
    - c. HIV;
    - d. Hepatitis B;

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- e. Hepatitis C;
  - f. Syphilis as required in A.R.S. § 36-693;
  - g. Rubella titer;
  - h. Chlamydia; and
  - i. Gonorrhea;
2. Until October 1, 2013, schedule or arrange for the following tests for the client:
    - a. A blood glucose screening test for diabetes completed between 24 and 28 weeks of gestation;
    - b. A hematocrit and hemoglobin or complete blood count test completed between 28 and 36 weeks of gestation;
    - c. A vaginal-rectal swab for Group B Strep Streptococcus culture completed between 35 and 37 weeks of gestation;
    - d. At least one ultrasound and recommended follow-up testing to determine placental location and risk for placenta previa and placenta accrete; and
    - e. An ultrasound at 36-37 weeks gestation to confirm fetal presentation and estimated fetal weight for a breech pregnancy;
  3. As of October 1, 2013, except as provided in R9-16-110, ensure that the tests in subsection (I)(1) are completed by the client within 28 weeks gestation;
  4. As of October 1, 2013, except as provided in R9-16-110, ensure that the tests in subsection (I)(2) are completed by the client;
  5. Conduct a prenatal visit at least once every 4 weeks until the beginning of 28 weeks of gestation, once every 2 weeks from the beginning of 28 weeks until the end of 36 weeks of gestation, and once a week after 36 weeks of gestation that includes:
    - a. Taking the client's weight, urinalysis for protein, nitrites, glucose and ketones; blood pressure; and assessment of the lower extremities for swelling;
    - b. Measurement of the fundal height and listening for fetal heart tones and, later in the pregnancy, feeling the abdomen to determine the position of the fetus;
    - c. Documentation of fetal movement beginning at 28 weeks of gestation;
    - d. Document of:
      - i. The occurrence of bleeding or invasive uterine procedures, and
      - ii. Any medications taken during the pregnancy that are specific to the needs of an Rh negative client;
    - e. Referral of a client for lab tests or other assessments, if applicable, based upon examination or history; and
    - f. Recommendation of administration of the drug RhoGam to unsensitized Rh negative mothers after 28 weeks, or any time bleeding or invasive uterine procedures are done, or midwife administration of RhoGam under a physician's written orders;
  6. Monitor fetal heart tones with fetoscope and document the client's report of first quickening, between 18 and 20 weeks of gestation;
  7. Conduct weekly visits until signs of first quickening have occurred if first quickening has not been reported by 20 weeks of gestation;
  8. Initiate a consultation if first quickening has not occurred by the end of 22 weeks of gestation; and
  9. Conduct a prenatal visit of the birthing location before the end of 35 weeks of gestation to ensure that the birthing environment is appropriate for birth and that communication is available to the hospital and emergency medical services provider identified in subsection (D)(1).
- J. During the intrapartum period, a midwife shall:**
1. Determine if the client is in labor and the appropriate course of action to be taken by:
    - a. Assessing the interval, duration, intensity, location, and pattern of the contractions;
    - b. Determining the condition of the membranes, whether intact or ruptured, and the amount and color of fluid;
    - c. Reviewing with the client the need for an adequate fluid intake, relaxation, activity, and emergency management; and
    - d. Deciding whether to go to client's home, remain in telephone contact, or arrange for transfer of care or consultation;
  2. Contact the hospital identified in subsection (D)(1)(a) according to the policies and procedures established by the hospital regarding communication with midwives when the client begins labor and ends labor;
  3. During labor, assess the condition of the client and fetus upon initial contact, every half hour in active labor until completely dilated, and every 15 to 20 minutes during pushing, following rupture of the amniotic bag, or until the newborn is delivered, including:
    - a. Initial physical assessment and checking of vital signs every 2 to 4 hours of the client;
    - b. Assessing fetal heart tones every 30 minutes in active first stage labor, and every 15 minutes during second stage, following rupture of the amniotic bag, or with any significant change in labor patterns;
    - c. Periodically assessing contractions, fetal presentation, dilation, effacement, and fetal position by vaginal examination;
    - d. Maintaining proper fluid balance for the client throughout labor as determined by urinary output and monitoring urine for presence of ketones; and
    - e. Assisting in support and comfort measures to the client and family;
  4. For deliveries described in subsection (B), during labor determine:
    - a. For primiparas, the progress of active labor by monitoring whether dilation occurs at an average of 1 centimeter per hour until completely dilated, and a second stage does not exceed 2 hours, if applicable;
    - b. Normal progress of active labor for multigravidas by monitoring whether dilation occurs at an average of 1.5 to 2 centimeters per hour until completely dilated, and a second stage does not exceed 1 hour, if applicable; or
    - c. The progress of active labor according to the Management Guidelines recommended by the American Congress of Obstetricians and Gynecologists;
  5. After delivery of the newborn:
    - a. Assess the newborn at 1 minute and 5 minutes to determine the Apgar scores;
    - b. Physically assess the newborn for any abnormalities;
    - c. Inspect the client's perineum, vagina, and cervix for lacerations;
    - d. Deliver the placenta within 1 hour and assess the client for signs of separation, frank or occult bleeding; and
    - e. Examine the placenta for intactness and to determine the number of umbilical cord vessels; and
  6. Recognize and respond to any situation requiring immediate intervention.

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- K. During the postpartum period, the midwife shall:
1. During the 2 hours after delivery of the placenta, provide the following care to the client:
    - a. Every 15 to 20 minutes for the first hour and every 30 minutes for the second hour:
      - i. Take vital signs of the client,
      - ii. Perform external massage of the uterus, and
      - iii. Evaluate bleeding;
    - b. Assist the client to urinate within 2 hours following the birth, if applicable;
    - c. Evaluate the perineum, vagina, and cervix for tears, bleeding, or blood clots;
    - d. Assist with maternal newborn and infant bonding;
    - e. Assist with initial breast feeding, instructing the client in the care of the breast, and reviewing potential danger signs, if appropriate;
    - f. Provide instruction to the family about adequate fluid and nutritional intake, rest, and the types of exercise allowed, normal and abnormal bleeding, bladder and bowel function, appropriate baby care, signs and symptoms of postpartum depression, and any symptoms that may pose a threat to the health or life of the client or the client's newborn and appropriate emergency phone numbers;
    - g. Recommend or administer under physician's written orders, the drug RhoGam to an unsensitized Rh-negative mother who delivers an Rh-positive newborn. Administration shall occur not later than 72 hours after birth; and
    - h. Document any medications taken by the client in the client's record to an unsensitized Rh-negative client who delivers an Rh-positive newborn;
  2. During the 2 hours after delivery of the placenta, provide the following care to the newborn:
    - a. Perform a newborn physical exam to determine the newborn's gestational age and any abnormalities;
    - b. Comply with the requirements in A.A.C. R9-6-332;
    - c. Recommend or administer Vitamin K under physician's written orders to the newborn. Administration shall occur not later than 72 hours after birth; and
    - d. Document the administration of any medications or vitamins to the newborn in the newborn's record according to the physician's written orders;
  3. Evaluate the client or newborn for any abnormal or emergency situation and seek consultation or intervention, if applicable, according to these rules; and
  4. Re-evaluate the condition of the client and newborn between 24 and 72 hours after delivery to determine whether the recovery is following a normal course, including:
    - a. Assessing baseline indicators such as the client's vital signs, bowel and bladder function, bleeding, breasts, feeding of the newborn, sleep/rest cycle, activity with any recommendations for change;
    - b. Assessing baseline indicators of well-being in the newborn such as vital signs, weight, cry, suck and feeding, fontanel, sleeping, and bowel and bladder function with documentation of meconium, and providing any recommendations for changes made to the family;
    - c. Submitting blood obtained from a heel stick to the newborn to the state laboratory for screening according to A.R.S. § 36-694(B) and 9 A.A.C. 13, Article 2, unless a written refusal is obtained from the client and documented in the client's record and the newborn's record; and
    - d. Recommending to the client that the client secure medical follow-up for her newborn.
- L. A midwife shall file a birth certificate with the local registrar within seven calendar days after the birth of the newborn.
- M. Subsections (B), (C)(1)(b), (C)(1)(d) and (J)(2) and (4) are effective July 1, 2014.
- Historical Note**
- Adopted effective March 14, 1994 (Supp. 94-1). R9-16-108 renumbered to R9-16-111; new Section R9-16-108 renumbered from R9-16-106 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).
- R9-16-109. Informed Consent for Midwifery Services**
- A. A midwife shall obtain a written informed consent for midwifery services in a format provided by the Department that contains:
1. The midwife's:
    - a. Name,
    - b. Telephone number,
    - c. License number, and
    - d. E-mail address;
  2. The client's:
    - a. Name;
    - b. Address;
    - c. Telephone number;
    - d. Date of birth; and
    - e. E-mail address, if applicable;
  3. An attestation that the client was:
    - a. Provided the information required in R9-16-108(C)(1);
    - b. Informed of the emergency care plan as required in R9-16-108(D); and
    - c. Given an opportunity to have questions answered, have an understanding of the information provided, and choose to continue with midwifery services; and
  4. The signatures of the client and midwife and date signed.
- B. A midwife shall ensure that the written informed consent for midwifery services is placed in the client file.
- C. A midwife shall ensure that a copy of the written informed consent for midwifery services is provided to the:
1. Client, and
  2. Department within five calendar days after a Department request.
- D. This Section is effective October 1, 2013.
- Historical Note**
- Adopted effective March 14, 1994 (Supp. 94-1). R9-16-109 renumbered to R9-16-112; new Section R9-16-109 made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2). Manifest typographical errors corrected in subsections (A)(3)(a) and (b) to rule Section reference of incorrect Chapter number; request made by department at file number R13-232 (Supp. 13-3).
- R9-16-110. Assertion to Decline Required Tests**
- A. Except for R9-16-108(I)(1)(f), if the client declines a test required in R9-16-108(I)(3) and (4), a midwife shall obtain a written assertion of a client's decision to decline a required test in a format provided by the Department, that contains:
1. The midwife's:
    - a. Name,
    - b. Telephone number,
    - c. License number, and
    - d. E-mail address;
  2. The client's:
    - a. Name;

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- b. Address;
  - c. Telephone number;
  - d. Date of birth; and
  - e. E-mail address, if applicable;
  - 3. The required test being declined by the client;
  - 4. Additional information as required by the Department;
  - 5. An attestation that the client:
    - a. Was provided the information as required in R9-16-108(C)(1)(d), and
    - b. Is declining testing; and
  - B. A midwife shall ensure that the written assertion of the decision to decline a test is placed in the client file.
  - C. A midwife shall ensure that a copy of the written assertion of the decision to decline a test is provided to the:
    - 1. Client, and
    - 2. Department within five calendar days after a Department request.
  - D. This Section is effective October 1, 2013.
- Historical Note**
- Adopted effective March 14, 1994 (Supp. 94-1). R9-16-110 renumbered to R9-16-113; new Section R9-16-110 made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2). Manifest typographical error corrected in subsection (A)(5)(a) to rule Section reference of incorrect Chapter number; request made by department at file number R13-232 (Supp. 13-3).
- R9-16-111. Prohibited Practice; Transfer of Care**
- A. A midwife shall not provide midwifery services in a location that has the potential to cause harm to the client or the client's child.
  - B. A midwife shall not accept for midwifery services or continue midwifery services for a client who has or develops any of the following:
    - 1. A previous surgery that involved:
      - a. An incision in the uterus, except as provided in R9-16-108(B)(1); or
      - b. A previous uterine surgery that enters the myometrium;
    - 2. Multiple fetuses;
    - 3. Placenta previa or placenta accreta;
    - 4. A history of severe postpartum bleeding, of unknown cause, which required transfusion;
    - 5. Deep vein thrombosis or pulmonary embolism;
    - 6. Uncontrolled gestational diabetes;
    - 7. Insulin-dependent diabetes;
    - 8. Hypertension;
    - 9. Rh disease with positive titers;
    - 10. Active:
      - a. Tuberculosis;
      - b. Syphilis;
      - c. Genital herpes at the onset of labor;
      - d. Hepatitis until treated and recovered, following which midwifery services may resume; or
      - e. Gonorrhea until treated and recovered, following which midwifery services may resume;
    - 11. Preeclampsia or eclampsia persisting after the second trimester;
    - 12. A blood pressure of 140/90 or an increase of 30 millimeters of Mercury systolic or 15 millimeters of Mercury diastolic over the client's lowest baseline blood pressure for two consecutive readings taken at least six hours apart;
    - 13. A persistent hemoglobin level below 10 grams or a hematocrit below 30 during the third trimester;
    - 14. A pelvis that will not safely allow a baby to pass through during labor;
    - 15. A serious mental illness;
    - 16. Evidence of substance abuse, including six months prior to pregnancy, to one of the following, evident during an assessment of a client:
      - a. Alcohol,
      - b. Narcotics, or
      - c. Other drugs;
    - 17. Except as provided in R9-16-108(B)(2), a fetus with an abnormal presentation;
    - 18. Labor beginning before the beginning of 36 weeks gestation;
    - 19. A progression of labor that does not meet the requirements of R9-16-108(J)(4), if applicable;
    - 20. Gestational age greater than 34 weeks with no prior prenatal care;
    - 21. A gestation beyond 42 weeks;
    - 22. Presence of ruptured membranes without onset of labor within 24 hours;
    - 23. Abnormal fetal heart rate consistently less than 120 beats per minute or more than 160 beats per minute;
    - 24. Presence of thick meconium, blood-stained amniotic fluid, or abnormal fetal heart tones;
    - 25. A postpartum hemorrhage of greater than 500 milliliters in the current pregnancy; or
    - 26. A non-bleeding placenta retained for more than 60 minutes.
  - C. A midwife shall not perform a vaginal delivery after prior Cesarean section for a client who:
    - 1. Had:
      - a. More than one previous Cesarean section;
      - b. A previous Cesarean section:
        - i. With a classical, vertical, or unknown uterine incision;
        - ii. Within 18 months before the expected delivery;
        - iii. With complications, including uterine infection; or
        - iv. Due to failure to progress as a result of cephalopelvic insufficiency; or
      - c. Complications during a previous vaginal delivery after a Cesarean section; or
    - 2. Has a fetus:
      - a. With fetal anomalies, confirmed by an ultrasound; or
      - b. In a breech presentation.
  - D. A midwife shall not perform a vaginal delivery of a fetus in a breech presentation for a client who:
    - 1. Had a previous:
      - a. Unsuccessful vaginal delivery or other demonstration of an inadequate maternal pelvis, or
      - b. Cesarean section; or
    - 2. Has a fetus:
      - a. With fetal anomalies, confirmed by an ultrasound;
      - b. With an estimated fetal weight less than 2500 grams or more than 3800 grams; or
      - c. In an incomplete breech presentation.
  - E. If the client has any of the conditions in subsections (B) through (D), a midwife shall:
    - 1. Document the condition in the client record, and
    - 2. Initiate transfer of care.
  - F. A midwife shall not perform any operative procedures except as provided in R9-16-113.
  - G. A midwife shall not:
    - 1. Use any artificial, forcible, or mechanical means to assist birth; or

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2. Attempt to correct fetal presentations by external or internal movement of the fetus.
- H.** A midwife shall not administer drugs or medications except as provided in R9-16-108(I)(5)(f), (K)(1)(g), (K)(2)(c), or R9-16-113.
- I.** Except as provided in R9-16-113, a midwife shall:
1. Discontinue midwifery services and transfer care of a newborn in which any of the following conditions are present:
    - a. Birth weight less than 2000 grams;
    - b. Pale, blue, or gray color after 10 minutes;
    - c. Excessive edema;
    - d. Major congenital anomalies; or
    - e. Respiratory distress; and
  2. Document the condition in subsection (I)(1) in the newborn record.

**Historical Note**

Adopted effective March 14, 1994 (Supp. 94-1). R9-16-111 renumbered to R9-16-116; new Section R9-16-111 renumbered from R9-16-108 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

**R9-16-112. Required Consultation**

- A.** A midwife shall obtain a consultation at the time a client is determined to have any of the following during the current pregnancy:
1. A positive culture for Group B Streptococcus;
  2. History of seizure disorder;
  3. History of stillbirth, premature labor, or parity greater than 5;
  4. Age younger than 16 years;
  5. A primigravida older than 40 years of age;
  6. Failure to auscultate fetal heart tones by the beginning of 22 weeks gestation;
  7. Failure to gain 12 pounds by the beginning of 30 weeks gestation or gaining more than 8 pounds in any two-week period during pregnancy;
  8. Greater than 1+ sugar, ketones, or protein in the urine on two consecutive visits;
  9. Excessive vomiting or continued vomiting after the end of 20 weeks gestation;
  10. Symptoms of decreased fetal movement;
  11. A fever of 100.4° F or 38° C or greater measured twice at 24 hours apart;
  12. Tender uterine fundus;
  13. Effacement or dilation of the cervix, greater than a fingertip, accompanied by contractions, prior to the beginning of 36 weeks gestation;
  14. Measurements for fetal growth that are not within 2 centimeters of the gestational age;
  15. Second degree or greater lacerations of the birth canal;
  16. Except as provided in R9-16-111(B)(19), an abnormal progression of labor;
  17. An unengaged head at 7 centimeters dilation in active labor;
  18. Failure of the uterus to return to normal size in the current postpartum period;
  19. Persistent shortness of breath requiring more than 24 breaths per minute, or breathing which is difficult or painful;
  20. Gonorrhea;
  21. Chlamydia;
  22. Syphilis;
  23. Heart disease;
  24. Kidney disease;
  25. Blood disease; or
  26. A positive test result for:
    - a. HIV,
    - b. Hepatitis B, or
    - c. Hepatitis C.
- B.** A midwife shall obtain a consultation at the time a newborn demonstrates any of the following conditions:
1. Weight less than 2500 grams or 5 pounds, 8 ounces;
  2. Congenital anomalies;
  3. An Apgar score less than 7 at 5 minutes;
  4. Persistent breathing at a rate of more than 60 breaths per minute;
  5. An irregular heartbeat;
  6. Persistent poor muscle tone;
  7. Less than 36 weeks gestation or greater than 42 weeks gestation by gestational exam;
  8. Yellowish-colored skin within 48 hours;
  9. Abnormal crying;
  10. Meconium staining of the skin;
  11. Lethargy;
  12. Irritability;
  13. Poor feeding;
  14. Excessively pink coloring over the entire body;
  15. Failure to urinate or pass meconium in the first 24 hours of life;
  16. A hip examination which results in a clicking or incorrect angle;
  17. Skin rashes not commonly seen in the newborn; or
  18. Temperature persistently above 99.0° or below 97.6° F.
- C.** The midwife shall inform the client of the consultation required in subsections (A) or (B) and recommendations of the physician or certified nurse midwife.
- D.** The midwife shall document the consultation required in subsections (A) or (B) and recommendations received in the client record or newborn record.

**Historical Note**

Adopted effective March 14, 1994 (Supp. 94-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5029, effective September 30, 2001 (Supp. 01-4). New Section R9-16-112 renumbered from R9-16-109 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

**R9-16-113. Emergency Measures**

- A.** In an emergency situation in which the health or safety of the client or newborn are determined to be at risk, a midwife:
1. Shall ensure that an emergency medical services provider is called; and
  2. May perform the following procedures as necessary:
    - a. Cardiopulmonary resuscitation of the client or newborn with a bag and mask;
    - b. Administration of oxygen at no more than 8 liters per minute via mask for the client and 5 liters per minute for the newborn via neonatal mask;
    - c. Episiotomy to expedite the delivery during fetal distress;
    - d. Suturing of episiotomy or tearing of the perineum to stop active bleeding, following administration of local anesthetic, contingent upon consultation with a physician or certified nurse midwife, or physician's written orders;
    - e. Release of shoulder dystocia by utilizing:
      - i. Hyperflexion of the client's legs to the abdomen,
      - ii. Application of external pressure suprapubically,

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- iii. Rotation of the nonimpacted shoulder until the impacted shoulder is released,
  - iv. Delivery of the posterior shoulder,
  - v. Application of posterior pressure on the anterior shoulder, or
  - vi. Positioning of the client on all fours with the back arched;
  - f. Manual exploration of the uterus for control of severe bleeding; or
  - g. Manual removal of placenta.
- B.** A licensed midwife may administer a maximum dose of 20 units of pitocin intramuscularly, in 10-unit dosages each, 30 minutes apart, to a client for the control of postpartum hemorrhage, contingent upon physician or certified nurse midwife consultation and written orders by a physician, and arrangements for immediate transport of the client to a hospital.
- C.** A midwife shall document in the client's record any medications taken by a client for the control of postpartum hemorrhage.

**Historical Note**

New Section R9-16-113 renumbered from R9-16-110 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

**R9-16-114. Midwife Report after Termination of Midwifery Services**

- A.** A midwife shall complete a midwife report for each client, in a format provided by the Department, that includes the following:
1. The midwife's:
    - a. First name,
    - b. Last name, and
    - c. License number;
  2. The client's:
    - a. Date of birth;
    - b. Client number;
    - c. Date of last menstrual period;
    - d. Estimated date of delivery;
    - e. Gravida (number);
    - f. Para (number); and
    - g. If applicable, whether the client had a vaginal delivery after prior Cesarean section or vaginal delivery of a fetus in a complete breech or frank breech presentation;
  3. A description of the maternal outcome, including any complications;
  4. If a vaginal delivery after prior Cesarean section or vaginal delivery of a fetus in a complete breech or frank breech presentation:
    - a. Rate of dilation, and
    - b. Duration of second stage labor;
  5. If applicable, the newborn's:
    - a. Date of birth;
    - b. Gender;
    - c. Weight;
    - d. Length;
    - e. Head circumference;
    - f. Designation of average, small, or large for gestational age;
    - g. Apgar score at 1 minute;
    - h. Apgar score at 5 minutes;
    - i. Existence of complications;
    - j. Description of complications, if applicable;
    - k. Birth certificate filing date; and
    - l. Birth certificate number, if available;

6. Whether the client required transfer of care and, if applicable:
    - a. Method of transport,
    - b. Type of facility or individual to which the midwife transferred care of the client,
    - c. Name of destination,
    - d. Time arrived at destination,
    - e. Confirmation the emergency care plan was utilized, and
    - f. Medical reason for transfer of care;
  7. The date midwifery services were terminated;
  8. Reason for the termination of midwifery services;
  9. If termination of midwifery services was due to a medical condition, the specific medical condition;
  10. Whether information was provided on newborn screening; and
  11. Whether newborn screening tests were ordered as required in A.R.S. § 36-694.
- B.** The midwife shall submit a midwife report for a client to the Department within 30 calendar days after the termination of midwifery services to the client.

**Historical Note**

Section made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).

**R9-16-115. Client and Newborn Records**

- A.** A midwife shall ensure that a record is established and maintained according to A.R.S. §§ 12-2291 and 12-2297 for each:
1. Client, and
  2. Newborn delivered by the midwife from a client.
- B.** A midwife shall ensure that a record for each client includes the following:
1. The client's full name, date of birth, address, and client number;
  2. Names, addresses, and telephone numbers of the client's spouse or other individuals designated by the client to be contacted in an emergency;
  3. Written informed consent for midwifery services, as required in R9-16-108(C)(2);
  4. Assertion to decline required tests, as required in R9-16-110(A)(3);
  5. A copy of the emergency care plan, as required in R9-16-108(E);
  6. The date the midwife began providing midwifery services to the client;
  7. The date the client is expected to deliver the newborn;
  8. The date the newborn was delivered, if applicable;
  9. An initial assessment of the client to:
    - a. Determine whether the client has a history of a condition or circumstance that would preclude care of the client by the midwife, as specified in R9-16-111; and
    - b. Determine the:
      - i. Number and outcome of previous pregnancies, and
      - ii. Number of previous medical or midwife visits the client has had during the current pregnancy;
  10. Progress notes documenting the midwifery services provided to the client;
  11. For a delivery identified in R9-16-108(B):
    - a. Rate of dilation, and
    - b. Duration of second stage labor;
  12. Laboratory and diagnostic reports, according to R9-16-108(I);
  13. Documentation of consultations as required in R9-16-112, including:

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- a. Reason for the consultation,
  - b. Name of physician or certified nurse midwife,
  - c. Date of consultation,
  - d. Time of consultation, and
  - e. Recommendation made by the physician or certified nurse midwife;
14. Written reports received from consultations as required in R9-16-112;
  15. A description of any conditions or circumstances arising during the pregnancy that required the transfer of care;
  16. The name of the physician, certified nurse midwife, or hospital to which the care of the client was transferred, if applicable;
  17. Documentation of medications or vitamins taken by the client;
  18. Documentation of medications or vitamins administered to the client and the physician's written orders for the medications or vitamins;
  19. The outcome of the pregnancy;
  20. The date the midwife stopped providing midwifery services to the client; and
  21. Instructions provided to the client before the midwife stopped providing midwifery services to the client.
- C. A midwife shall ensure that a record for each newborn includes the following:
1. The full name, date of birth, and address of the newborn's mother;
  2. The newborn's:
    - a. Date of birth,
    - b. Gender,
    - c. Weight at birth,
    - d. Length at birth, and
    - e. Apgar scores at 1 minute and 5 minutes after birth;
  3. The newborn's estimated gestational age at birth;
  4. Progress notes documenting the midwifery services provided to the newborn;
  5. Laboratory and diagnostic reports, as required in R9-16-108(I);
  6. Documentation of consultations as required in R9-16-112:
    - a. Reason for the consultation,
    - b. Name of physician or certified nurse midwife,
    - c. Date of consultation,
    - d. Time of consultation, and
    - e. Recommendation made by the physician or certified nurse midwife;
  7. Written reports received from consultations as required in R9-16-112;
  8. A description of any conditions or circumstances arising during or after the newborn's birth that required the transfer of care;
  9. The name of the physician, certified nurse midwife, or hospital to which the care of the newborn was transferred, if applicable;
  10. Documentation of medications or vitamins taken by the newborn;
  11. Documentation of medications or vitamins administered to the newborn and the physician's written orders for the medications or vitamins;
  12. Documentation of newborn screening, including when the specimen collection kit, as defined in A.A.C. R9-13-201, was submitted and results received, as required in R9-16-108(K)(4)(c);
  13. The date the midwife stopped providing midwifery services to the newborn; and
  14. Instructions provided to the client about the newborn before the midwife stopped providing midwifery services to the newborn.
- Historical Note**
- New Section R9-16-115 renumbered from R9-16-107 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).
- R9-16-116. Denial, Suspension, or Revocation of License; Civil Penalties; Procedures**
- In addition to the grounds specified in A.R.S. §§ 36-756 and 13-904(E), the Department may deny, suspend, or revoke a license permanently or for a definite period of time, and may assess a civil penalty for each violation, for any of the following causes:
1. Practicing under a false name or alias so as to interfere with or obstruct the investigative or regulatory process,
  2. Practicing under the influence of drugs or alcohol,
  3. Falsification of records,
  4. Obtaining any fee for midwifery services by fraud or misrepresentation,
  5. Permitting another to use the midwife's license, or
  6. Knowingly providing false information to the Department.
- Historical Note**
- New Section R9-16-116 renumbered from R9-16-111 and amended by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2).
- R9-16-117. Expired**
- Historical Note**
- New Section made by exempt rulemaking at 19 A.A.R. 1805, effective July 1, 2013 (Supp. 13-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 1044, effective August 26, 2017 (Supp. 17-3).
- ARTICLE 2. LICENSING AUDIOLOGISTS AND SPEECH-LANGUAGE PATHOLOGISTS**
- R9-16-201. Definitions**
1. "Accredited" means approved by the:
    - a. New England Commission of Higher Education,
    - b. Middle States Commission on Higher Education,
    - c. Higher Learning Commission,
    - d. Northwest Commission on Colleges and Universities,
    - e. Southern Association of Colleges and Schools Commission on Colleges, or
    - f. WASC Senior College and University Commission.
  2. "Applicant" means an individual who submits an application and required documentation for approval to practice as an audiologist or a speech-language pathologist.
  3. "ASHA" means the American Speech-Language-Hearing Association, a national professional, scientific, and credentialing association for audiologists; speech-language pathologists; speech, language, and hearing scientists; audiology and speech-language pathology support personnel; and students.
  4. "Calendar day" means each day, not including the day of the act, event, or default, from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
  5. "CCC" means Certificate of Clinical Competence, an award issued by ASHA to an individual who:

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- a. Completes a degree in audiology or speech-language pathology from an accredited college or university that includes a clinical practicum,
  - b. Passes the ETSNEA or ETSNESLP, and
  - c. Completes a clinical fellowship.
6. "Clinical fellow" means an individual engaged in a clinical fellowship.
  7. "Clinical fellowship" means an individual's postgraduate professional experience assessing, diagnosing, screening, treating, writing reports, and counseling individuals exhibiting speech, language, hearing, or communication disorders, obtained:
    - a. After completion of graduate level academic course work and a clinical practicum;
    - b. Under the supervision of a clinical fellowship supervisor; and
    - c. While employed on a full-time or part-time equivalent basis.
  8. "Clinical fellowship agreement" means the document submitted to the Department by a clinical fellow to register the initiation of a clinical fellowship.
  9. "Clinical fellowship report" means a document completed by a clinical fellowship supervisor containing:
    - a. A summary of the diagnostic and therapeutic procedures performed by the clinical fellow,
    - b. A verification by the clinical fellowship supervisor of the clinical fellow's performance of diagnostic and therapeutic procedures, and
    - c. An evaluation of the clinical fellow's ability to perform the diagnostic and therapeutic procedures.
  10. "Clinical fellowship supervisor" means a licensed speech-language pathologist who:
    - a. Is or has been a sponsor of a temporary licensee,
    - b. Had a CCC while supervising a clinical fellow before October 28, 1999, or
    - c. Has a CCC while supervising a clinical fellow in another state.
  11. "Clinical practicum" means the experience acquired by an individual who is completing course work in audiology or speech-language pathology, while supervised by a licensed audiologist, a licensed speech-language pathologist, or an individual holding a CCC, by assessing, diagnosing, evaluating, screening, treating, and counseling individuals exhibiting speech, language, cognitive, hearing, or communication disorders.
  12. "Continuing education" means a course that provides instruction and training that is designed to develop or improve a licensee's professional competence in disciplines directly related to the licensee's scope of practice.
  13. "Course" means a workshop, seminar, lecture, conference, or class.
  14. "Diagnostic and therapeutic procedures" means the principles and methods used by an audiologist in the practice of audiology or a speech-language pathologist in the practice of speech-language pathology.
  15. "Disciplinary action" means a proceeding that is brought against a licensee by the Department under A.R.S. § 36-1934 or a state licensing entity.
  16. "ETSNEA" means Educational Testing Service National Examination in Audiology, the specialty area test of the Praxis Series given by the Education Testing Service, Princeton, N.J.
  17. "ETSNESLP" means Educational Testing Service National Examination in Speech-Language Pathology, the specialty area test of the Praxis Series given by the Education Testing Service, Princeton, N.J.
  18. "Full-time" means 30 clock hours or more per week.
  19. "Hearing aid dispenser examination" means the International Licensing Examination for Hearing Healthcare Professionals approved by the Department as complying with A.R.S. § 36-1924.
  20. "Local education agency" means a governing board established by A.R.S. § 15-101 or A.R.S. Title 15, Chapter 3, Article 3.
  21. "Monitoring" means being responsible for and providing direction to a clinical fellow without directly observing diagnostic and therapeutic procedures.
  22. "On-site observations" means the presence of a clinical fellowship supervisor who is watching a clinical fellow perform diagnostic and therapeutic procedures.
  23. "Part-time equivalent" means:
    - a. 25-29 clock hours per week for 48 weeks,
    - b. 20-24 clock hours per week for 60 weeks, or
    - c. 15-19 clock hours per week for 72 weeks.
  24. "Semester credit hour" means one earned academic unit of study based on completing, at an accredited college or university, a 50 to 60 minute class session per calendar week for 15 to 18 weeks.
  25. "Semester credit hour equivalent" means one quarter credit, which is equal in value to 2/3 of a semester credit hour.
  26. "State-supported institution" means a school, a charter school, a private school, or an accommodation school as defined in A.R.S. § 15-101.
  27. "Student" means a child attending a school, a charter school, a private school, or an accommodation school as defined in A.R.S. § 15-101.
  28. "Supervision" means being responsible for and providing direction to:
    - a. A clinical fellow during on-site observations or monitoring of the clinical fellow's performance of diagnostic and therapeutic procedures; or
    - b. An individual completing a clinical practicum.
  29. "Supervisory activities" means evaluating and assessing a clinical fellow's performance of diagnostic and therapeutic procedures in assessing, diagnosing, evaluating, screening, treating, and counseling individuals exhibiting speech, language, cognitive, hearing, or communication disorders.

**Historical Note**

Former Section R9-16-201 repealed, new Section R9-16-201 adopted effective January 23, 1978 (Supp. 78-1).  
 Repealed effective March 14, 1994 (Supp. 94-1).  
 Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-202. Application**

- A. An applicant for licensure shall submit to the Department:
  1. An application in a Department-provided format that contains:
    - a. The applicant's name, home address, telephone number, and e-mail address;
    - b. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
    - c. If applicable, the applicant's business addresses and telephone number;
    - d. The applicant's current employment, if applicable, including:

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- i. The employer's name,
  - ii. The licensee's position,
  - iii. Dates of employment,
  - iv. The address of the employer,
  - v. The supervisor's name,
  - vi. The supervisor's email address, and
  - vii. The supervisor's telephone number;
  - e. If applicable, whether the applicant is requesting an audiology license to fit and dispense;
  - f. Whether the applicant has ever been convicted of a felony or a misdemeanor in this or another state;
  - g. If the applicant has been convicted of a felony or a misdemeanor:
    - i. The date of the conviction,
    - ii. The state or jurisdiction of the conviction,
    - iii. An explanation of the crime of which the applicant was convicted, and
    - iv. The disposition of the case;
  - h. Whether the applicant is or has been licensed as an audiologist, an audiologist to fit and dispense hearing aids, or a speech-language pathologist in another state or country;
  - i. Whether the applicant has had a license revoked or suspended by any state;
  - j. Whether the applicant is currently ineligible for licensing in any state because of a license revocation or suspension;
  - k. Whether any disciplinary action has been imposed by any state, territory or district in this country for an act related to the applicant's practice of audiology or a speech-language pathologist license;
  - l. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-214(C);
  - m. An attestation that the information submitted as part of the application is true and accurate; and
  - n. The applicant's signature and date of signature;
  2. If a license for the applicant has been revoked or suspended by any state documentation that includes:
    - a. The date of the revocation or suspension,
    - b. The state or jurisdiction of the revocation or suspension, and
    - c. An explanation of the revocation or suspension;
  3. If the applicant is currently ineligible for licensing in any state because of a license revocation or suspension, documentation that includes:
    - a. The date of the ineligibility for licensing,
    - b. The state or jurisdiction of the ineligibility for licensing, and
    - c. An explanation of the ineligibility for licensing;
  4. If the applicant has been disciplined by any state, territory, or district of this country for an act related to the applicant's license to practice audiology or a speech-language pathologist license that is consistent with A.R.S. Title 36, Chapter 17, documentation that includes:
    - a. The date of the disciplinary action,
    - b. The state or jurisdiction of the disciplinary action,
    - c. An explanation of the disciplinary action, and
    - d. Any other applicable documents, including a legal order or settlement agreement;
  5. Documentation of the applicant's citizenship or alien status that complies with A.R.S. § 41-1080; and
  6. A fee specified in R9-16-216.
- B.** In addition to complying with subsection (A), an applicant that may be eligible for licensure under A.R.S. § 36-1922 shall submit documentation to the Department that includes:
1. The name of each state that issued the applicant a current license, including:
    - a. The license number of each current license, and
    - b. The date each current license was issued;
  2. Documentation of the professional license or certification issued to the applicant by each state in which the applicant holds a professional license or certification;
  3. For each state named in subsection (B)(1), a statement, signed and dated by the applicant, attesting that the applicant:
    - a. Has been licensed or certified in another state for at least one year, with a scope of practice consistent with the scope of practice for which licensure is being requested;
    - b. Has met minimum education requirements according to A.R.S. §§ 36-1940 or 36-1940.01;
    - c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
    - d. Does not have a complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct.
- C.** The Department shall review the application and required documentation for a license according to R9-16-214 and Table 2.1.

**Historical Note**

Former Section R9-16-202 repealed, new Section R9-16-202 adopted effective January 23, 1978 (Supp. 78-1).

Repealed effective March 14, 1994 (Supp. 94-1).

Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Section R9-16-202 repealed; new Section R9-16-202 renumbered from R9-16-203 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section R9-16-202 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-203. Initial Application for an Audiologist**

- A.** In addition to complying with R9-16-202, an applicant for initial licensure as an audiologist shall submit to the Department the following:
1. A transcript or equivalent documentation issued to the applicant from an accredited college or university after the applicant's completion of a doctoral degree consistent with the standards of this state's universities, as required in A.R.S. § 36-1940(A)(2) or documentation of the applicant's current CCC.
  2. Documentation of a passing grade on a ETSNEA or current CCC dated within three years before the date of application required in A.R.S. §§ 36-1902(E) and 36-1940(A)(3) or current license from other state.
  3. Documentation of completing supervised clinical rotation consistent with the standards of this state's universities required in A.R.S. § 36-1940(B)(2) or current CCC.
  4. Whether the applicant is applying to fit and dispense hearing aids.
  5. If applicable, a list of all states and countries in which the applicant is or has been licensed as an audiologist or an audiologist to fit and dispense hearing aids.
- B.** In addition to complying with R9-16-202, an applicant for initial licensure as an audiologist licensed to fit and dispense hearing aids who was awarded a master's degree before December 31, 2007 shall submit to the Department the following:

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1. A transcript or equivalent documentation issued to the applicant from an accredited college or university demonstrating the applicant's completion of a master's degree in audiology before December 31, 2007 or documentation of the applicant's current CCC;
2. Documentation of a passing grade on an ETSNEA or current CCC dated within three years before the date of application; and
3. Documentation of a passing grade obtained by the applicant on a written hearing aid dispenser examination as required in A.R.S. § 36-1940(C)(4).

**Historical Note**

Former Section R9-16-203 repealed, new Section R9-16-203 adopted effective January 23, 1978 (Supp. 78-1).

Repealed effective March 14, 1994 (Supp. 94-1).

Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Section R9-16-203 renumbered to R9-16-202; new Section R9-16-203 made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Section R9-16-203 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-204. Initial Application for a Speech-language Pathologist**

In addition to complying with R9-16-202(A), an applicant for initial licensure as a speech-language pathologist shall submit to the Department the following:

1. A transcript or equivalent documentation issued to the applicant by an accredited college or university after the applicant's completion of a master's degree consistent with the standards of this state's universities, as required in A.R.S. § 36-1940.01(A)(2)(a) or documentation of current CCC;
2. Completion of a clinical practicum, as required in A.R.S. § 36-1940.01(A)(2)(b) or documentation of current CCC;
3. Documentation of the applicant's completion of the ETS-NESLP as required in A.R.S. § 36-1940.01(A)(3) or documentation of current CCC; and
4. Documentation of the completion of clinical fellowship or documentation of current CCC.

**Historical Note**

Former Section R9-16-204 repealed, new Section R9-16-204 adopted effective January 23, 1978 (Supp. 78-1).

Repealed effective March 14, 1994 (Supp. 94-1).

Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Section R9-16-204 renumbered to R9-16-209; new Section R9-16-204 made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Section R9-16-204 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-205. Initial Application for a Temporary Speech-language Pathologist**

A. In addition to complying with R9-16-202(A), an applicant for initial licensure as a temporary speech-language pathologist shall submit to the Department the following:

1. A transcript or equivalent documentation issued to the applicant by an accredited college or university after the applicant's completion of a master's degree consistent

with the standards of this state's universities, as required in A.R.S. § 36-1940.01(A)(2)(a).

2. Completion of a clinical practicum, as required in A.R.S. § 36-1940.01(A)(2)(b).
3. Documentation of the applicant's completion of the ETS-NESLP as required in A.R.S. § 36-1940.01(A)(3).
4. Documentation of the applicant's clinical fellowship agreement that includes:
  - a. The applicant's name, home address, and telephone number;
  - b. The clinical fellowship supervisor's name, business address, telephone number, and speech-language pathology license number;
  - c. The name and address where the clinical fellowship will take place;
  - d. A statement by the clinical fellowship supervisor agreeing to comply with R9-16-209; and
  - e. The signatures of the applicant and the clinical fellowship supervisor.

B. A temporary license issued is effective for 12 months from the date of issuance.

C. A temporary license may be renewed only once.

D. An applicant issued a temporary speech-language pathologist license shall:

1. Practice under the supervision of a licensed speech-language pathologist, and
2. Not practice under the supervision of an individual who has a temporary speech-language pathologist license.

**Historical Note**

Former Section R9-16-205 repealed, new Section R9-16-205 adopted effective January 23, 1978 (Supp. 78-1).

Repealed effective March 14, 1994 (Supp. 94-1).

Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Section R9-16-205 renumbered to R9-16-210; new Section R9-16-205 renumbered from R9-16-206 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section R9-16-205 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-206. Requirements for a Speech-language Pathologist - Limited**

In addition to complying with R9-16-202(A), an applicant for initial licensure as a speech-language pathologist - limited as specified in A.R.S. § 36-1940.01(B) shall submit to the Department the following:

1. A certificate in speech and language therapy awarded by the Department of Education.
2. A document representing an employee or contractor relationship with a local education agency or a state supported institution.

**Historical Note**

Former Section R9-16-206 repealed, new Section R9-16-206 adopted effective January 23, 1978 (Supp. 78-1).

Repealed effective March 14, 1994 (Supp. 94-1).

Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Section R9-16-206 renumbered to R9-16-205; new Section R9-16-206 made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section R9-16-206 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate

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ate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-207. License Renewal**

**A.** Before the expiration date of a license, a licensee shall submit to the Department:

1. A renewal application in a Department-provided format that contains:
  - a. The licensee's name, home address, telephone number, and e-mail address;
  - b. If applicable, the licensee's business address and telephone number;
  - c. The licensee's current employment, if applicable, including:
    - i. The employer's name,
    - ii. The licensee's position,
    - iii. Dates of employment,
    - iv. The address of the employer,
    - v. The supervisor's name,
    - vi. The supervisor's email address, and
    - vii. The supervisor's telephone number;
  - d. The licensee's license number and date of expiration;
  - e. Since the previous license application, whether the licensee has been convicted of a felony or a misdemeanor in this or another state;
  - f. If the licensee was convicted of a felony or a misdemeanor:
    - i. The date of the conviction,
    - ii. The state or jurisdiction of the conviction,
    - iii. An explanation of the crime of which the licensee was convicted, and
    - iv. The disposition of the case;
  - g. Whether the licensee has had, within two years before the renewal application date, an audiology or speech-language pathology license suspended or revoked by any state;
  - h. If the applicant has been disciplined by any state, territory, or district of this country for an act related to the applicant's license to practice audiology or a speech-language pathologist license that is consistent with A.R.S. Title 36, Chapter 17, documentation that includes:
    - i. The date of the disciplinary action,
    - ii. The state or jurisdiction of the disciplinary action,
    - iii. An explanation of the disciplinary action, and
    - iv. Any other applicable documents, including a legal order or settlement agreement;
  - i. An attestation that the licensee completed continuing education required under A.R.S. § 36-1904 and documentation of completion is available upon request;
  - j. The licensee agrees to allow the Department to submit supplemental requests for information under R9-16-214(C);
  - k. An attestation that the information submitted as part of the application is true and accurate; and
    - l. The licensee's signature and date of signature; and
2. A renewal fee specified in R9-16-216.

**B.** A licensee licensed as a speech-language pathologist, whose practice is limited to providing services to students under the authority of a local education agency or state-supported institution, shall provide documentation required in A.R.S. § 36-1940.01(B);

**C.** If a licensee is renewing a temporary speech-language pathology license:

1. A statement signed and dated by the licensee's clinical fellowship supervisor agreeing to comply with R9-16-209; and
  2. The name, business address, telephone number, and license number of the speech language pathologist providing supervision to the licensee.
- D.** In addition to subsection (A), a licensee who submits a renewal application within 30 calendar days after the license expiration date shall submit a late fee specified in R9-16-216.
- E.** A licensee who does not submit the documentation and the fee in subsection (A) and, if applicable, (B) within 30 calendar days after the license expiration date shall apply for a new license in R9-16-202.
- F.** If a licensee applies for a license according to R9-16-202 more than 30 calendar days but less than one year after the expiration date of the applicant's previous license, the applicant:
1. Is not required to submit ETSNEA or ETSNESLP documentation, and
  2. Shall submit an attestation of continuing education according to R9-16-208, completed within the twenty-four months before the date of application.
- G.** The Department shall review the application for a renewal license according R9-16-214 and Table 2.1.

**Historical Note**

Former Section R9-16-207 repealed, new Section R9-16-207 adopted effective January 23, 1978 (Supp. 78-1).

Repealed effective March 14, 1994 (Supp. 94-1).

Adopted by final rulemaking at 5 A.A.R. 4359, effective

October 28, 1999 (Supp. 99-4). Section R9-16-207

renumbered to R9-16-208; new Section R9-16-207 made

by exempt rulemaking at 20 A.A.R. 1998, effective July

1, 2014 (Supp. 14-2). Section R9-16-207 repealed; new

Section made by final expedited rulemaking at 26 A.A.R.

816, with an immediate effective date of April 8, 2020

(Supp. 20-2).

**R9-16-208. Continuing Education**

**A.** Twenty-four months prior to submitting a renewal application, a licensee shall complete continuing education.

1. Except as provided in (A)(2), a licensed audiologist shall complete at least 20 continuing education hours related to audiology;
2. A licensed audiologist who fits and dispenses hearing aids shall complete:
  - a. At least 20 continuing education hours related to audiology and hearing aid dispensing, and
  - b. No more than eight continuing education hours required in subsection (A)(2)(a) provided by a single manufacturer of hearing aids; and
3. A licensed speech-language pathologist shall complete at least 20 continuing education hours in speech-language pathology related courses.

**B.** Continuing education shall:

1. Directly relate to the practice of audiology, speech-language pathology, or fitting and dispensing hearing aids;
2. Have educational objectives that exceed an introductory level of knowledge of audiology, speech-language pathology, or fitting and dispensing hearing aids; and
3. Consist of courses that include advances within the last five years in:
  - a. Practice of audiology,
  - b. Practice of speech-language pathology,
  - c. Procedures in the selection and fitting of hearing aids,
  - d. Pre- and post-fitting management of clients,
  - e. Instrument circuitry and acoustic performance data,

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- f. Ear mold design and modification contributing to improved client performance,
  - g. Audiometric equipment or testing techniques that demonstrate an improved ability to identify and evaluate hearing loss,
  - h. Auditory rehabilitation,
  - i. Ethics,
  - j. Federal and state statutes or rules, or
  - k. Assistive listening devices.
- C. A continuing education course developed, endorsed, or sponsored by one of the following meets the requirements in subsection (B):
1. Hearing Healthcare Providers of Arizona,
  2. Arizona Speech-Language-Hearing Association,
  3. American Speech-Language-Hearing Association,
  4. International Hearing Society,
  5. International Institute for Hearing Instruments Studies,
  6. American Auditory Society,
  7. American Academy of Audiology,
  8. Academy of Doctors of Audiology,
  9. Arizona Society of Otolaryngology, Head and Neck Surgery,
  10. American Academy of Otolaryngology-Head and Neck Surgery, or
  11. An organization determined by the Department to be consistent with an organization in subsection (C)(1) through (10).

**Historical Note**

Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Section R9-16-208 renumbered to R9-16-214; new Section R9-16-208 renumbered from R9-16-207 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-209. Clinical Fellowship Supervisors**

In addition to complying with the requirements in A.R.S. § 36-1905, a clinical fellowship supervisor shall complete a minimum of 36 supervisory activities throughout an individual's clinical fellowship that include:

1. A minimum of 18 on-site observations,
2. No more than six on-site observations in a 24-hour period, and
3. A minimum of 18 monitoring activities.

**Historical Note**

Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Section R9-16-209 renumbered to R9-16-212; new Section R9-16-209 renumbered from R9-16-204 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section R9-16-209 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-210. Requirements for Supervising a Speech-language Pathologist Assistant**

A licensed speech-language pathologist who provides direct supervision or indirect supervision to a speech-language pathologist assistant shall comply with A.R.S. § 36-1940.04(F) and (G):

1. Establish a record for each speech-language pathologist assistant who receives direct supervision and indirect supervision from the speech-language pathologist that includes:

- a. The speech-language pathologist assistant's license number, name, home address, telephone number, and e-mail;
  - b. A plan indicating the types of skills and the number of hours allocated to the development of each skill that the speech-language pathologist assistant is expected to complete;
  - c. A document listing each occurrence of direct supervision or indirect supervision provided to the speech-language pathologist assistant that includes:
    - i. Business name and address where supervision occurred,
    - ii. The date and times when the supervision started and ended,
    - iii. The types of clinical interactions provided, and
    - iv. Notation of speech-language pathologist assistant's progress;
  - d. Documentation of evaluations provided to the speech-language pathologist assistant during the time supervision was provided; and
  - e. Documentation of when supervision was terminated; and
2. Maintain a speech-language pathologist assistant record:
    - a. Throughout the period that the speech-language pathologist assistant receives direct supervision and indirect supervision clinical interactions from the supervisor; and
    - b. For at least two years after the last date the speech-language pathologist assistant received clinical interactions from the supervisor.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Section R9-16-210 renumbered to R9-16-215; new Section R9-16-210 renumbered from R9-16-205 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section R9-16-210 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-211. Equipment; Records**

- A. A licensee shall maintain equipment used by the licensee in the practice of audiology or the practice of speech-language pathology according to the manufacturer's specifications.
- B. If a licensee uses equipment that requires calibration, the licensee shall ensure that:
  1. The equipment is calibrated a minimum of every 12 months and according to the American National Standard - Specifications for Audiometers S3.6-2018, incorporated by reference and on file with the Department, with no future additions or amendments and available from the Standards Secretariat, c/o Acoustical Society of America, 1305 Walt Whitman Road, Suite 300, Melville, New York, 11747-4300, September 20, 2018; and
  2. A written record of the calibration is maintained in the same location as the calibrated equipment for at least 36 months after the date of the calibration.
- C. A licensee shall maintain the following records according to A.R.S. § 32-3211 for each client for at least 36 months after the date the licensee provided a service or dispensed a product while engaged in the practice of audiology, practice of speech-language pathology, or practice of fitting and dispensing hearing aids:
  1. The client's name, address, and telephone number;

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2. The name or description and the results of each test and procedure used in evaluating speech, language, and hearing disorders or determining the need for dispensing a product or service; and
3. If a product such as a hearing aid, augmentative communication device, or laryngeal device is dispensed, a record of the following:
  - a. The name of the product dispensed;
  - b. The product's serial number, if any;
  - c. The product's warranty or guarantee, if any;
  - d. The refund policy for the product, if any;
  - e. A statement of whether the product is new or used;
  - f. The total amount charged for the product;
  - g. The name of the licensee; and
  - h. The name of the intended user of the product.

**Historical Note**

Adopted as an emergency effective July 12, 1982, pursuant to A.R.S. § 41-1003, valid for 90 days (Supp. 82-4). Emergency expired. Permanent rule R9-16-211 adopted effective January 14, 1983 (Supp. 83-1). Repealed effective March 14, 1994 (Supp. 94-1). New Section R9-16-211 made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section R9-16-211 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-212. Bill of Sale Requirements**

An audiologist who dispenses hearing aids shall provide a bill of sale to a client at the time the audiologist provides a hearing aid to the client or at a time requested by the client that complies with the requirements in R9-16-311(A)(7).

**Historical Note**

Adopted as an emergency effective July 12, 1982, pursuant to A.R.S. § 41-1003, valid for 90 days (Supp. 82-4). Emergency expired. Permanent rule R9-16-212 adopted effective January 14, 1983 (Supp. 83-1). Repealed effective March 14, 1994 (Supp. 94-1). New Section R9-16-212 renumbered from R9-16-209 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section R9-16-212 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-213. Enforcement**

- A. The Department may, as applicable:
  1. Deny, revoke, or suspend an audiology or speech-language pathology's license under A.R.S. § 36-1934;
  2. Request an injunction under A.R.S. § 36-1937; or
  3. Assess a civil money penalty under A.R.S. § 36-1939.
- B. In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:
  1. The type of violation,
  2. The severity of the violation,
  3. The danger to the public health and safety,
  4. The number of violations,
  5. The number of clients affected by the violations,
  6. The degree of harm to the consumer,
  7. A pattern of noncompliance, and
  8. Any mitigating or aggravating circumstances.
- C. A licensee may appeal a disciplinary action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Adopted as an emergency effective July 12, 1982, pursuant to A.R.S. § 41-1003, valid for 90 days (Supp. 82-4). Emergency expired. Permanent rule R9-16-213 adopted effective January 14, 1983 (Supp. 83-1). Repealed effective March 14, 1994 (Supp. 94-1). New Section R9-16-213 made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section R9-16-213 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-214. Time-frames**

- A. For each type of license issued by the Department under this Article, Table 2.1 specifies the overall time-frame described in A.R.S. § 41-1072(2).
  1. An applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
  2. The extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.
- B. For each type of license issued by the Department under this Article, Table 2.1 specifies the administrative completeness review time-frame described in A.R.S. § 41-1072(1).
  1. The administrative completeness review time-frame begins the date the Department receives an application required in this Article.
  2. Except as provided in subsection (B)(3), the Department shall provide a written notice of administrative completeness or a notice of deficiencies to an applicant within the administrative completeness review time-frame.
    - a. If a license application is not complete, the notice of deficiencies listing each deficiency and the information or documentation needed to complete the application.
    - b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date of the notice until the date the Department receives the missing information or documentation.
    - c. If the applicant does not submit to the Department all the information or documentation listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the application withdrawn.
  3. If the Department issues a license during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
- C. For each type of license issued by the Department under this Article, Table 2.1 specifies the substantive review time-frame described in A.R.S. § 41-1072(3), which begins on the date the Department sends a written notice of administrative completeness.
  1. Within the substantive review time-frame, the Department shall provide a written notice to the applicant that the Department approved or denied.
  2. During the substantive review time-frame:
    - a. The Department may make one comprehensive written request for additional information or documentation; and
    - b. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information or documentation.
  3. A comprehensive written request or a supplemental request for additional information or documentation sus-

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pends the substantive review time-frame and the overall time-frame from the date of the request until the date the Department receives all the information or documentation requested.

- 4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for additional information or documentation within 30 calendar days after the date of the request, the Department shall deny the license or approval.

**D.** The Department shall issue a regular license or a temporary license:

- 1. Within five calendar days after receiving the license fee, and
- 2. From the date of issue, the license is valid for:
  - a. Two years, if a regular license, and
  - b. Twelve months, if a temporary license.

- E.** An applicant who is denied a license may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Adopted as an emergency effective July 12, 1982, pursuant to A.R.S. § 41-1003, valid for 90 days (Supp. 82-4). Emergency expired. Permanent rule R9-16-214 adopted effective January 14, 1983 (Supp. 83-1). Repealed effective March 14, 1994 (Supp. 94-1). New Section R9-16-214 renumbered from R9-16-208 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section R9-16-214 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**Table 2.1 Time-frames (in calendar days)**

Type of Approval	Statutory Authority	Overall Time-Frame	Administrative Completeness Review Time-Frame	Time to Respond to Notice of Deficiency	Substantive Review Time-Frame	Time to Respond to Comprehensive Written Request
Application for an Initial or Temporary License (R9-16-202)	A.R.S. §§ 36-1904 and 36-1940	60	30	30	30	30
License Renewal (R9-16-207)	A.R.S. § 36-1904	60	30	30	30	30

**Historical Note**

Table 2.1 made by exempt rulemaking under R9-16-209 at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Table 2.1 repealed; new Table 2.1 made and recodified under new Section R9-16-214, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-215. Changes Affecting a License or a Licensee; Request for a Duplicate License**

**A.** A licensee shall submit to the Department a notice in a Department-provided format within 30 calendar days after the effective date of a change in:

- 1. The licensee’s home address or e-mail address, including the new home address or e-mail address;
- 2. The licensee’s name, including a copy of one of the following with the licensee’s new name:
  - a. Marriage certificate,
  - b. Divorce decree, or
  - c. Other legal document establishing the licensee’s new name; and
- 3. The place or places, including address or addresses, where the licensee engages in the practice of audiology or speech-language pathology.

**B.** A licensee may obtain a duplicate license by submitting to the Department a written request for a duplicate license in a format provided by the Department that includes:

- 1. The licensee’s name and address,
- 2. The licensee’s license number and expiration date,
- 3. The licensee’s signature and date of signature, and
- 4. A duplicate license fee specified in R9-16-216.

**Historical Note**

New Section R9-16-215 renumbered from R9-16-210 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-216. Fees**

**A.** An applicant shall submit to the Department the following nonrefundable fee for:

- 1. An initial application as an audiologist, \$100;
  - 2. An initial application as a speech-language pathologist, \$100; and
  - 3. An initial application as a temporary speech-language pathologist, \$100.
- B.** An applicant shall submit to the Department the following fee for:
- 1. An initial license as an audiologist, \$200;
  - 2. An initial license as a speech-language pathologist, \$200; and
  - 3. A temporary license as a speech-language pathologist, \$100.
- C.** A licensee shall submit to the Department the following fee for:
- 1. A renewal license as an audiologist, \$200;
  - 2. A renewal license as a speech-language pathologist, \$200; and
  - 3. A temporary renewal license as a speech-language pathologist, \$100.
- D.** If a licensed audiologist or speech-language pathologist submits a renewal license application specified in subsection (C) within 30 calendar days after the license expiration date, the licensee shall submit with the renewal license application a \$25 late fee.
- E.** The fee for a duplicate license is \$25.
- F.** An applicant for initial licensure is not required to submit the applicable fee in subsection (A) and (B) if the applicant, as part of the applicable application in R9-16-202, submits an attestation that the applicant meets the criteria for waiver of licensing fees in A.R.S. § 41-1080.01.

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**Historical Note**

New Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**ARTICLE 3. LICENSING HEARING AID DISPENSERS****R9-16-301. Definitions**

In addition to the definitions in A.R.S. § 36-1901, the following definitions apply in this Article unless otherwise specified:

1. "Applicant" means an individual or a business organization that submits an application and required documentation for approval to practice as a hearing aid dispenser.
2. "Business organization" means an entity identified in A.R.S. § 36-1910.
3. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
4. "Continuing education" means a course that provides instruction and training that directly relates to the practice of fitting and dispensing hearing aids specified in A.R.S. § 36-1904.
5. "Designated agent" means an individual who:
  - a. Is authorized by an applicant or hearing aid dispenser [a person] to receive communications from the Department, including legal service of process;
  - b. May file or sign documents on behalf of the applicant or hearing aid dispenser;
  - c. Is a U.S. citizen or legal resident;
  - d. Has an Arizona address; and
  - e. Is a controlling person of the business organization, if applicable.
6. "Disciplinary action" means a proceeding that is brought against a licensee by the Department under A.R.S. § 36-1934 or a state specified in R9-16-308(A)(2).
7. "GED" means a general education development test.
8. "Hearing aid dispenser examination" means one of the following that has been identified by the Department as complying with the requirements in A.R.S. § 36-1924:
  - a. The International Licensing Examination for Hearing Health Professionals, administered by the International Hearing Society; or
  - b. A test provided by the Department or other organization.
9. "Practical examination" means a test:
  - a. Designated by the Department that demonstrates an applicant's proficiency in the practice of fitting and dispensing of hearing aids, and
  - b. Compliant with A.R.S. § 36-1924(A)(4).
10. "State licensing entity" means a state agency or board that approves licensure and takes disciplinary action of individuals or businesses that practice as a hearing aid dispenser.
11. "Temporary hearing aid dispenser" means a person who is licensed under A.R.S. Title 36, Chapter 17 and this Article for a specified period of time under the sponsorship of a hearing aid dispenser also licensed under A.R.S. Title 36, Chapter 17 and this Article.

**Historical Note**

Section repealed, new Section adopted effective June 25, 1993 (Supp. 93-2). Section amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 26 A.A.R.

835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-302. Examination Requirements**

- A. Within two years after the date an applicant receives the approval notification in R9-16-306(B), or a temporary hearing aid dispenser receives the approval in R9-16-305(B), the applicant or temporary hearing aid dispenser shall take and obtain a passing score on the Department-designated:
  1. Written hearing aid dispenser examination required in subsection (B), and
  2. Practical examination required in subsection (B).
- B. An applicant approved to take the Department-designated practical examination or a temporary hearing aid dispenser approved to take the Department-designated practical examination shall:
  1. Arrive on the scheduled date and time of the examination,
  2. Provide proof of identity by a government-issued photographic identification card that is provided by the applicant or temporary hearing aid dispenser upon the request of the individual administering the examination, and
  3. Exhibit ethical conduct during the examination process.
- C. After the Department receives an applicant's Department-designated written hearing aid dispenser examination results, the Department shall notify the applicant of:
  1. A passing score and approval to take the practical examination; or
  2. A failing score that includes, as applicable, approval to retake the written hearing aid dispenser examination.
- D. An applicant or temporary hearing aid dispenser who does not comply with subsection (B)(1) or (B)(2) is ineligible to take the examination on the scheduled date and time.
- E. An applicant or temporary hearing aid dispenser taking the examination will receive a passing score on the examination if the applicant or temporary hearing aid dispenser demonstrates the proficiencies in A.R.S. § 36-1924, as determined by the Department.
- F. After the Department receives an applicant's practical examination results, the Department shall notify the applicant whether the applicant received:
  1. A passing score; or
  2. A failing score and, as applicable, approval to retake the Department-designated practical examination for the examination sections that the applicant failed.
- G. The Department shall notify an applicant or temporary hearing aid dispenser that the applicant or temporary hearing aid dispenser may apply for an initial hearing aid dispenser license when the applicant or temporary hearing aid dispenser has received a passing score on both of the examinations in subsection (A).

**Historical Note**

Amended effective March 22, 1976 (Supp. 76-2). Section repealed, new Section adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-303. Application**

- A. An applicant for licensure shall submit to the Department:
  1. An application in a Department-provided format that contains:
    - a. The applicant's name, home address, telephone number, and e-mail address;

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- b. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
  - c. The applicant's current employment, if applicable, including:
    - i. The employer's name,
    - ii. The licensee's position,
    - iii. Dates of employment,
    - iv. The address of the employer,
    - v. The supervisor's name,
    - vi. The supervisor's email address, and
    - vii. The supervisor's telephone number;
  - d. Whether the applicant has ever been convicted of a felony or a misdemeanor in this or another state or jurisdiction;
  - e. If the applicant was convicted of a felony or misdemeanor:
    - i. The date of the conviction,
    - ii. The state or jurisdiction of the conviction,
    - iii. An explanation of the crime of which the applicant was convicted, and
    - iv. The disposition of the case;
  - f. Whether a hearing aid dispenser license issued to the applicant has been suspended or revoked;
  - g. Whether the applicant is currently ineligible to apply for a hearing aid dispenser license due to a prior revocation or suspension of the applicant's hearing aid dispenser license;
  - h. Whether the applicant has been disciplined by any state, territory or district in this country for an act upon the applicant's hearing aid dispenser license;
  - i. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-314;
  - j. An attestation that the information submitted as part of the application is true and accurate; and
  - k. The applicant's signature and date of signature;
2. Documentation of the applicant's citizenship or alien status that complies with A.R.S. § 41-1080;
  3. Documentation that the applicant received a high school diploma, a high school equivalency diploma, an associate degree, or a higher degree;
  4. Whether a professional license or certificate has been revoked or suspended by another state or jurisdiction;
  5. If a license for an applicant has been revoked or suspended by any state, documentation that includes:
    - a. The date of the revocation or suspension,
    - b. The state or jurisdiction of the revocation or suspension, and
    - c. An explanation of the revocation or suspension;
  6. If an applicant is currently ineligible for licensing in any state because of a license revocation or suspension, documentation that includes:
    - a. The date of the ineligibility for licensing,
    - b. The state or jurisdiction of the ineligibility for licensing, and
    - c. An explanation of the ineligibility for licensing;
  7. If an applicant has been disciplined by any state, territory or district, in this country for an act upon the applicant's hearing aid dispenser license, documentation that includes:
    - a. The date of the disciplinary action,
    - b. The state or jurisdiction of the disciplinary action,
    - c. An explanation of the disciplinary action, and
    - d. Any other applicable documents, including a legal order or settlement agreement; and
  8. A nonrefundable application fee specified in R9-16-316.
- B.** The Department shall review an application and documentation for approval according to R9-16-314 and Table 3.1.
- Historical Note**
- The Department of Health Services advises that this rule is preempted by Section 521(a) of the federal Food, Drug and Cosmetic Act (21 U.S.C. 360K). See 21 CFR 808.53, effective November 10, 1980 (Supp. 80-6). Section repealed, new Section adopted effective June 25, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).
- R9-16-304. Requirements for an Initial Hearing Aid Dispenser License**
- A.** An applicant for initial licensure shall submit an application to the Department that includes:
1. The information and documents required in R9-16-303;
  2. Documentation of passing the:
    - a. Written hearing aid dispenser examination, and
    - b. Practical examination; and
  3. The fees specified in R9-16-316.
- B.** In addition to complying with subsections (A)(1) and (A)(3), an applicant that may be eligible for licensure under A.R.S. § 36-1922 shall submit documentation to the Department that includes:
1. The name of each state that issued the applicant a current hearing aid dispenser license, including:
    - a. The license number of each current hearing aid dispenser license, and
    - b. The date each current hearing aid dispenser license was issued;
  2. Documentation of the professional license or certification issued to the applicant by each state in which the applicant holds a professional license or certification;
  3. For each state named in subsection (B)(1), a statement, signed and dated by the applicant, attesting that the applicant:
    - a. Has been licensed or certified in another state for at least one year, with a scope of practice consistent with the scope of practice for which licensure is being requested;
    - b. Has met minimum education requirements according to A.R.S. § 36-1923(A);
    - c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
    - d. Does not have a complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct.
- C.** An initial hearing aid dispenser license is valid for two years from the date of issue for licensure by examination or licensure by reciprocity.
- D.** If the Department does not issue an initial hearing aid dispenser license to an applicant, the Department shall return the license fee to the applicant.
- Historical Note**
- Amended effective March 22, 1976 (Supp. 76-2). The Department of Health Services advises that this rule is preempted by Section 521(a) of the federal Food, Drug and Cosmetic Act (21 U.S.C. 360K). See 21 CFR 808.53, effective

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tive November 10, 1980 (Supp. 80-6). Section repealed, new Section adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-305. Requirements for an Initial Temporary Hearing Aid Dispenser License**

- A. In addition to complying with R9-16-303, an applicant for a temporary hearing aid dispenser license shall submit to the Department:
1. The sponsor's:
    - a. Name,
    - b. Business address,
    - c. Business telephone number, and
    - d. Arizona hearing aid dispenser license number.
  2. A statement signed by the sponsor that the sponsor is a licensed hearing aid dispenser who agrees to train, supervise, and be responsible for the applicant's hearing aid dispenser practice according to A.R.S. § 36-1905.
- B. If the Department issues a temporary license to the applicant, the Department shall notify the applicant of approval to take the hearing aid dispenser examination as specified in R9-16-302.
- C. A temporary hearing aid dispenser may renew a temporary license according to A.R.S. § 36-1926.
- D. A temporary license is no longer valid on the date the Department receives notice from the sponsor that the sponsor is terminating sponsorship.
- E. A hearing aid dispenser whose temporary license is terminated according to subsection (D):
1. Shall not practice until issued a new license,
  2. May apply for an initial or temporary license as a hearing aid dispenser according to this Article; and
  3. May choose to:
    - a. Complete the two-year test period issued to the applicant with a previous temporary license, or
    - b. Restart the two-year test period on the date the Department approves the hearing aid dispenser's temporary license in subsection (E)(2); and
  4. If the applicant chooses to restart the two-year test period in subsection (3)(b), the previous test result obtained will not apply.
- F. An initial hearing aid dispenser license is valid for 12 months from the date of issue for a temporary license or in compliance with A.R.S. § 36-1926(D).

**Historical Note**

Section repealed, new Section adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-306. Application for Examination**

- A. In addition to complying with R9-16-303, an applicant for initial licensure by examination shall submit an application to the Department that includes:
1. Information and documentation required in R9-16-303, and
  2. The fee in R9-16-316.

- B. If the Department approves the application, the Department shall notify the applicant of approval to take the written hearing aid dispenser examination as specified in R9-16-302.
- C. If the Department approves an application, the applicant shall not practice fitting and dispensing hearing aids without a license issued by the Department.

**Historical Note**

Adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-307. Initial Application for a Business Hearing Aid Dispenser License**

- A. An applicant for a business hearing aid dispenser license shall submit to the Department:
1. An application in a Department-provided format that contains:
    - a. The name of the business organization;
    - b. The business organization's Arizona business name, address, e-mail address, and telephone number;
    - c. If the business organization has more than one location, provide the name, address, e-mail address, and telephone number for each location;
    - d. The name, address, telephone number, and e-mail address of the individual authorized by the business organization to be the designated agent;
    - e. The name, business telephone number, and Arizona hearing aid dispenser license number of each hearing aid dispenser employed by the business organization in Arizona;
    - f. Whether the business organization or a hearing aid dispenser working for the business organization has had a hearing aid dispenser license suspended or revoked by any state;
    - g. Whether the business organization or a hearing aid dispenser working for the business organization is currently ineligible for licensing in any state due to a suspension or revocation;
    - h. An attestation that the:
      - i. Business organization allows the Department to make supplemental requests for additional information; and
      - ii. Information required as part of the application has been submitted and is true and accurate; and
    - i. The signature and date of signature from the designated agent; and
  2. An application and license fee specified in R9-16-316.
- B. A business organization with more than one location shall submit a duplicate license fee for each additional location according to R9-16-315 and R9-16-316.
- C. The Department shall review an application for an initial business hearing aid dispenser license according to R9-16-314 and Table 3.1.
- D. A business organization licensed according to this Article shall comply with A.R.S. § 36-1910.
- E. An initial license issued to a business organization according to this Section is valid for two years from the date of issue.

**Historical Note**

Adopted effective June 25, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Section repealed; new Section made

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by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-308. License Renewal**

- A.** A licensee, except for a temporary hearing aid dispenser, shall submit a renewal application in a Department-provided format that contains:
1. For an individual licensed as a hearing aid dispenser:
    - a. The licensee's name, home address, telephone number, and e-mail address;
    - b. The licensee's current employment, if applicable, including:
      - i. The employer's name,
      - ii. The licensee's position,
      - iii. Dates of employment,
      - iv. The address of the employer,
      - v. The supervisor's name,
      - vi. The supervisor's email address, and
      - vii. The supervisor's telephone number;
    - c. The licensee's license number and expiration date;
    - d. Since the hearing aid dispenser's previous license application, whether the licensee has been convicted of a felony or a misdemeanor in this or another state or jurisdiction;
    - e. If the licensee was convicted of a felony or misdemeanor:
      - i. The date of the conviction,
      - ii. The state or jurisdiction of the conviction,
      - iii. An explanation of the crime of which the licensee was convicted, and
      - iv. The disposition of the case;
    - f. Whether the licensee has had a license revoked or suspended by any state within the previous two years;
    - g. Whether the licensee is currently ineligible for licensure in any state because of a prior license revocation or suspension;
    - h. Whether the licensee agrees to allow the Department to submit supplemental requests for information under R9-16-314;
    - i. An attestation that the licensee completed continuing education required under A.R.S. § 36-1904 and that documentation of completion is available upon request;
    - j. An attestation that the information required as part of the application has been submitted and is true and accurate; and
    - k. The licensee's signature and date of signature;
  2. Whether the licensee has, within the two years before the date of the application, had:
    - a. A license issued under this Article suspended or revoked; or
    - b. A professional license or certificate revoked by another state or jurisdiction; and
  3. A license renewal fee specified in R9-16-316; or
  4. For a business organization licensed as a hearing aid dispenser:
    - a. The information in subsection R9-16-307(A)(1), and
    - b. A license renewal fee specified in R9-16-316.
- B.** A licensee, except for a temporary hearing aid dispenser, who renews a license within 30 calendar days after the expiration date of the license, shall submit to the Department:
1. The information and renewal fee required in subsection (A), and
  2. A late fee specified in R9-16-316.
- C.** A renewal license issued to a licensee, except for temporary hearing aid dispenser, is valid for two years after the expiration date of the previous license issued by the Department.
- D.** If a licensee does not comply with subsections (A) or (B), the license is nonrenewable and:
1. The hearing aid dispenser may apply for a new license according to subsection (E), or
  2. The business organization may apply for a new license according to R9-16-307.
- E.** A licensee whose license is nonrenewable, according to subsection (D)(1), and is within one year after the expiration date of the hearing aid dispenser's license, the licensee shall submit:
1. The information in R9-16-303(A);
  2. An attestation of continuing education, according to R9-16-309, completed with twenty-four months before the date of the date of application; and
  3. A nonrefundable application fee and a license fee specified in R9-16-316.
- F.** If allowed in R9-16-303, a temporary hearing aid dispenser shall submit at least 30 calendar days before the expiration date on the license, a renewal application to the Department in a Department-provided format that contains:
1. The information in R9-16-303(A);
  2. The applicant's sponsor's:
    - a. Name,
    - b. Business address,
    - c. Business telephone number, and
    - d. Arizona hearing aid dispenser license number;
  3. A statement signed by the sponsor that the sponsor is a licensed hearing aid dispenser who agrees to train, supervise, and be responsible for the applicant's hearing aid dispenser practice according to A.R.S. § 36-1905; and
  4. A license renewal fee specified in R9-16-316.
- G.** A renewal license issued to a licensee according to subsection (F) is valid for one year after the expiration date of the previous license issued by the Department.
- H.** The Department shall review a renewal application according to R9-16-314 and Table 3.1.

**Historical Note**

Adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-309. Continuing Education**

- A.** Twenty-four months prior to submitting a renewal application, a licensee shall complete 24 continuing education hours that includes no more than eight continuing education hours provided by a single manufacturer of hearing aids.
- B.** Continuing education shall:
1. Directly relate to the practice of fitting and dispensing hearing aids;
  2. Have educational objectives that exceed an introductory level of knowledge of fitting and dispensing hearing aids; and
  3. Consist of courses that include advances within the last five years in:
    - a. Procedures in the selection and fitting of hearing aids,
    - b. Pre- and post-fitting management of clients,
    - c. Instrument circuitry and acoustic performance data,

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- d. Ear mold design and modification contributing to improved client performance,
  - e. Audiometric equipment or testing techniques that demonstrate an improved ability to identify and evaluate hearing loss,
  - f. Auditory rehabilitation,
  - g. Ethics,
  - h. Federal and state statutes or rules, or
  - i. Assistive listening devices.
- C. A continuing education course developed, endorsed, or sponsored by one of the following meets the requirements in subsection (B):
- 1. Hearing Healthcare Providers of Arizona,
  - 2. Arizona Speech-Language-Hearing Association,
  - 3. American Speech-Language-Hearing Association,
  - 4. International Hearing Society,
  - 5. International Institute for Hearing Instruments Studies,
  - 6. American Auditory Society,
  - 7. American Academy of Audiology,
  - 8. Academy of Doctors of Audiology,
  - 9. Arizona Society of Otolaryngology, Head and Neck Surgery,
  - 10. American Academy of Otolaryngology-Head and Neck Surgery, or
  - 11. An organization determined by the Department to be consistent with an organization in subsection (B)(1) through (10).

**Historical Note**

Adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-310. Sponsors**

- A. A sponsor shall:
- 1. Provide to a temporary hearing aid dispenser for on-site training and supervision that:
    - a. Consists of coordinating, directing, watching, inspecting, and evaluating the fitting and dispensing activities of the temporary hearing aid dispenser; and
    - b. Directly relates to the type of training and education needed to pass the licensing examination required in A.R.S. § 36-1924;
  - 2. Maintain a training record that:
    - a. Is signed by the temporary hearing aid dispenser;
    - b. Has the date, time, and content of the training and supervision provided to the temporary hearing aid dispenser, as required in subsection (A)(1); and
    - c. Is available for inspection by the Department for at least 12 months after the end of the sponsorship agreement; and
  - 3. Not provide sponsorship to more than two temporary hearing aid dispenser licensees at one time.
- B. When a sponsor terminates a sponsorship agreement with a temporary hearing aid dispenser, the sponsor shall:
- 1. Provide to the temporary hearing aid dispenser a:
    - a. Written notice indicating termination of the sponsorship agreement, and
    - b. Copy of the hearing aid dispenser's records in subsection (A)(2); and
  - 2. Provide to the Department documentation of the notice required in subsection (B)(1)(a).

**Historical Note**

Adopted effective June 25, 1993 (Supp. 93-2). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5029, effective September 30, 2001 (Supp. 01-4). New Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-311. Responsibilities of a Hearing Aid Dispenser**

- A. A hearing aid dispenser licensed shall:
- 1. Upon licensure, notify the Department in writing of the address where the hearing aid dispenser practices the fitting and dispensing of hearing aids;
  - 2. Conspicuously post the license received in the hearing aid dispenser's office or place of business;
  - 3. Except as specified in subsections (A)(4) or (A)(5), conduct audiometric tests before selecting a hearing aid for a client that provides detailed information about the client's hearing loss, including:
    - a. Type, degree, and configuration of hearing loss;
    - b. Ability, as measured by the percentage of words the client is able to repeat correctly, to discriminate speech; and
    - c. The client's most comfortable and uncomfortable loudness levels in decibels;
  - 4. Have the option to conduct audiometric testing required in subsection (A)(3) before selling a client a hearing aid if the client provides to the dispenser the information required in subsection (A)(3) from a licensed professional and the information was:
    - a. Obtained within the previous 12 months for an adult, or
    - b. Within the previous six months for an individual under the age of 18;
  - 5. Have the option to conduct audiometric testing required in subsection (A)(3) if the tests cannot be performed on the client due to:
    - a. The client's young age, or
    - b. A physical or mental disability;
  - 6. Evaluate the performance characteristics of the hearing aid as it functions on the client's ear for the purpose of assessing the degree of audibility provided by the device and benefit to the client;
  - 7. Provide a bill of sale to a client according to A.R.S. § 36-1909(A) that contains:
    - a. Information required in A.R.S. § 36-1909;
    - b. A complete description of:
      - i. Warranty information, and
      - ii. The conditions of any offer of a trial period with a money back guarantee or partial refund; and
    - c. The client's signature and date of signature; and
  - 8. Not:
    - a. Practice without a license according to A.R.S. § 36-1907,
    - b. Commit unlawful acts according to A.R.S. § 36-1936, or
    - c. Commit actions described in A.R.S. § 36-1934(A).
- B. The trial period described in subsection (A)(7)(b)(ii) shall not include any time that the hearing aid is in the possession of the hearing aid dispenser or the manufacturer of the hearing aid.

**Historical Note**

Adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section

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repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-312. Equipment and Records**

- A. A licensee shall maintain an audiometer and other hearing devices according to the manufacturer's specifications.
- B. If a licensee uses equipment that requires calibration, the licensee shall ensure that:
  1. The equipment is calibrated at least every 12 months and according to the American National Standard Institution/Acoustical Society incorporated by reference and on file with the Department, with no future additions or amendments, and available from the American National Standards Institution at <http://webstore.ansi.org>; and
  2. A written record of the calibration is maintained in the same location as the calibrated equipment for at least 36 months after the date of the calibration.
- C. A licensee shall maintain a record according to A.R.S. § 32-3211 for each client with the following documents for at least 36 months after the date the licensee provided a service or dispensed a product while engaged in the practice of fitting and dispensing hearing aids:
  1. The name, address, and telephone number of the individual to whom services are provided;
  2. A written statement from a licensed physician that the client has medical clearance to use hearing aids or a medical waiver signed by the client who is 18 years of age or older;
  3. For each audiometric test conducted for the client, the:
    - a. Audiometric test results by date and procedure used in evaluating hearing disorders or determining the need for dispensing a product or service,
    - b. Name of the individual who performed the audiometric tests, and
    - c. Signature of the individual who performed the audiometric tests;
  4. A copy of the bill of sale required in R9-16-311(A)(7);
  5. Documented verification of the effectiveness of the hearing aid required in R9-16-311(A)(6); and
  6. The contracts, agreements, warranties, trial periods, or other documents involving the client.

**Historical Note**

Adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-313. Enforcement**

- A. The Department may, as applicable:
  1. Deny, revoke, or suspend a license under A.R.S. § 36-1934,
  2. Request an injunction under A.R.S. § 36-1937, or
  3. Assess a civil money penalty under A.R.S. § 36-1939.
- B. In determining which disciplinary action specified in subsection (A), the Department shall consider:
  1. The type of violation,
  2. The severity of the violation,
  3. The danger to the public health and safety,
  4. The number of violations,
  5. The number of clients affected by the violations,
  6. The degree of harm to the consumer,
  7. A pattern of noncompliance, and
  8. Any mitigating or aggravating circumstances.

- C. A licensee may appeal a disciplinary action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-314. Time-frames**

- A. For each type of license issued by the Department under this Article, Table 6.1 specifies the overall time-frame described in A.R.S. § 41-1072(2).
  1. An applicant or licensee and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
  2. The extension of the substantive review time-frame and overall time-frame may not exceed 25% of the overall time-frame.
- B. For each type of license issued by the Department under this Article, Table 6.1 specifies the administrative completeness review time-frame described in A.R.S. § 41-1072(1).
  1. The administrative completeness review time-frame begins on the date the Department receives an application required in this Article.
  2. Except as provided in subsection (B)(3), the Department shall provide written notice of administrative completeness or a notice of deficiencies to an applicant within the administrative completeness review time-frame.
    - a. If an application and required documentation is not complete, the notice of deficiencies shall list each deficiency and the information or documentation needed to complete the application.
    - b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date of the notice until the date the Department receives the missing information or documentation.
    - c. If the applicant does not submit to the Department all the information or documentation listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the application withdrawn.
  3. If the Department issues a license during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
- C. For each type of license issued by the Department under this Article, Table 6.1 specifies the substantive review time-frame described in A.R.S. § 41-1072(3), which begins on the date the Department sends a written notice of administrative completeness.
  1. Within the substantive review time-frame, the Department shall provide written notice to the applicant that the Department approved or denied the application.
  2. During the substantive review time-frame:
    - a. The Department may make one comprehensive written request for additional information or documentation; and
    - b. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information or documentation.
  3. A comprehensive written request or a supplemental request for additional information or documentation sus-

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pends the substantive review time-frame and the overall time-frame from the date of the request until the date the Department receives all the information or documentation requested.

- 4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for additional information or documentation within 30 calendar days after the date of the request, the Department shall deny the license.

- D. An applicant who is denied a license may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**Table 3.1. Time-frames (in calendar days)**

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Time to Respond to Notice of Deficiency	Substantive Review Time-frame	Time to Respond to Comprehensive Written Request
Initial Application for a Hearing Aid Dispenser	A.R.S. §§ 36-1904, 36-1923	60	30	30	30	30
Initial Application for a Business Organization	A.R.S. § 36-1910	60	30	30	30	30
License Renewal	A.R.S. § 36-1904	60	30	30	30	30

**Historical Note**

Table 3.1 renumbered from Table 1 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Table 3.1 repealed; new Table 3.1 made and recodified under R9-16-314 by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-315. Change Affecting a License or a Licensee; Request for Duplicate License**

- A. A hearing aid dispenser licensee or temporary hearing aid dispenser licensee shall submit a written notice to the Department in writing within 30 calendar days after the effective date of a change in:
  - 1. The licensee’s home address or e-mail address, including the new home address or e-mail address;
  - 2. The licensee’s name, including a copy of one of the following with the licensee’s new name:
    - a. Marriage certificate,
    - b. Divorce decree, or
    - c. Other legal document establishing the licensee’s new name; or
  - 3. The place or places where the licensee engages in the practice of hearing aid dispensing, including the address or addresses of the place or places where the licensee engages in the practice of hearing aid dispensing.
- B. A licensee may obtain a duplicate license by submitting to the Department a request for a duplicate license in a Department-provided format that includes:
  - 1. The licensee’s name and address,
  - 2. The licensee’s license number and expiration date,
  - 3. The licensee’s signature and date of signature, and
  - 4. A duplicate license fee specified in R9-16-316.
- C. A business hearing aid dispenser licensee shall submit a written notice to the Department within 30 calendar days after the licensee:
  - 1. Has a change in the information provided in R9-16-307(A)(1)(b).
  - 2. Closes a location specified in R9-16-307(A)(1)(b) and (c), including the location address.
  - 3. Begins operating at new location, not specified in R9-16-307(A)(1)(c), including the new location address.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2688, effective June 7, 2002 (Supp. 02-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**Table 1. Renumbered**

**Historical Note**

Table 1 made by final rulemaking at 8 A.A.R. 2688, effective June 7, 2002 (Supp. 02-2). Table 1 renumbered to Table 3.1 by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

**R9-16-316. Fees**

- A. An applicant shall submit to the Department the following fee for:
  - 1. A nonrefundable initial application, \$100;
  - 2. An initial license for a regular or business hearing aid dispenser, \$200;
  - 3. A renewal application for temporary hearing aid dispenser license, \$100.
  - 4. A regular or business hearing aid dispenser licensee for a renewal license, \$200.
- B. If a renewal application is submitted within 30 calendar days after the license expiration date, a licensee shall submit with the renewal application a \$25 late fee.
- C. The fee for a duplicate license is \$25.
- D. An applicant, who is not a business organization, for initial licensure is not required to submit the applicable fee in subsection (A) if the applicant, as part of the applicable application in R9-16-303 or R9-16-306, submits an attestation that the applicant meets the criteria for waiver of licensing fees in A.R.S. § 41-1080.01.

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**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Historical note corrected to reflect the rulemaking action on file and effective with the 04-2 supplement (Supp. 05-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-317. Repealed****Historical Note**

New Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**ARTICLE 4. REGISTRATION OF ENVIRONMENTAL HEALTH SANITARIANS****R9-16-401. Definitions**

The following definitions apply in this Article, unless otherwise specified:

1. "Accredited" means that an educational institution is recognized by the U.S. Department of Education as providing standards necessary to meet acceptable levels of quality for its graduates to gain admission to other reputable institutions of higher learning or to achieve credentials for professional practice.
2. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
3. "Applicant" means an individual who submits an application packet or renewal application packet for registration as an environmental health sanitarian.
4. "Application packet" means the information, documents, and fees required by the Department to apply for approval to:
  - a. Take a sanitarian examination, and
  - b. Be registered as an environmental health sanitarian.
5. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run and including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
6. "Continuing education" means a course that provides instruction and training that is designed to develop or improve a registered environmental health sanitarian's professional competence in disciplines directly related to the practice of a registered environmental health sanitarian.
7. "Continuing education hour" means 50 to 60 minutes of continuous course work.
8. "Course" means a workshop, seminar, lecture, conference, or other learning program activities as approved by the Department.
9. "Department" means the Arizona Department of Health Services established in A.R.S. § 36-104 and the Sanitarians Council established in A.R.S. § 36-136.01.
10. "Environmental health" means the science and practice of preventing human injury and illness and promoting well-being by identifying sources that produce potential hazardous physical, chemical, and biological agents in air, water, soil, food, and other conditions; and eliminating or minimizing exposure to the sources that adversely affect or may adversely affect human health.
11. "Environmental health sanitarian aide" means an individual who performs and assists with environmental health services as described and under the supervision of an individual in R9-16-403.
12. "Hazardous environmental agent" means a material, whether liquid, solid, gas, or sludge, that contains properties that make the material potentially harmful to public health or the environment.
13. "Immediate family member" means an individual related by birth, marriage, or adoption.
14. "License or licensed" means a permit, certificate, or similar form of approval issued by a state agency according to state law that an individual may practice in the profession indicated by the approval.
15. "Natural science" means a branch of science that deals with the physical world, including life, physical, and health sciences.
16. "Overall time-frame" has the same meaning as in A.R.S. § 41-1072.
17. "Practice of a registered environmental health sanitarian" means acting under the authority of R9-16-402.
18. "Registered environmental health sanitarian" means the same as a "registered sanitarian" in A.R.S. § 36-136.01.
19. "Renewal application packet" means the information, documents, and fees required by the Department to apply for a renewal registration as an environmental health sanitarian.
20. "Sanitarian examination" means a test that consists of questions related to environmental health including natural sciences, facility and system inspections, investigations, compliance, responding to emergencies, and promoting environmental public health awareness.
21. "Semester credit" means one earned academic unit of study or equivalent, with a grade of "C" or better, at an accredited college or university by:
  - a. Attending a 50 to 60 minute class session each calendar week for at least 16 weeks, or
  - b. Completing practical work for a class as determined by the accredited college or university.
22. "Substantive review time-frame" has the same meaning as in A.R.S. § 41-1072.
23. "Supervision" means being responsible for and providing direction to an individual who:
  - a. Performs and assists a registered environmental health sanitarian with environmental health services as described in R9-16-403, and
  - b. Is employed as an environmental health sanitarian aide in a position directly related to environmental health.

**Historical Note**

Adopted effective September 29, 1976 (Supp. 76-4). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective September 30, 2001 (Supp. 01-4). New Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).

**R9-16-402. Eligibility and Responsibilities for a Registered Environmental Health Sanitarian**

- A.** An individual is eligible to be a registered environmental health sanitarian, if the individual meets at least one of the following:

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1. Has completed at least 30 semester credits at an accredited college or university in the natural sciences or the equivalent credits from a college or university from outside the United States or its territories verified by a Department-approved third party evaluation service;
  2. Has completed at least five years of employment as a sanitarian aide in a position directly related to environmental health;
  3. Has completed at least five years of active military service in the field of environmental health;
  4. Is currently licensed as a sanitarian in another jurisdiction, has passed a sanitarian examination that is equivalent to this state's examination with a score of 70% or more, and has completed at least one of the requirements identified in subsections (A)(1), (2), or (3); or
  5. Has received an official notice from a testing organization approved by the Department that contains the sanitarian examination test results with a score of 70% or more and has completed at least one of the requirements identified in subsections (A)(1), (2), or (3).
- B.** An individual who is eligible to be a registered environmental health sanitarian according to subsection (A)(1) through (3) shall pass a sanitarian examination administered by the Department or administered by a testing organization approved by the Department.
- C.** The practice of a registered environmental health sanitarian may include:
1. Investigate, sample, measure, and assess hazardous environmental agents;
  2. Recommend and apply protective interventions that control hazards to health;
  3. Develop, promote, and enforce guidelines, policies, rules, statutes, and regulations;
  4. Perform system analysis;
  5. Interpret research utilizing science and evidence to understand the relationship between health and environment; or
  6. Interpret data and prepare technical summaries and reports.
- D.** A registered environmental health sanitarian shall:
1. Comply with A.R.S. § 41-1009;
  2. Comply with A.A.C. Title 9, Chapter 8; and
  3. Review and, as applicable, sign reports prepared by a sanitarian aide.

**Historical Note**

Adopted effective September 29, 1976 (Supp. 76-4). Amended effective April 12, 1985 (Supp. 85-2), Section repealed; new Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).

**R9-16-403. Requirements for an Environmental Health Sanitarian Aide**

- A.** An environmental health sanitarian aide may perform and assist in any of the following environmental health services:
1. Inspections related to food establishments, food processing, food distribution, sewage and refuse disposal, water supplies, hotels, motels, campground, swimming pools, and other related public facilities regulated under A.A.C. Title 9, Chapter 8;
  2. Investigations of complaints to ensure compliance with environmental regulations;
  3. Routine samplings of water, sewage, food, and other samples for analysis; or

4. Application of ordinances, codes, rules, and regulations governing public health.
- B.** An environmental health sanitarian aide shall:
1. Have reports reviewed by a registered environmental health sanitarian;
  2. Not approve or disapprove the operation of an establishment under A.A.C. Title 9, Chapter 8; and
  3. Not sign on behalf of a registered environmental health sanitarian.
- C.** A sanitarian aide, who has completed at least five years of employment as an environmental health sanitarian aide in a position directly related to environmental health, may apply for registration as an environmental health sanitarian according to R9-16-405.
- D.** An individual who provides supervision to an environmental health sanitarian aide shall:
1. Ensure that the number of hours and type of supervision in providing environmental health services is consistent with:
    - a. The sanitarian aide's skills and experience,
    - b. The setting where the environmental health services are provided, and
    - c. The tasks assigned;
  2. Establish a record for the environmental health sanitarian aide who receives supervision that includes:
    - a. The sanitarian aide's name, address, e-mail address, and telephone number;
    - b. A plan indicating the types of skills and the number of hours allocated to the development of each skill that the environmental health sanitarian aide is expected to complete;
    - c. Documentation of evaluations provided to the environmental health sanitarian aide during the time supervision was provided; and
    - d. Documentation of when supervision began and ended; and
  3. Maintain a sanitarian aide's record throughout the period that the environmental health sanitarian aide received supervision.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Former R9-16-403 renumbered to R9-16-404; new R9-16-403 made by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).

**R9-16-404. Continuing Education Requirements; Continuing Education Deferral; and Renewal Extension**

- A.** A registered environmental health sanitarian shall complete 12 continuing education hours during the 12 months prior to December 31 of each calendar year, unless the registered environmental health sanitarian:
1. Has been a registered environmental health sanitarian for less than 12 months as indicated on the renewal application;
  2. Was prevented from completing continuing education according to subsection (A) due to a personal or immediate family member's illness during at least six continuous months of the preceding 12 months; or
  3. Was called to active military service.
- B.** Except for a registered environmental health sanitarian in subsection (A)(1) and (3), by November 1 of each calendar year, a registered environmental health sanitarian may request to defer continuing education by submitting:
1. A request in a Department-provided format that contains:

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- a. The registered environmental health sanitarian's name, address, e-mail address, and telephone number;
  - b. The registered environmental health sanitarian's registration number;
  - c. A statement regarding the registered environmental health sanitarian's personal or immediate family member's illness;
  - d. Indicate the number of continuing education hours requesting to defer;
  - e. An attestation that the Department is authorized to verify all information provided in the continuing education deferral request; and
  - f. The registered environmental health sanitarian's signature, including date of signature;
2. Documentation that verifies the duration of the registered environmental health sanitarian's personal or immediate family member's illness from the physician treating or who treated the registered environmental health sanitarian's personal or immediate family member's illness; and
  3. If a registered environmental health sanitarian has completed any continuing education hours, report the completed continuing education hours according to R9-16-406(D)(1)(h).
- C.** A registered environmental health sanitarian that deferred continuing education in subsection (B) shall obtain:
1. The deferred continuing education by the end of the subsequent renewal year, and
  2. The continuing education required in subsection (A) for the current renewal year.
- D.** A registered environmental health sanitarian called to active military service:
1. Shall submit:
    - a. Written notice for renewal extension to the Department that includes:
      - i. The registered environmental health sanitarian's name, address, e-mail address, and telephone number;
      - ii. The registered environmental health sanitarian's registration number;
      - iii. A statement stating the reason for the notice of renewal extension; and
      - iv. The registered environmental health sanitarian's signature, including date of signature; and
    - b. A copy of the registered environmental health sanitarian's deployment documentation;
  2. Retains registration as an environmental health sanitarian for the term of service or deployment plus 180 calendar days;
  3. Defers the requirement for completing the continuing education for the term of service or deployment plus 180 calendar days; and
  4. Shall submit a renewal application packet according to R9-16-406 after the term of service or deployment plus 180 calendar days.
- E.** The Department shall review the request to defer continuing education submitted in subsection (B) for approval according to R9-16-407 and Table 4.1.
- F.** If the Department denies a registered environmental health sanitarian's request to defer continuing education, the registered environmental health sanitarian shall submit the required continuing education hours in subsection (A) according to R9-16-406(D)(1)(h).
- Historical Note**
- New Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Former R9-16-404 renumbered to R9-16-406; new R9-16-404 renumbered from R9-16-403 and amended by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).
- R9-16-405. Application for Sanitarian Examination and Registration**
- A.** An individual may apply to take the sanitarian examination for registration as a sanitarian if the individual meets one of the eligibility requirements in R9-16-402(A).
- B.** At least seven calendar days before a Sanitarians Council meeting, an applicant for environmental health sanitarian registration shall submit an application packet to the Department containing:
1. The following information in a Department-provided format:
    - a. The applicant's name, address, e-mail address, and telephone number;
    - b. If applicable, applicant's former names;
    - c. The applicant's social security number, required under A.R.S. §§ 25-320 and 25-502;
    - d. If applicable, the applicant's current employment information:
      - i. The employer's name, address, e-mail address, and telephone number;
      - ii. The applicant's position title; and
      - iii. The applicant's employment start date;
    - e. If an applicant meets the eligibility requirement in R9-16-402(A)(1), the following for each college or university where the applicant completed semester credits or the equivalent credits from a college or university:
      - i. The college or university's name, address, e-mail address, and telephone number;
      - ii. The number of natural science semester credits completed; and
      - iii. If applicable, the degree obtained;
    - f. If an applicant meets the eligibility requirement in R9-16-402(A)(2), the following for each employer during the five years the applicant was employed as a sanitarian aide:
      - i. The employer's name, address, e-mail address, and telephone number;
      - ii. The name, title, e-mail address, and telephone number of a contact individual for the employer;
      - iii. The applicant's position and description of responsibilities; and
      - iv. The months and years of employment;
    - g. If an applicant meets the eligibility requirement in R9-16-402(A)(3), the following for each active military service assignment during the five years the applicant held a military job position in the field of environmental health:
      - i. The military branch name, address, e-mail address, and telephone number;
      - ii. The name, title, e-mail address, and telephone number of a contact individual from the military branch;
      - iii. The applicant's military job position and description of responsibilities; and
      - iv. The months and years of active military service assignments;
    - h. If an applicant meets the eligibility requirement in R9-16-402(A)(4), the following for a sanitarian licensed in another state or jurisdiction:

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- i. The state, county, and city that issued the applicant's current license as a sanitarian;
- ii. The testing organization that administered the sanitarian examination;
- iii. The name of the sanitarian examination;
- iv. The sanitarian examination administration date;
- v. The number of sanitarian examination questions;
- vi. The sanitarian examination score;
- vii. The other eligibility requirement in R9-16-402(A)(1), (2), or (3) met by the applicant; and
- viii. As applicable, the information required in subsection (B)(1)(e), (f), or (g);
- i. If an applicant meets the eligibility requirement in R9-16-402(A)(5), the following for an official notice from a Department-approved testing organization that contains a sanitarian examination test results with a score of 70% or more:
  - i. The name of the testing organization;
  - ii. The date the sanitarian examination was completed;
  - iii. The sanitarian examination score; and
  - iv. As applicable, the information required in subsection (B)(1)(e), (f), or (g);
- j. Whether the applicant is or has been licensed as a sanitarian in another state or jurisdiction;
- k. Whether the applicant has had an application for licensure as a sanitarian denied in a state or jurisdiction;
- l. If the applicant has had an application for licensure as a sanitarian denied, the:
  - i. Reason for denial;
  - ii. Date of the denial; and
  - iii. Name, address, and telephone number of the licensing agency that denied the applicant's application;
- m. Whether the applicant has had a license as a sanitarian suspended or revoked by a state or jurisdiction or entered into a consent agreement with a state or jurisdiction;
- n. If the applicant has had a license as a sanitarian suspended or revoked or entered into a consent agreement, the:
  - i. Reason for the suspension, revocation, or consent agreement;
  - ii. Date of the suspension, revocation, or consent agreement; and
  - iii. Name, address, and telephone number of the licensing agency that suspended, revoked, or entered into a consent agreement with the applicant;
- o. Whether the applicant has been convicted of a felony or a misdemeanor related to the functions of the applicant's employment or occupation as a sanitarian in this state or another state;
- p. If the applicant has been convicted of a felony or a misdemeanor in subsection (B)(1)(o):
  - i. The date of the conviction,
  - ii. The state or jurisdiction of the conviction,
  - iii. An explanation of the crime of which the applicant was convicted, and
  - iv. The disposition of the case;
- q. Whether the applicant agrees to allow the Department to submit supplemental requests for additional information or documentation in R9-16-407;
- r. An attestation that:
  - i. The applicant authorizes the Department to verify all information provided in the application packet, and
  - ii. The information submitted as part of the application packet is true and accurate; and
- s. The applicant's signature and date of signature;
- 2. In addition to the application in subsection (B)(1), the following:
  - a. A copy of applicant's Social Security card;
  - b. Proof of U.S. citizenship or alien status according to A.R.S. § 41-1080;
  - c. If applicable, a copy of an applicant's sanitarian license issued by another state or jurisdiction;
  - d. If an official transcript is issued by a college or university from outside of the United States or its territories, documentation from a third party evaluation service verifying equivalent credits identified in subsection (B)(1)(d);
  - e. If applicable, a letter verifying an applicant's start and end dates of employment for each employer identified in subsection (B)(1)(f);
  - f. If applicable, a letter verifying an applicant's start and end dates of the military job position for each active military service assignment identified in subsection (B)(1)(g);
  - g. If applicable, documentation of the completed sanitarian examination, including the sanitarian examination test results, from the testing organization or jurisdiction that administered the sanitarian examination required by another state or jurisdiction in subsection (B)(1)(h); and
  - h. If applicable, a copy of the official notice from a Department-approved testing organization in subsection (B)(1)(i); and
- 3. The nonrefundable \$25 application fee.
- C. If an official transcript documents natural science semester credit hours identified in subsection (B)(1)(e), an applicant shall instruct the college or university to send the official transcript to the Department.
- D. The Department shall review an application packet for an applicant to take a sanitarian examination according to R9-16-407 and Table 4.1.
- E. The Department shall review a sanitarian examination for an applicant licensed by another state or jurisdiction for approval for the applicant to practice as a registered environmental health sanitarian according to R9-16-407 and Table 4.1.
- F. The Department shall:
  - 1. Administer the sanitarian examination at least four times each calendar year;
  - 2. By January 1 of each calendar year, provide the annual sanitarian examination schedule;
  - 3. If a scheduled sanitarian examination requires rescheduling, provide a notice at least 14 calendar days before a scheduled sanitarian examination date in subsection (F)(2) occurs that includes information about the revised sanitarian examination; and
  - 4. By January 1 of each calendar year, provide a list of Department-approved testing organizations.
- G. An applicant approved to take a sanitarian examination shall:
  - 1. Determine whether the applicant will take a sanitarian examination administered by the Department or administered by a testing organization approved by the Department;
    - a. If the applicant determines to take a sanitarian examination administered by the Department, the applicant shall:

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- i. Submit a nonrefundable \$140 sanitarian examination fee to the Department at least 30 calendar days before taking a scheduled sanitarian examination,
  - ii. Take a scheduled sanitarian examination administered by the Department, and
  - iii. Submit the completed sanitarian examination to the Department; or
  - b. If the applicant determines to take a sanitarian examination administered by a testing organization approved by the Department, the applicant shall:
    - i. Select a testing organization from the Department-approved list,
    - ii. Take a scheduled sanitarian examination administered by the testing organization, and
    - iii. Submit a copy of the official notice from the testing organization that contains the sanitarian examination test results to the Department.
  - 2. Take the sanitarian examination within 6 months after the date the applicant received the notice of approval to take the sanitarian examination.
  - 3. Pass the sanitarian examination with a score of 70% or more.
- H.** The Department shall review a sanitarian examination for approval for an applicant to practice as a registered environmental health sanitarian according to R9-16-407 and Table 4.1.
- I.** An applicant, who does not submit a sanitarian examination or a copy of an official notice from a testing organization in subsection (G) within 6 months after the date that the applicant received the notice of approval to take the sanitarian examination, shall submit a new application packet according to R9-16-405(B).
- J.** An applicant, who submits a sanitarian examination or a copy of an official notice from a testing organization in subsection (G) within 6 months after the date that the applicant received the notice of approval to take the sanitarian examination and does not score 70% or more, shall:
- 1. Have 12 months from the date of the approval letter the applicant received from the Department to resubmit a sanitarian examination or a copy of an official notice from a testing organization in subsection (G); and
  - 2. Comply with subsections (G)(1)(a) or (b) to retake the sanitarian examination.
- Historical Note**
- Adopted effective September 29, 1976 (Supp. 76-4). Amended effective April 12, 1985 (Supp. 85-2). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective September 30, 2001 (Supp. 01-4). New Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Former R9-16-405 renumbered to R9-16-407; new R9-16-405 made by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).
- R9-16-406. Application for Renewal Registration**
- A.** Except as provided in R9-16-404(D), a registered environmental health sanitarian shall submit an application packet for registration renewal on or before December 31 of each calendar year.
- B.** A registered environmental health sanitarian who does not submit a renewal application packet by December 31 has a grace period until February 15 to submit a renewal application packet.
- C.** A registered environmental health sanitarian, who does not submit a renewal application packet by February 15, shall not practice as a registered environmental health sanitarian.
- D.** By December 31 of each calendar year, an applicant shall submit to the Department a renewal application packet containing:
- 1. The following information in a Department-provided format:
    - a. The applicant's name, address, e-mail address, and telephone number;
    - b. The applicant's environmental health sanitarian registration number;
    - c. Whether the applicant, since the applicant last submitted an application packet or renewal application packet, has had a license as a sanitarian suspended or revoked by a state or jurisdiction or entered into a consent agreement with another jurisdiction;
    - d. If the applicant has had a license as a sanitarian suspended or revoked or entered into a consent agreement with another jurisdiction, the:
      - i. Reason for the suspension, revocation, or consent agreement;
      - ii. Date of the suspension, revocation, or consent agreement; and
      - iii. Name, address, and telephone number of the licensing agency that suspended, revoked, or entered into a consent agreement;
    - e. Whether the applicant, since the applicant last submitted a renewal application packet, has been convicted of a felony or a misdemeanor related to the applicant's employment or occupation as a sanitarian in this state or another jurisdiction;
    - f. If the applicant has been convicted of a felony or a misdemeanor as stated according to subsection (D)(1)(e):
      - i. The date of the conviction,
      - ii. The state or jurisdiction of the conviction,
      - iii. An explanation of the crime of which the applicant was convicted, and
      - iv. The disposition of the case;
    - g. Whether the applicant requested to defer continuing education due to a personal or immediate family member's illness according to R9-16-404(B);
    - h. Except for a registered environmental health sanitarian in R9-16-404(A), for each continuing education course completed during the previous 12 months, the following:
      - i. The course title,
      - ii. A course description,
      - iii. The name of the individual providing the continuing education course,
      - iv. The date the continuing education course was completed, and
      - v. The total number of continuing education hours attended;
    - i. Whether the applicant has been a registered environmental health sanitarian for less than 12 months according to R9-16-404(A)(1);
    - j. An attestation that:
      - i. The applicant affirms that the continuing education courses specified according to subsection (h) are applicable and consistent with the Department's approved continuing education courses or with the practice of a registered environmental health sanitarian described in R9-16-402(C);

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- ii. The applicant authorizes the Department to verify all information provided in the renewal application packet; and
  - iii. The information submitted as part of the renewal application packet is true and accurate; and
  - k. The applicant's signature and date of signature;
  - 2. If applicable, a copy of the approved request to defer continuing education, and
  - 3. The \$10 renewal application fee.
  - E. If a registered environmental health sanitarian does not submit a renewal application packet in subsection (D) by February 15:
    - 1. The registered environmental health sanitarian's registration expires on February 16; and
    - 2. Before practicing as a registered environmental health sanitarian, a registered environmental health sanitarian whose environmental health sanitarian registration expired shall submit a new application packet according to R9-16-405.
  - F. The Department shall review the renewal application packet for approval of registration as an environmental health sanitarian according to R9-16-407 and Table 4.1.
- Historical Note**
- Adopted effective September 29, 1976 (Supp. 76-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Former R9-16-406 renumbered to R9-16-408; new R9-16-406 renumbered from R9-16-404 by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).
- R9-16-407. Time-frames**
- A. The overall time-frame begins, for:
    - 1. A sanitarian examination approval, on the date the Department receives an application packet in R9-16-405;
    - 2. An environmental health sanitarian registration approval, on the date the Department receives an official notice for an applicant's sanitarian examination test result administered by:
      - a. A testing organization described in R9-16-405(B)(1)(i) or (G), or
      - b. A testing organization or jurisdiction that administered the sanitarian examination required by another state or jurisdiction described in R9-16-405(B)(1)(h);
    - 3. A continuing education deferral approval, on the date the Department receives the continuing education deferral request in R9-16-404; and
    - 4. A renewal registration approval, on the date the Department receives a renewal application packet in R9-16-406.
  - B. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. The substantive review time-frame and the overall time-frame may not be extended by more than 25% of the overall time-frame.
  - C. Within the administrative completeness review time-frame in Table 4.1, the Department shall:
    - 1. Provide a notice of administrative completeness to an applicant; or
    - 2. Provide a notice of deficiencies to an applicant, including a list of the missing information or documents.
  - D. If the Department provides a notice of deficiencies to an applicant:
    - 1. The administrative completeness review time-frame and the overall time-frame are suspended after the date of the notice of deficiencies until the date the Department receives the missing information or documents from the applicant;
  - 2. If the applicant submits the missing information or documents to the Department within the time-frame in Table 4.1, the substantive review time-frame resumes on the date the Department receives the missing information or documents; and
  - 3. If the applicant does not submit the missing information or documents to the Department within the time-frame in Table 4.1, the Department shall consider the application or the request withdrawn.
  - E. If the Department issues a registration or notice of approval during the administrative completeness review time-frame, the Department may not issue a separate written notice of administrative completeness.
  - F. Within the substantive review time-frame specified in Table 4.1, the Department:
    - 1. Shall approve an:
      - a. Applicant's request for registration as an environmental health sanitarian or
      - b. Applicant, who did not score 70% or more on the sanitarian examination, to resubmit a sanitarian examination according to R9-16-405(J);
    - 2. Shall deny an applicant's request for registration as an environmental health sanitarian;
    - 3. May make a written comprehensive request for additional information or documentation; and
    - 4. May make supplemental requests for additional information and documentation if agreed to by the applicant.
  - G. If the Department provides a written comprehensive request for additional information or documentation or a supplemental request to the applicant:
    - 1. The substantive review time-frame and overall time-frame are suspended from the date of the written comprehensive request or supplemental request until the date the Department receives the information and documents requested; and
    - 2. The applicant shall submit to the Department the information and documents listed in the written comprehensive request within 15 calendar days after the date of the written comprehensive request or supplemental request.
  - H. The Department shall issue:
    - 1. An approval to an applicant who submits:
      - a. An application packet to take a sanitarian examination that complies with the requirements in R9-16-405;
      - b. An application packet and a sanitarian examination with a score of 70% or more from a testing organization approved by the Department that complies with the requirements in R9-16-405;
      - c. An application packet and a sanitarian examination test results from the testing organization or jurisdiction that administered the sanitarian examination that complies with the requirements in R9-16-405;
      - d. A continuing education deferral request that complies with the requirements in R9-16-404; and
      - e. A renewal application packet that complies with the requirements R9-16-406; or
    - 2. A denial to an applicant, including the reason for the denial and the appeal process in A.R.S. Title 41, Chapter 6, Article 10, if:
      - a. The applicant does not submit all of the information and documentation listed in a written comprehensive request or supplemental request for additional information or documentation; or

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- b. The applicant does not comply with A.R.S. § 36-136.01 and this Article.

**Historical Note**

Adopted effective September 29, 1976 (Supp. 76-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Former R9-16-407 renumbered to R9-16-409; new R9-16-407 renumbered from R9-16-405 and amended by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).

**Historical Note**

Table 1. Time-frames made by final rulemaking under new Section R9-16-405 at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Table 1. Time-frames following Section R9-16-405 renumbered below Section R9-16-407 and amended by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3). Table 1. Time-frames repealed by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).

**Table 1. Repealed**

**Table 4.1 Time-frames (in calendar days)**

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Written Comprehensive Request
Sanitarian Examination (R9-16-405)	A.R.S. § 36-136.01(B)	150	30	30	120	15
Registration (R9-16-405)	A.R.S. § 36-136.01(B)	35	5	15	30	15
Registration by Reciprocity (R9-16-405)	A.R.S. § 36-136.01(C)	150	30	30	120	15
Deferred Continuing Education (R9-16-404)	A.R.S. § 36-136.01(E)	45	30	15	15	15
Renewal Registration (R9-16-406)	A.R.S. § 36-136.01(D)	75	60	15	15	15

**Historical Note**

Table 4.1 Time-frames made by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).

**R9-16-408. Requesting a Change**

Within 30 calendar days after the effective date of a change, a registered environmental health sanitarian requesting a change to personal information shall submit in a Department-provided format:

1. A written notice stating the information to be changed and indicating the new information; and
2. If the change is to the registered environmental health sanitarian’s legal name, a copy of one of the following with the registered environmental health sanitarian’s new name:
  - a. Marriage certificate,
  - b. Divorce decree,
  - c. Professional license, or
  - d. Other legal document establishing the registered environmental health sanitarian’s legal name.

**Historical Note**

Adopted effective September 29, 1976 (Supp. 76-4). Section repealed by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Section R9-16-408 renumbered from R9-16-406 by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).

**R9-16-409. Denial, Suspension, or Revocation**

**A.** The Department may deny an application packet for approval for registration or renewal of registration if the Department determines that an applicant:

1. Intentionally provided false information or documents in an application packet or renewal application packet;

2. Had an application for a license related to the practice of a registered environmental health sanitarian denied by a state or jurisdiction;
3. Had a license related to the practice of a registered environmental health sanitarian suspended or revoked by a state or jurisdiction or entered into a consent agreement with a state or jurisdiction; or
4. Was convicted of or entered into a plea of no contest to a misdemeanor resulting from employment as a registered environmental health sanitarian or a felony.

**B.** The Department may suspend or revoke a registered environmental health sanitarian’s registration if the Department determines that a registered environmental health sanitarian:

1. Assisted an individual who is not a registered environmental health sanitarian to circumvent the requirements in this Article;
2. Allowed an individual who is not a registered environmental health sanitarian to use the registered environmental health sanitarian’s registration;
3. Falsified records to interfere with or obstruct an investigation or regulatory process of the Department or a political subdivision; or
4. Failed to comply with any of the requirements in A.R.S. § 36-136.01 or this Article.

**C.** In determining whether to suspend or revoke a registered environmental health sanitarian’s registration, the Department shall consider the threat to public health based on:

1. Whether there is repeated non-compliance with statutes or rules,
2. Type of non-compliance,

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3. Severity of non-compliance, and
  4. Number of non-compliance actions.
- D. The Department's notice of suspension or revocation to the applicant or registered environmental health sanitarian shall comply with A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Adopted effective September 29, 1976 (Supp. 76-4). Amended effective April 12, 1985 (Supp. 85-2). Section repealed by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2). Section R9-16-409 renumbered from R9-16-407 and amended by final rulemaking at 10 A.A.R. 3004, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 23 A.A.R. 3038, effective October 5, 2017 (Supp. 17-4).

**R9-16-410. Repealed****Historical Note**

Adopted effective September 29, 1976 (Supp. 76-4). Former Section R9-16-410 repealed, new Section R9-16-410 adopted effective April 12, 1985 (Supp. 85-2). Section repealed by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2).

**R9-16-411. Repealed****Historical Note**

Adopted effective September 29, 1976 (Supp. 76-4). Former Section R9-16-411 renumbered as Section R9-16-414, new Section R9-16-411 adopted effective April 12, 1985 (Supp. 85-2). Section repealed by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2).

**R9-16-412. Repealed****Historical Note**

Adopted effective April 12, 1985 (Supp. 85-2). Section repealed by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2).

**R9-16-413. Repealed****Historical Note**

Adopted effective April 12, 1985 (Supp. 85-2). Section repealed by final rulemaking at 8 A.A.R. 2444, effective May 16, 2002 (Supp. 02-2).

**R9-16-414. Expired****Historical Note**

Former Section R9-16-411 renumbered as Section R9-16-414 effective April 12, 1985 (Supp. 85-2). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5257, effective September 30, 2001 (Supp. 01-4).

**ARTICLE 5. LICENSING SPEECH-LANGUAGE PATHOLOGIST ASSISTANTS****R9-16-501. Definitions**

In addition to the definitions in A.R.S. § 36-1901, the following definitions apply in this Article unless otherwise specified:

1. "Accredited" means approved by the:
  - a. New England Commission of Higher Education,
  - b. Middle States Commission on Higher Education,
  - c. Higher Learning Commission,
  - d. Northwest Commission on Colleges and Universities,
  - e. Southern Association of Colleges and Schools Commission on Colleges, or
  - f. WASC Senior College and University Commission.

2. "Applicant" means an individual who submits a license application and required documentation for approval to practice as a speech-language pathologist assistant.
3. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
4. "Continuing education" means a course that provides instruction and training that is designed to develop or improve a licensee's professional competence in disciplines that directly relate to the licensee's scope of practice.
5. "Course" means a workshop, seminar, lecture, conference, or class.
6. "Documentation" means information in written, photographic, electronic, or other permanent form.
7. "General education" means instruction that includes:
  - a. Oral communication,
  - b. Written communication,
  - c. Mathematics,
  - d. Computer instruction,
  - e. Social sciences, and
  - f. Natural sciences.
8. "Observation" means to witness:
  - a. The provision of speech-language pathology services to a client, or
  - b. A demonstration of how to provide speech-language pathology services to a client.
9. "Semester credit hour" means one earned academic unit of study completed, at an accredited college or university, by:
  - a. Attending a 50 to 60 minute class session each calendar week for at least 16 weeks, or
  - b. Completing practical work for a course as determined by the accredited college or university.
10. "Speech-language pathologist" means an individual who is licensed under A.R.S. § 36-1940.01.
11. "Speech-language pathology technical course work" means a curriculum that provides knowledge to develop core skills and assume job responsibilities, including:
  - a. Language acquisition,
  - b. Speech development,
  - c. Communication disorders,
  - d. Articulation and phonology, and
  - e. Intervention techniques for speech and language disorders.
12. "Supervision" means instruction and monitoring provided by a licensed speech-language pathologist as required in A.R.S. § 36-1940.04(E) and (F) to an individual training to become a speech-language pathologist assistant.

**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 26 A.A.R. 852, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-502. Initial Application**

- A. An applicant for licensure shall submit to the Department:
1. An application in a Department-provided format that contains:

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- a. The applicant's name, home address, telephone number, and e-mail address;
  - b. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
  - c. If applicable, the name of the applicant's employer and the employer's business address and telephone number;
  - d. Whether the applicant has ever been convicted of a felony or of a misdemeanor in this state or another state;
  - e. If the applicant has been convicted of a felony or a misdemeanor:
    - i. The date of the conviction,
    - ii. The state or jurisdiction of the conviction,
    - iii. An explanation of the crime of which the applicant was convicted, and
    - iv. The disposition of the case;
  - f. Whether the applicant has had a license revoked or suspended by any state;
  - g. Whether the applicant is currently ineligible for licensure in any state because of a prior license revocation or suspension;
  - h. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-506;
  - i. An attestation that the information submitted is true and accurate; and
  - j. The applicant's signature and date of signature;
2. If applicable, a list of all states and countries in which the applicant is or has been licensed as a speech-language pathologist assistant;
  3. If a license for an applicant has been revoked or suspended by any state, documentation that includes:
    - a. The date of the revocation or suspension,
    - b. The state or jurisdiction of the revocation or suspension, and
    - c. An explanation of the revocation or suspension;
  4. If the applicant is currently ineligible for licensure in any state because of a prior license revocation or suspension, documentation that includes:
    - a. The date of the ineligibility for licensure,
    - b. The state or jurisdiction of the ineligibility for licensure, and
    - c. An explanation of the ineligibility for licensure;
  5. Documentation of the applicant's citizenship or alien status that complies with A.R.S. § 41-1080.
  6. A transcript or equivalent documentation issued to the applicant from an accredited college or university, showing completion of at least 60 semester credit hours of general education and speech-language pathology technical course work specified in A.R.S. § 36.1940.04(A) that requires:
    - a. No less than 20 semester credit hours of general education, and
    - b. No less than 20 semester credit hours of speech-language pathology technical course work;
  7. Documentation, signed by a licensed speech-language pathologist as required in A.R.S. §36-1940.04 who provided supervision to the applicant, confirming the applicant's completion of at least 100 hours of clinical interaction that did not include observation; and
  8. The application and licensing fees specified in R9-16-508.
- B.** In addition to complying with subsection (A)(1) through (5), an applicant that may be eligible for licensure under A.R.S. § 36-1922 shall submit documentation to the Department that includes:
1. The name of each state that issued the applicant a current speech-language pathologist assistant, including:
    - a. The license number of each current speech-language pathologist assistant license, and
    - b. The date each current speech-language pathologist assistant license was issued;
  2. Documentation of the professional license or certification issued to the applicant by each state in which the applicant holds a professional license or certification;
  3. For each state named in subsection (B)(1), a statement, signed and dated by the applicant, attesting that the applicant:
    - a. Has been licensed or certified in another state for at least one year, with a scope of practice consistent with the scope of practice for which licensure is being requested;
    - b. Has met minimum education requirements according to A.R.S. § 36-1940.04;
    - c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
    - d. Does not have a complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct.
- C.** A regular license is valid for two years from the date of issue.
- D.** The Department shall review the application and required documentation for an initial license to practice as a speech-language pathologist assistant according to R9-16-506 and Table 5.1.
- E.** If the Department does not issue an initial license to an applicant, the Department shall refund the license fee to the applicant.
- Historical Note**
- New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Section R9-16-502 repealed; new Section R9-16-502 renumbered from R9-16-503 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 26 A.A.R. 852, with an immediate effective date of April 8, 2020 (Supp. 20-2).
- R9-16-503. License Renewal**
- A.** Before the expiration date of a speech-language pathologist assistant license, a licensee shall submit to the Department:
1. An application in a Department-provided format for renewal of a speech-language pathologist assistant license that contains:
    - a. The licensee's name, home address, telephone number, and e-mail address;
    - b. The licensee's current employment, if applicable, including:
      - i. The employer's name,
      - ii. The licensee's position,
      - iii. Dates of employment,
      - iv. The address of the employer,
      - v. The supervisor's name,
      - vi. The supervisor's e-mail address, and
      - vii. The supervisor's telephone number;
    - c. If applicable, the name of the licensee's supervising speech-language pathologist;
    - d. The licensee's license number and date of expiration;

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- e. Since the previous license application, whether the licensee has been convicted of a felony or a misdemeanor involving moral turpitude in this or another state;
  - f. If the licensee has been convicted of a felony or a misdemeanor:
    - i. The date of the conviction,
    - ii. The state or jurisdiction of the conviction,
    - iii. An explanation of the crime of which the licensee was convicted, and
    - iv. The disposition of the case;
  - g. Whether the licensee has had a license revoked or suspended by any state within the previous two years;
  - h. Whether the licensee is currently ineligible for licensure in any state because of a prior license revocation or suspension;
  - i. Whether the licensee agrees to allow the Department to submit supplemental requests for information under R9-16-506;
  - j. An attestation that the licensee has completed continuing education required under A.R.S. 36-1904 and this Article and documentation of completion is available upon request;
  - k. An attestation that the information required as part of the renewal application is true and accurate; and
    - l. The licensee's signature and date of signature;
  - 2. If a license for a licensee has been revoked or suspended by any state within the previous that two years, documentation that includes:
    - a. The date of the revocation or suspension,
    - b. The state or jurisdiction of the revocation or suspension, and
    - c. An explanation of the revocation or suspension;
  - 3. If the licensee is currently ineligible for licensure in any state because of a prior license revocation or suspension, documentation that includes:
    - a. The date of the ineligibility for licensure,
    - b. The state or jurisdiction of the ineligibility for licensure, and
    - c. An explanation of the ineligibility for licensure;
  - 4. A renewal fee specified in R9-16-508.
- B.** According to A.R.S. § 36-1904, the Department shall allow a speech-language pathologist assistant to renew a license within 30 calendar days after the expiration date of the license by submitting to the Department:
1. The renewal application, including documentation required in subsection (A), and
  2. Fees specified in R9-16-508.
- C.** An individual who does not submit a renewal application, documentation; and fees required in subsection (A) or (B), shall reapply for an initial license according to R9-16-502.

**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Section R9-16-503 renumbered to R9-16-502; new Section R9-16-503 renumbered from R9-16-504 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 26 A.A.R. 852, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-504. Continuing Education**

- A.** Twenty-four months prior to submitting a renewal application, a licensee shall complete continuing education.
- B.** Continuing education shall:
  1. Directly relate to the practice of speech-language pathology;
  2. Have educational objectives that exceed an introductory level of knowledge of speech-language pathology; and
  3. Consist of courses that include advances within the last five years in:
    - a. Practice of speech-language pathology,
    - b. Auditory rehabilitation,
    - c. Ethics, or
    - d. Federal and state statutes or rules.

- C.** A continuing education course developed, endorsed, or sponsored by one of the following meets the requirements in subsection (B):
  1. Hearing Healthcare Providers of Arizona,
  2. Arizona Speech-Language-Hearing Association,
  3. American Speech-Language-Hearing Association,
  4. International Hearing Society,
  5. International Institute for Hearing Instrument Studies,
  6. American Auditory Society,
  7. American Academy of Audiology,
  8. Academy of Doctors of Audiology,
  9. Arizona Medical Association,
  10. American Academy of Otolaryngology-Head and Neck Surgery, or
  11. An organization determined by the Department to be consistent with an organization in subsection (C)(1) through (10).
- D.** A speech-language pathologist assistant shall comply with the requirements in A.R.S. § 36-1904.

**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Section R9-16-504 renumbered to R9-16-503; new Section R9-16-504 renumbered from R9-16-506 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 26 A.A.R. 852, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-505. Enforcement**

- A.** The Department may, as applicable:
  1. Deny, revoke, or suspend a speech-language pathologist assistant license under A.R.S. § 36-1934;
  2. Request an injunction under A.R.S. § 36-1937; or
  3. Assess a civil money penalty under A.R.S. § 36-1939.
- B.** In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:
  1. The type of violation,
  2. The severity of the violation,
  3. The danger to public health and safety,
  4. The number of violations,
  5. The number of clients affected by the violations,
  6. The degree of harm to a client,
  7. A pattern of noncompliance, and
  8. Any mitigating or aggravating circumstances.

**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 852, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**Table 1. Renumbered**

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**Historical Note**

New Table 1 made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Table 1 renumbered to Table 5.1 by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

**R9-16-506. Time-frames**

- A. For each type of license issued by the Department under this Article, Table 5.1 specifies the overall time-frame described in A.R.S. § 41-1072(2).
  - 1. An applicant or licensee and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
  - 2. The extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.
- B. For each type of license issued by the Department under this Article, Table 5.1 specifies the administrative completeness review time-frame described in A.R.S. § 41-1072(1).
  - 1. The administrative completeness review time-frame begins on the date the Department receives an application and required documentation required in this Article.
  - 2. Except as provided in subsection (B)(3), the Department shall provide a written notice of administrative completeness or a notice of deficiencies to an applicant within the administrative completeness review time-frame.
    - a. If an application or required documentation is not complete, the notice of deficiencies shall list each deficiency and the information or documentation needed to complete the application.
    - b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date of the notice until the date the Department receives the missing documents or information.
    - c. If the applicant does not submit to the Department all or documentation listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the application withdrawn.
  - 3. If the Department issues a license during the administrative completeness review time-frame, the Department

shall not issue a separate written notice of administrative completeness.

- C. For each type of license issued by the Department under this Article, Table 5.1 specifies the substantive review time-frame described in A.R.S. § 41-1072(3), which begins on the date of the notice of administrative completeness.
  - 1. Within the substantive review time-frame, the Department shall provide a written notice to the applicant that the Department issued or denied the license.
  - 2. During the substantive review time-frame:
    - a. The Department may make one comprehensive written request for additional information or documentation; and
    - b. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information or documentation.
  - 3. A comprehensive written request or a supplemental request for additional information or documentation suspends the substantive review time-frame and the overall time-frame from the date of the request until the date the Department receives all the documents and information requested.
  - 4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for additional information or documentation within 30 calendar days after the date of the request, the Department shall deny the license.
- D. An applicant who is denied a license may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Section R9-16-506 renumbered to R9-16-504; new Section R9-16-506 renumbered from R9-16-507 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 852, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**Table 5.1. Time-frames (in calendar days)**

Type of Approval	Statutory Authority	Overall Time-Frame	Administrative Completeness Review Time-Frame	Time to Respond to Notice of Deficiency	Substantive Review Time-Frame	Time to Respond to Comprehensive Written Request
Initial License (R9-16-502)	A.R.S. §§ 36-1904 and 36-1940.04	60	30	30	30	30
Renewal License (R9-16-503)	A.R.S. § 36-1904	60	30	30	30	30

**Historical Note**

Table 5.1 renumbered from Table 1 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Table 5.1 repealed; new Table 5.1 made and recodified under Section R9-16-506 by final expedited rulemaking at 26 A.A.R. 852, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-507. Changes Affecting a License or a Licensee; Request for a Duplicate License**

- A. A licensee shall submit a notice to the Department in writing within 30 calendar days after the effective date of a change in:
  - 1. The licensee’s home address or e-mail address, including the new home address or e-mail address;

- 2. The licensee’s name, including one of the following with the licensee’s new name:
  - a. Marriage certificate,
  - b. Divorce decree, or
  - c. Other legal document establishing the licensee’s new name; or

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3. The place or places, including address or addresses, where the licensee engages in the practice of speech-language pathology.
- B.** A licensee may obtain a duplicate license by submitting to the Department a written request for a duplicate license in a Department-provided format that contains:
1. The licensee's name and address,
  2. The licensee's license number and expiration date,
  3. The licensee's signature and date of signature, and
  4. A duplicate license fee specified in R9-16-508.

**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). Section R9-16-507 renumbered to R9-16-506; new Section R9-16-507 renumbered from R9-16-508 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 26 A.A.R. 852, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**R9-16-508. Fees**

- A.** An applicant shall submit to the Department the following fees:
1. An initial nonrefundable application fee, \$100; and
  2. An initial license fee, \$200.
- B.** An applicant shall submit to the Department a \$200 license fee for renewal.
- C.** If an applicant submits a renewal license application specified in subsection (B) within 30 calendar days after the license expiration date, the applicant shall submit with the renewal license application a \$25 late fee.
- D.** An applicant for initial licensure is not required to submit the applicable fee in subsection (A), if the applicant submits an attestation that the applicant meets the criteria for waiver of licensing fees in A.R.S. § 41-1080.01.
- E.** The fee for a duplicate license is \$25.

**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 2132, effective January 30, 2010 (Supp. 09-4). R9-16-508 renumbered to R9-16-507 by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). New Section made by final expedited rulemaking at 26 A.A.R. 852, with an immediate effective date of April 8, 2020 (Supp. 20-2).

**ARTICLE 6. RADIATION TECHNOLOGISTS****R9-16-601. Definitions**

In addition to the definitions in A.R.S. § 32-2801, the following definitions apply in this Article unless otherwise specified:

1. "Applicant" means:
  - a. An individual who submits an application packet, or
  - b. A person who submits a request for approval of a radiation technologist training program.
2. "Application packet" means the information, documents, and fees required by the Department for a certificate or permit.
3. "ARRT" means the American Registry of Radiologic Technologists.
4. "Authorized user" means the same as in A.A.C. R9-7-102.
5. "Calendar day" means each day, not including the day of the act, event, or default, from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until

the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.

6. "CBRPA" means the Certification Board for Radiology Practitioner Assistants.
7. "Certification" means the issuing of a certificate.
8. "Chest radiography" means radiography performed to visualize the heart and lungs only.
9. "Continuing education" means a course or learning activity that provides instruction and training designed to develop or improve the professional competence of a certificate holder related to the certificate holder's scope of practice.
10. "Contrast media" means material intentionally administered to a human body to define a part or parts of the human body that are not normally radiographically visible.
11. "Department-approved educational program" means a curriculum of courses and learning activities that is accredited by a nationally recognized accreditation body or granted approval through the Department.
12. "Department-approved examination" means a test administered through ARRT, NMTCB, ISCD, or CBRPA.
13. "Extremity" means the same as in A.A.C. R9-7-102.
14. "Fluoroscopy" means the use of radiography to directly visualize internal structures of the human body, the motion of internal structures, and fluids in real time, or near real-time, to aid in the treatment or diagnosis of disease or the performance of other medical procedures.
15. "ISCD" means the International Society for Clinical Densitometry.
16. "Nationally recognized accreditation body" means ARRT, NMTCB, ISCD, or CBRPA.
17. "NMTCB" means the Nuclear Medicine Technology Certification Board.
18. "Radiograph" means the record of an image, representing anatomical details of a part of a human body examined through the use of ionizing radiation, formed by the differential absorption of ionizing radiation within the part of the human body.
19. "Radiography" means the use of ionizing radiation in making radiographs.
20. "Radiopharmaceutical agent" means a radionuclide or radionuclide compound designed and prepared for administration to human beings.

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).

**R9-16-602. Training Programs**

- A.** The Department shall maintain a list of Department-approved educational programs according to A.R.S. § 32-2804 on the Department's website at <https://www.azdhs.gov/licensing/special/index.php#mrt-provider-info>.
- B.** An applicant may request Department approval of a curriculum of courses and learning activities as a training program by submitting an application packet that contains:
1. An application, in a Department-provided format, that includes:
    - a. The name and address of the school providing the training program;
    - b. The name, title, telephone number, and e-mail address of the administrator or designee of the school; and
    - c. A list of each training program for which approval is being requested, including the number of hours of instruction provided for each;

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2. A copy of the curriculum that includes course titles and course descriptions; and
  3. A list of instructors providing the instruction and the credentials of each.
- C.** The Department shall:
1. Review each application packet according to R9-16-621; and
  2. If approved, add the applicant's school to the list of Department-approved educational programs in subsection (A).
- D.** If an applicant for certification or permit did not complete a Department-approved educational program, the applicant may submit to the Department a copy of the curriculum for the training program completed by the applicant with the applicant's application packet in R9-16-606(B), R9-16-607(A), or R9-16-609(A).
- iii. Achieved a score of at least 70% on a Department-approved examination; or
  - b. Meets the criteria in A.R.S. § 32-4302(A).
- B.** An individual certified as a practical technologist in podiatry shall:
1. Follow the standards specified in the 2017 American Society of Radiologic Technologists Limited X-Ray Machine Operator Practice Standards, available at [https://www.asrt.org/docs/default-source/practice-standards-published/ps\\_lxmo.pdf?sfvrsn=29e176d0\\_16](https://www.asrt.org/docs/default-source/practice-standards-published/ps_lxmo.pdf?sfvrsn=29e176d0_16), incorporated by reference, on file with the Department, and including no future editions or amendments; and
  2. Only perform radiographic examinations of the lower leg, ankle, and foot, without the use of fluoroscopy or contrast media.

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).

**R9-16-603. Practical Technologist in Radiology - Eligibility and Scope of Practice**

- A.** An individual is eligible for certification as a practical technologist in radiology if the individual:
1. Is at least 18 years of age; and
  2. Either:
    - a. Has completed a training program in radiologic technology through a Department-approved educational program and achieved a score of at least 67% on a Department-approved examination; or
    - b. Meets the criteria in A.R.S. § 32-4302(A).
- B.** An individual certified as a practical technologist in radiology shall:
1. Follow the standards specified in the 2017 American Society of Radiologic Technologists Limited X-Ray Machine Operator Practice Standards available at [https://www.asrt.org/docs/default-source/practice-standards-published/ps\\_lxmo.pdf?sfvrsn=29e176d0\\_16](https://www.asrt.org/docs/default-source/practice-standards-published/ps_lxmo.pdf?sfvrsn=29e176d0_16), incorporated by reference, on file with the Department, and including no future editions or amendments;
  2. Perform only:
    - a. Chest radiography, and
    - b. Radiography of the extremities; and
  3. Not use fluoroscopy or contrast media.

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).

**R9-16-604. Practical Technologist in Podiatry - Eligibility and Scope of Practice**

- A.** An individual is eligible for certification as a practical technologist in podiatry if the individual:
1. Is at least 18 years of age; and
  2. Either:
    - a. Has:
      - i. Completed a training program in podiatry radiology through a Department-approved educational program;
      - ii. Received a signed and dated attestation from a podiatrist licensed according to A.R.S. Title 32, Chapter 7, verifying that the applicant:
        - (1) Completed training under the direction of the licensed podiatrist, and
        - (2) Is proficient in independently taking radiographs; and

**R9-16-605. Practical Technologist in Bone Densitometry - Eligibility and Scope of Practice**

- A.** An individual is eligible for certification as a practical technologist in bone densitometry if the individual:
1. Is at least 18 years of age; and
  2. Either:
    - a. Has completed a training program in bone densitometry through a Department-approved educational program and achieved a score of at least 70% on a Department-approved examination, or
    - b. Meets the criteria in A.R.S. § 32-4302(A).
- B.** An individual certified as a practical technologist in bone densitometry shall:
1. Follow the standards specified in the 2017 American Society of Radiologic Technologists Bone Densitometry Practice Standards, available at [https://www.asrt.org/docs/default-source/practice-standards-published/ps\\_bd.pdf?sfvrsn=11e176d0\\_22](https://www.asrt.org/docs/default-source/practice-standards-published/ps_bd.pdf?sfvrsn=11e176d0_22), incorporated by reference, on file with the Department, and including no future editions or amendments; and
  2. Apply ionizing radiation only to a person's hips, spine, and extremities through the use of a bone density machine without the use of fluoroscopy or contrast media.

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).

**R9-16-606. Application for Examination**

- A.** An individual may apply for examination if the individual meets eligibility criteria for a:
1. Practical technologist in radiology listed in R9-16-603(A);
  2. Practical technologist in podiatry listed in R9-16-604(A); or
  3. Practical technologist in bone densitometry listed in R9-16-605(A).
- B.** An applicant for examination shall submit an application packet to the Department that includes:
1. The information and documents required in R9-16-619;
  2. Except as provided in R9-16-602(D), documentation of completion of a Department-approved educational program; and
  3. For an applicant for examination as a practical technologist in podiatry, the attestation specified in R9-16-604(A)(2)(a)(ii).

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- C. The Department shall approve or deny an individual's application for examination according to R9-16-621.
- D. If the Department determines that the application packet submitted under subsection (B) is complete and in compliance, the Department shall notify the applicant that the applicant is approved to test.
- E. Upon notification by the Department according to subsection (D), and applicant:
1. Shall arrange testing through AART, and
  2. Has six months to complete testing before the applicant is required to re-apply for examination.
- another state or country related to unprofessional conduct; and
4. The applicable fee in R9-16-623.
- C. The Department shall approve or deny an individual's application for initial certification according to R9-16-621.

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).

**R9-16-608. Radiologic Technologist, Nuclear Medicine Technologist, and Radiation Therapy Technologist - Eligibility and Scope of Practice**

- A. An individual is eligible to apply for initial certification as a radiologic technologist, nuclear medicine technologist, or radiation therapy technologist if the individual:
1. Is at least 18 years of age; and
  2. Satisfies one of the following:
    - a. Holds current applicable ARRT or NMTCB certification,
    - b. Has completed a Department-approved educational program in radiation technology and has a passing score on a Department-approved examination, or
    - c. Meets the criteria in A.R.S. § 32-4302(A).
- B. An individual certified as a radiologic technologist shall follow the standards specified in the 2017 American Society of Radiologic Technologists Radiography Practice Standards, available at [https://www.asrt.org/docs/default-source/practice-standards-published/ps\\_rad.pdf?sfvrsn=13e176d0\\_18](https://www.asrt.org/docs/default-source/practice-standards-published/ps_rad.pdf?sfvrsn=13e176d0_18), incorporated by reference, on file with the Department, and including no future editions or amendments.
- C. An individual certified as a nuclear medicine technologist shall:
1. Follow the standards specified in the 2017 American Society of Radiologic Technologists Nuclear Medicine Practice Standards, available at [https://www.asrt.org/docs/default-source/practice-standards-published/ps\\_nm.pdf?sfvrsn=1ee176d0\\_14](https://www.asrt.org/docs/default-source/practice-standards-published/ps_nm.pdf?sfvrsn=1ee176d0_14), incorporated by reference, on file with the Department, and including no future editions or amendments; and
  2. Use radiopharmaceutical agents on humans for diagnostic or therapeutic purposes only.
- D. An individual certified as a radiation therapy technologist shall follow the standards specified in the 2017 American Society of Radiologic Technologists Radiation Therapy Practice Standards, available at [https://www.asrt.org/docs/default-source/practice-standards-published/ps\\_rt.pdf?sfvrsn=18e076d0\\_16](https://www.asrt.org/docs/default-source/practice-standards-published/ps_rt.pdf?sfvrsn=18e076d0_16), incorporated by reference, on file with the Department, and including no future editions or amendments.
- Historical Note**
- New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).
- R9-16-607. Application for Initial Certification as a Practical Technologist in Radiology, Practical Technologist in Podiatry, or Practical Technologist in Bone Densitometry**
- A. Except as provided in subsection (B), an applicant for initial certification as a practical technologist in radiology, practical technologist in podiatry, or practical technologist in bone densitometry shall submit an application packet to the Department that includes:
1. The information and documents required in R9-16-619;
  2. Except as provided in R9-16-602(D), documentation of completion of a Department-approved educational program;
  3. Documentation of achieving the applicable minimum score on a Department-approved examination;
  4. For an application for a practical technologist in podiatry, the signed attestation in R9-16-604(A)(2)(a)(ii) containing:
    - a. The name and date of birth of the applicant,
    - b. The name and license number of the licensed podiatrist,
    - c. A statement by the licensed podiatrist verifying completion of the applicant's clinical training and approval of radiographic images taken by the applicant, and
    - d. The licensed podiatrist's signature and date; and
  5. The applicable fee in R9-16-623.
- B. If an applicant for initial certification as a practical technologist in radiology, practical technologist in podiatry, or practical technologist in bone densitometry may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:
1. The information and documentation required in R9-16-619;
  2. Documentation of the professional license or certification issued to the applicant by each state in which the applicant holds a professional license or certification;
  3. A statement, signed and dated by the applicant, attesting that the applicant:
    - a. Has been licensed or certified in another state for at least one year, with a scope of practice consistent with the scope of practice for which certification is being requested;
    - b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
    - c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
    - d. Does not have a complaint, allegation, or investigation pending before another regulatory entity in

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- i. Completing a Department-approved educational program, except as provided in R9-16-602(D); and
  - ii. Having a passing score on a Department-approved examination; and
3. The applicable fee in R9-16-623.
- B.** If an applicant for initial certification as a radiation technologist, nuclear medicine technologist, or radiation therapy technologist may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:
1. The information and documentation required in R9-16-619;
  2. Documentation of the professional license or certification issued to the applicant by each state in which the applicant holds a professional license or certification;
  3. A statement, signed and dated by the applicant, attesting that the applicant:
    - a. Has been licensed or certified in another state for at least one year, with a scope of practice consistent with the scope of practice for which certification is being requested;
    - b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
    - c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
    - d. Does not have a complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
  4. The applicable fee in R9-16-623.
- C.** The Department shall approve or deny an individual's application for initial certification according to R9-16-621.

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).

**R9-16-610. Mammographic Technologist - Eligibility and Scope of Practice**

- A.** An individual is eligible to apply for initial certification as a mammographic technologist if the individual:
1. Is at least 18 years of age;
  2. Possesses a current Department-issued certification in radiologic technology; and
  3. Satisfies one of the following:
    - a. Holds a current ARRT certification in mammography;
    - b. Meets the initial training and education requirements in 21 CFR 900.12 and has a passing score on a Department-approved examination in mammography, or
    - c. Meets the criteria in A.R.S. § 32-4302(A).
- B.** An individual certified as a mammographic technologist:
1. Shall follow the standards specified in the 2017 American Society of Radiologic Technologists Mammography Practice Standards, available at [https://www.asrt.org/docs/default-source/practice-standards-published/ps\\_mamm.pdf?sfvrsn=10e076d0\\_16](https://www.asrt.org/docs/default-source/practice-standards-published/ps_mamm.pdf?sfvrsn=10e076d0_16), incorporated by reference, on file with the Department, and including no future editions or amendments; and
  2. May perform diagnostic mammography or screening mammography, as defined in A.R.S. § 30-651.

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).

**R9-16-611. Student Mammography Permits**

- A.** Before beginning the initial training in 21 CFR 900.12 under R9-16-610(A)(3)(b), an individual shall obtain a student mammography permit from the Department.
- B.** An applicant for a student mammography permit shall submit an application packet to the Department that includes:
1. The information and documents required under R9-16-619; and
  2. A Department-provided agreement form that includes the following:
    - a. The name and date of birth of the applicant;
    - b. The name, license number, e-mail address, and telephone number of a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology;
    - c. A statement that the licensed radiologist is accepting responsibility for the applicant's supervision and training; and
    - d. The licensed radiologist's signature and date of signing.
- C.** The Department shall approve or deny an individual's application for a student mammography permit according to R9-16-621.
- D.** A student mammography permit is valid for one year from the date issued and may not be renewed.

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).

**R9-16-612. Application for Initial Certification as a Mammographic Technologist**

- A.** Except as provided in subsection (B), an applicant for initial certification as a mammographic technologist shall submit an application packet to the Department that includes:
1. The information and documents required in R9-16-619;
  2. The applicant's current radiology technologist certificate number;
  3. The applicant's current student mammography permit number, if applicable;
  4. Either:
    - a. A copy of current ARRT certification in mammography; or
    - b. Documentation of:
      - i. Completing of initial education and training that meets the requirements specified in 21 CFR 900.12, and
      - ii. Having a passing score on a Department-approved examination in mammography; and
  5. The applicable fee in R9-16-623.
- B.** If an applicant for initial certification as a mammographic technologist may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:
1. The information and documentation required in R9-16-619;
  2. Documentation of the license or certification as a mammographic technologist issued to the applicant by each state in which the applicant holds the license or certification;
  3. A statement, signed and dated by the applicant, attesting that the applicant:
    - a. Has been licensed or certified as a mammographic technologist in another state for at least one year;

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- b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
  - c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
  - d. Does not have a complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
4. The applicable fee in R9-16-623.
- C. The Department shall approve or deny an individual's application for initial certification as a mammographic technologist according to R9-16-621.
- c. A statement that the licensed radiologist is accepting responsibility for the applicant's supervision and training; and
  - d. The licensed radiologist's signature and date of signing; and
3. The applicable fee in R9-16-623.
- C. The Department shall approve or deny an individual's application for a computed tomography preceptorship certificate according to R9-16-621.
- D. A computed tomography preceptorship certificate is valid for one year from the date issued and may not be renewed.
- E. At least 30 days before the expiration of an individual's computed tomography preceptorship certificate, the individual may apply for a computed tomography temporary certificate by submitting an application packet to the Department that includes:

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).

**R9-16-613. Computed Tomography Technologist - Eligibility and Scope of Practice**

- A. An individual is eligible to apply for initial certification as a computed tomography technologist if the individual:
1. Is at least 18 years of age;
  2. Possesses a current Department-issued certification as a radiologic technologist or nuclear medicine technologist; and
  3. Satisfies one of the following:
    - a. Holds a current ARRT or NMTCB certification in computed tomography;
    - b. Has completed two years of training in computed tomography and twelve hours of computed tomography-specific education; or
    - c. Meets the criteria in A.R.S. § 32-4302(A).
- B. An individual certified as a computed tomography technologist:
1. Shall follow the standards specified in the 2017 American Society of Radiologic Technologists Computed Tomography Practice Standards, available at [https://www.asrt.org/docs/default-source/practice-standards-published/ps\\_ct.pdf?sfvrsn=9e076d0\\_16](https://www.asrt.org/docs/default-source/practice-standards-published/ps_ct.pdf?sfvrsn=9e076d0_16), incorporated by reference, on file with the Department, and including no future editions or amendments; and
  2. May apply ionizing radiation to a human using a computed tomography machine for diagnostic purposes.

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).

**R9-16-614. Application for Computed Tomography Technologist Preceptorship and Temporary Certification**

- A. Before beginning training under R9-16-613(A)(3)(b), an individual shall obtain a computed tomography preceptorship certificate from the Department.
- B. An applicant for a computed tomography preceptorship certificate shall submit an application packet to the Department that includes:
1. The information and documents required under R9-16-619;
  2. A Department-provided agreement form from a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology, that includes the following:
    - a. The name and date of birth of the applicant;
    - b. The name, license number, e-mail address, and telephone number of the licensed radiologist;

1. The information and documents required under R9-16-619;
  2. A Department-provided agreement form from a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology, that includes the following:
    - a. The name and date of birth of the applicant;
    - b. The name, license number, e-mail address, and telephone number of the licensed radiologist;
    - c. A statement that the licensed radiologist is accepting responsibility for the applicant's supervision and training; and
    - d. The licensed radiologist's signature and date of signing; and
  3. The applicable fee in R9-16-623.
- F. The Department shall approve or deny an individual's application for a computed tomography temporary certificate according to R9-16-621.
- G. A computed tomography temporary certificate is valid for one year and may not be renewed.

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3). Section heading corrected to heading made in the table of contents at 25 A.A.R. 2409; Section amended by final rulemaking at 26 A.A.R. 350, effective April 5, 2020 (Supp. 20-1).

**R9-16-615. Application for Initial Certification for a Computed Tomography Technologist**

- A. Except as provided in subsection (B), an applicant for initial certification as a computed tomography technologist shall submit an application packet to the Department that includes:
1. The information and documents required in R9-16-619;
  2. The applicant's current radiation technologist or nuclear medicine technologist certificate number;
  3. The applicant's computed tomography preceptorship number or temporary certificate number, if applicable;
  4. Either:
    - a. A copy of the applicant's current ARRT or NMTCB certification in computed tomography; or
    - b. Documentation of completion of:
      - i. Two years of training in computed tomography, and
      - ii. Twelve hours of computed tomography-specific education; and
  5. The applicable fee in R9-16-623.
- B. If an applicant for initial certification as a computed tomography technologist may be eligible for certification under A.R.S.

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§ 32-4302(A), the applicant shall submit an application packet to the Department that includes:

1. The information and documentation required in R9-16-619;
  2. Documentation of the license or certification as a computed tomography technologist issued to the applicant by each state in which the applicant holds the license or certification;
  3. A statement, signed and dated by the applicant, attesting that the applicant:
    - a. Has been licensed or certified as a computed tomography technologist in another state for at least one year;
    - b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
    - c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
    - d. Does not have a complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
  4. The applicable fee in R9-16-623.
- C. The Department shall approve or deny an individual's application for initial certification as a computed tomography technologist according to R9-16-621.

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).

**R9-16-616. Radiologist Assistant - Eligibility and Scope of Practice**

- A. An individual is eligible to apply for initial certification as a radiologist assistant if the individual:
1. Is at least 18 years of age; and
  2. Satisfies one of the following:
    - a. Holds a current ARRT or CBRPA certification as a radiologist assistant;
    - b. Has:
      - i. Completed a baccalaureate degree or post-baccalaureate certificate from an accredited educational institution that encompasses a radiologist assistant curriculum that includes a radiologist-directed clinical preceptorship, and
      - ii. Achieved a passing score on an ARRT or a CBRPA examination for radiologist assistants; or
    - c. Meets the criteria in A.R.S. § 32-4302(A).
- B. An individual certified as a radiologist assistant:
1. Shall follow the standards specified the 2017 American Society of Radiologic Technologists Radiologist Assistant Practice Standards, available at [https://www.asrt.org/docs/default-source/practice-standards-published/ps\\_raa.pdf?sfvrsn=1ae076d0\\_16](https://www.asrt.org/docs/default-source/practice-standards-published/ps_raa.pdf?sfvrsn=1ae076d0_16), incorporated by reference on file with the Department, and including no future editions or amendments; and
  2. May perform the following procedures under the direction of a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology:
    - a. Fluoroscopy;
    - b. Assessment and evaluation of the physiological and psychological responsiveness of individuals undergoing radiologic procedures;

- c. Evaluation of image quality, making initial image observations and communicating observations to the supervising radiologist; and
  - d. Administration of contrast media or other medications prescribed by the supervising radiologist.
- C. A radiologist assistant shall not interpret images, make diagnoses, or prescribe medications or therapies.

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).

**R9-16-617. Application for Initial Certification as a Radiologist Assistant**

- A. Except as provided in subsection (B), an applicant for initial certification as a radiologist assistant shall submit an application packet to the Department that includes:
1. The information and documents required in R9-16-619;
  2. Either:
    - a. The applicant's current ARRT or CBRPA certification as a radiologist assistant; or
    - b. Documentation of:
      - i. Completing a baccalaureate degree or post-baccalaureate certificate from an accredited educational institution that encompasses a radiologist assistant curriculum that includes a radiologist-directed clinical preceptorship, and
      - ii. Having a passing score on an ARRT or a CBRPA examination for radiologist assistants; and
  3. The applicable fee in R9-16-623.
- B. If an applicant for initial certification as a radiologist assistant may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:
1. The information and documentation required in R9-16-619;
  2. Documentation of the license or certification as a radiologist assistant issued to the applicant by each state in which the applicant holds the license or certification;
  3. A statement, signed and dated by the applicant, attesting that the applicant:
    - a. Has been licensed or certified as a radiologist assistant in another state for at least one year;
    - b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
    - c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
    - d. Does not have a complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
  4. The applicable fee in R9-16-623.
- C. The Department shall approve or deny an individual's application for initial certification as a radiologist assistant according to R9-16-621.

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).

**R9-16-618. Special Permits**

- A. An applicant for a special permit under A.R.S. § 32-2814(B) shall submit an application packet to the Department containing:
1. The information and documents required in R9-16-619;

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2. An attestation, in a Department-provided format, from the health care institution in which the applicant proposes to practice:
    - a. Stating that the requesting health care institution is located in an Arizona medically underserved area, as defined in A.A.C. R9-15-101(4), or a health professional shortage area, as defined in A.A.C. R9-15-101(25);
    - b. Verifying that the health care institution developed and is implementing a program of continuing education for the applicant to protect the health and safety of individuals undergoing radiologic procedures; and
    - c. Signed and dated by the health care institution's administrator or designee; and
  3. A letter signed by the health care institution's administrator or designee that provides justification for the issuance of a special permit.
- B.** The Department shall approve or deny an application for a special permit according to R9-16-621.
- C.** A special permit is valid for no more than one year, but may be renewed as provided in subsection (A) if the circumstances justifying the issuance of a special permit have not changed.

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).

**R9-16-619. Application Information**

An applicant for certification shall submit to the Department:

1. The following information in a Department-provided format:
    - a. The applicant's name;
    - b. The applicant's residential address and, if different, mailing address;
    - c. The applicant's telephone number;
    - d. The applicant's e-mail address;
    - e. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
    - f. The applicant's date of birth;
    - g. The applicant's current employment in the radiation technology field, if applicable, including:
      - i. The employer's name,
      - ii. The applicant's position,
      - iii. Dates of employment,
      - iv. The address of the employer,
      - v. The supervisor's name,
      - vi. The supervisor's email address, and
      - vii. The supervisor's telephone number;
    - h. The applicant's educational history related to radiation technology, including:
      - i. The name and address of each educational institution,
      - ii. The degree or certification received, and
      - iii. The applicant's date of graduation;
    - i. The type of certificate being applied for;
    - j. Whether the applicant has ever been convicted of a felony or a misdemeanor in this or another state;
    - k. If the applicant has been convicted of a felony or a misdemeanor:
      - i. The date of the conviction,
      - ii. The state or jurisdiction of the conviction,
      - iii. An explanation of the crime of which the applicant was convicted, and
      - iv. The disposition of the case;
    - l. Whether the applicant holds other professional licenses or certifications and, if so:
      - i. The professional license or certification, and
      - ii. The state in which the professional license or certification was issued;
  - m. Whether the applicant has had a professional license or certificate suspended, revoked, or had disciplinary action taken against the professional license or certificate;
  - n. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-621;
  - o. An attestation that the information submitted as part of an application packet is true and accurate; and
  - p. The applicant's signature and date of signing;
2. If the applicant has had a professional license or certificate suspended, revoked, or had disciplinary action taken against the professional license or certificate within the previous five years, documentation that includes:
  - a. The date of the disciplinary action, revocation, or suspension;
  - b. The state or nationally accredited certifying body that issued the disciplinary action, revocation, or suspension; and
  - c. An explanation of the disciplinary action, revocation, or suspension;
3. If the applicant is currently ineligible for licensing or certification in any state because of a license revocation or suspension, documentation that includes:
  - a. The date of the ineligibility for licensing or certification,
  - b. The state or jurisdiction of the ineligibility for licensing or certification, and
  - c. An explanation of the ineligibility for licensing or certification; and
4. Documentation for the applicant that complies with A.R.S. § 41-1080.

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).

**R9-16-620. Renewal of Certification**

- A.** Certifications issued under R9-16-607, R9-16-609, R9-16-612, R9-16-615, and R9-16-617 are valid for two years after issuance, unless revoked.
- B.** A certificate holder may apply to renew a certification:
1. Within 90 days before the expiration date of the certificate holder's current certification;
  2. Within the 30-day period after the expiration date of the certificate holder's certification, if the certificate holder pays the late renewal penalty fee in R9-16-623; or
  3. Within the extension time period granted under A.R.S. § 32-4301.
- C.** An applicant for renewal of a certification shall submit to the Department an application packet, including:
1. The following in a Department-provided format:
    - a. The applicant's name, address, telephone number, email address, date of birth, and Social Security number;
    - b. The applicant's current certification number and type;
    - c. The applicant's current employment in the radiation technology field, if applicable, including:
      - i. The employer's name,
      - ii. The applicant's position,
      - iii. Dates of employment,
      - iv. The address of the employer,
      - v. The supervisor's name,

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- vi. The supervisor’s email address, and
- vii. The supervisor’s telephone number;
- d. Whether the applicant has, within the two years before the date of the application, had:
  - i. A certificate issued under this Article suspended or revoked; or
  - ii. A professional license or certificate revoked by another state, jurisdiction, or nationally recognized accreditation body;
- e. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-621;
- f. Attestation that all the information submitted as part of the application packet is true and accurate; and
- g. The applicant’s signature and date of signature;
- 2. Either:
  - a. An attestation that the applicant completed continuing education required under A.R.S. § 32-2815(D) and that documentation of completion is available upon request, signed and dated by the applicant; or
  - b. A copy of the applicant’s current certification from a nationally recognized accreditation body; and
- 3. The applicable renewal fee and, if applicable, the late renewal penalty fee required in R9-16-623.
- D. The Department shall approve or deny an application for recertification according to R9-16-621.

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).

**R9-16-621. Review Time-frames**

- A. For each type of certificate or permit issued by the Department under this Article, Table 6.1 specifies the overall time-frame described in A.R.S. § 41-1072(2).
  - 1. An applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
  - 2. The extension of the substantive review time-frame and overall time-frame may not exceed 25% of the overall time-frame.
- B. For each type of certificate or permit issued by the Department under this Article, Table 6.1 specifies the administrative completeness review time-frame described in A.R.S. § 41-1072(1).
  - 1. The administrative completeness review time-frame begins on the date the Department receives an application packet required in this Article.
  - 2. Except as provided in subsection (B)(3), the Department shall provide written notice of administrative completeness or a notice of deficiencies to an applicant within the administrative completeness review time-frame.

- a. If an application packet is not complete, the notice of deficiencies shall list each deficiency and the information or documentation needed to complete the application packet.
- b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date of the notice until the date the Department receives the missing information or documentation.
- c. If the applicant does not submit to the Department all the information or documentation listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the application packet withdrawn.
- 3. If the Department issues a certificate during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
- C. For each type of certificate or permit issued by the Department under this Article, Table 6.1 specifies the substantive review time-frame described in A.R.S. § 41-1072(3), which begins on the date the Department sends a written notice of administrative completeness.
  - 1. Within the substantive review time-frame, the Department shall provide written notice to the applicant that the Department approved or denied the application.
  - 2. During the substantive review time-frame:
    - a. The Department may make one comprehensive written request for additional information or documentation; and
    - b. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information or documentation.
  - 3. A comprehensive written request or a supplemental request for additional information or documentation suspends the substantive review time-frame and the overall time-frame from the date of the request until the date the Department receives all the information or documentation requested.
  - 4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for additional information or documentation within 30 calendar days after the date of the request, the Department shall deny the certificate or permit.
- D. An applicant who is denied a certificate or permit may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).

**Table 6.1. Time-frames**

Type of Application	Administrative Completeness Review Time-frame (in Calendar Days)	Substantive Review Time-frame (in Calendar Days)	Overall Time-frame (in Calendar Days)
Application for Examination	30	30	60
Initial Certificate	30	30	60
Renewal Certificate	30	30	60
Student Mammography Permit	30	30	60
Computed Tomography Preceptorship Certificate or Computed Tomography Temporary Certificate	30	30	60
Special Permit	30	30	60
School Approval	60	60	120

## CHAPTER 16. DEPARTMENT OF HEALTH SERVICES - OCCUPATIONAL LICENSING

**Historical Note**

New Table 6.1 made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).

**R9-16-622. Changes Affecting a Certificate or Certificate Holder; Request for a Duplicate Certificate**

- A.** A certificate holder shall notify the Department in writing, within 30 calendar days after the effective date of a change in:
1. The certificate holder's residential address, mailing address, or e-mail address, including the new residential address, mailing address, or e-mail address;
  2. The certificate holder's name, including a copy of the legal document establishing the certificate holder's new name; or
  3. The certificate holder's employer, including the name and address of the new employer.
- B.** A certificate holder may obtain a duplicate certificate by submitting to the Department:
1. A written request for a duplicate certificate, in a Department-provided format, that includes:
    - a. The certificate holder's name and address,
    - b. The certificate holder's certificate number and expiration date, and
    - c. The certificate holder's signature and date of signature; and
  2. The duplicate certificate fee in R9-16-623.
- C.** A certificate holder may submit to the Department, either as a separate written document or as part of the renewal application, a signed and dated request to transfer to inactive status or retirement status under A.R.S. § 32-2816(F).

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).

**R9-16-623. Fees**

- A.** Except as provided in subsection (C) or (D), an applicant shall submit to the Department the following nonrefundable fees for:
1. An initial application or renewal application for certification as a practical technologist in radiology, practical technologist in podiatry, or practical technologist in bone densitometry, \$100;
  2. An initial application or renewal application for certification as a radiation technologist, nuclear medicine technologist, or radiation therapy technologist, \$100;
  3. An initial application or renewal application for certification as a mammographic technologist, \$20;
  4. A computed tomography preceptorship certificate or computed tomography temporary certificate, \$10;
  5. An initial application or renewal application for certification as a computed tomography technologist, \$20;

6. An initial application or renewal application for certification as a radiologist assistant, \$100; and
7. A late renewal penalty fee according to A.R.S. § 32-2816(C), \$50.

- B.** The fee for a duplicate certificate is \$10.
- C.** An applicant for initial certification is not required to submit the applicable fee in subsection (A) if the applicant, as part of the applicable application packet in R9-16-607, R9-16-609, R9-16-612, R9-16-615, or R9-16-617, submits an attestation that the applicant meets the criteria for waiver of licensing fees in A.R.S. § 41-1080.01.
- D.** As allowed under A.R.S. § 32-2816(F), a certificate holder is not required to submit a fee for renewal of certification if the certificate holder submits to the Department an affidavit stating that the certificate holder:
1. Is retired from the practice of radiologic technology, or
  2. Requests to be placed on inactive status.

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).  
Section amended by final rulemaking at 26 A.A.R. 350, effective April 5, 2020 (Supp. 20-1).

**R9-16-624. Enforcement**

- A.** The Department may, as applicable:
1. Deny, revoke, or suspend a certificate or permit under A.R.S. § 36-2821;
  2. Request an injunction under A.R.S. § 36-2825; or
  3. Assess a civil money penalty under A.R.S. § 36-2821.
- B.** In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:
1. The type of violation,
  2. The severity of the violation,
  3. The danger to public health and safety,
  4. The number of violations,
  5. The number of individuals affected by the violations,
  6. The degree of harm to an individual,
  7. A pattern of noncompliance, and
  8. Any mitigating or aggravating circumstances.
- C.** A certificate holder or permittee may appeal a disciplinary action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

New Section made by final expedited rulemaking at 25 A.A.R. 2409, effective August 27, 2019 (Supp. 19-3).

**36-136.01. Sanitarians council; members; powers; fees; examinations; continuing education; exceptions; renewal; definition**

- A. The director shall establish a sanitarians council composed of five members. The members shall be the director of the department of health services or the director's representative, two governmental sanitarians, one of whom shall represent the two largest counties and one of whom shall represent the thirteen smaller counties, one industrial sanitarian and one lay person representing the public. The director shall be the council chairman. Members of the council are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2. Reciprocity
- B. The council shall provide for the classification of sanitarians, establish standards for persons employed as sanitarians and provide for the examination of applicants for registration as sanitarians. A person shall not be employed as a sanitarian by the state or any political subdivision of the state unless that person is registered by the department as a sanitarian of the class determined by the council to be appropriate for the performance of the functions of that person's employment.
- C. The council may register an applicant as a sanitarian without an examination if both of the following are true:
  - 1. The applicant is registered, certified or licensed as a sanitarian in another jurisdiction and pays all applicable fees prescribed pursuant to this section.
  - 2. The council determines that the applicant meets at least one of the requirements prescribed pursuant to subsection I of this section and the examination requirements in the applicant's regulatory jurisdiction are substantially equivalent to this state's examination requirements.
- D. Each registration expires on December 31 of each year. To renew a registration, the registrant must submit an application that contains the information prescribed by the director by rule and documentation of completion of at least ten hours of council approved continuing education during the previous twelve months. A registrant who has been registered for less than twelve months before the registration expiration date is not required to complete continuing education for the year that immediately precedes registration renewal. A registrant who does not renew the registration on or before February 15 of each year shall not perform the duties of a registered sanitarian.
- E. Pursuant to rules adopted by the director, the council may defer the continuing education requirements prescribed in subsection D of this section.
- F. The council shall charge and collect a nonrefundable application fee of twenty-five dollars. The council shall charge and collect a nonrefundable examination fee established by the director by rule that does not exceed the cost of administering the examination. A fee of ten dollars shall be charged and collected for the annual renewal of registration certificates.
- G. All monies collected by the sanitarians council shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

- H. Only a person with a valid registration certificate issued pursuant to this section may use the title "registered sanitarian" or the abbreviation "R.S." after the registrant's name.
- I. An applicant is eligible for registration as a sanitarian if the applicant meets at least one of the following qualifications:
1. The applicant has completed five years of employment as a sanitarian aide in either a recognized public health agency or private industry in a position directly related to environmental health.
  2. The applicant has satisfactorily completed at least five years of full-time military duty in the field of environmental health.
  3. The applicant has successfully completed thirty semester hours of credit at an accredited college or university in the natural sciences.
- J. For the purposes of this section, "sanitarian" means a person who by education or experience in the physical, biological and sanitary sciences is qualified to carry out educational, investigational and technical duties in the field of environmental health.

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.

## **D-3**

### **DEPARTMENT OF HEALTH SERVICES**

Title 9, Chapter 3, All Articles, Department of Health Services - Child Care Group Homes

**Amend:** R9-3-101, R9-3-102, Table 1.1, R9-3-201, R9-3-202, R9-3-203, R9-3-205, R9-3-206, R9-3-301, R9-3-302, R9-3-303, R9-3-304, R9-3-306, R9-3-308, R9-3-309, R9-3-401, R9-3-402, R9-3-403, R9-3-404, Table 4.2, R9-3-407, R9-3-408, R9-3-504, R9-3-506, R9-3-507



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

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**MEETING DATE:** September 1, 2020

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

**FROM:** Council Staff

**DATE:** August 6, 2020

**SUBJECT: DEPARTMENT OF HEALTH SERVICES**  
Title 9, Chapter 3, All Articles

**Amend:** R9-3-101, R9-3-102, Table 1.1, R9-3-201, R9-3-202, R9-3-203, R9-3-205, R9-3-206, R9-3-301, R9-3-302, R9-3-303, R9-3-304, R9-3-306, R9-3-308, R9-3-309, R9-3-401, R9-3-402, R9-3-403, R9-3-404, Table 4.2, R9-3-407, R9-3-408, R9-3-504, R9-3-506, R9-3-507

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### **Summary:**

This Notice of Final Expedited Rulemaking from the Department of Health Services (Department) relates to rules in Title 9, Chapter 3, All Articles. The Department seeks to amend these rules consistent with its recent Five-Year Review Report (5YRR) for these rules, which the Council approved on December 3, 2019. In that 5YRR, the Department stated it would amend the rules to increase understandability of the rules, simplify and clarify requirements, improve consistency with A.R.S. § 28-907, and update outdated language. The Department stated it would also update the Department of Agriculture Child and Adult Food Program for children and infants. This expedited rulemaking seeks to amend the rules consistent with the proposed course of action in the Department's 5YRR.

The Department received an exemption from the rulemaking moratorium to conduct this expedited rulemaking on June 2, 2020.

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

Yes. The Department states that in the 5YRR for these rules, which the Council approved on December 3, 2019, the Department proposed to amend the rules in this chapter to increase understandability of the rules by simplifying and clarifying requirements such as requirements for fingerprint cards, requirements for adult staff member high school education, and requirements related to child passenger restraint system to improve consistency with A.R.S. § 28-907; to update the Department of Agriculture Child and Adult Food Program for children and infants; and to update antiquated language and outdated references such as “accredited,” “enrolled children,” “modification,” and “positioning device.” The Department states that the rule amendments meet the criteria for expedited rulemaking under A.R.S. § 41-1027(A)(7) because they implement a course of action proposed in a 5YRR. Upon review, Council staff agrees with the Department that this rulemaking meets the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(7).

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

Yes, the Department cites to both general and specific authority for these rules.

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

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

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

The Department did not receive any comments in conducting this expedited rulemaking.

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

There were no changes between the proposed rules and final rules.

6. **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.

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

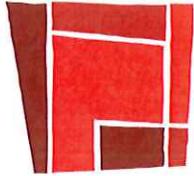
Under Article 2, the Department outlines requirements for a certificate or approval of a child care home. A.R.S. § 36-897.01(A) provides that “[a] child care group home be certified by the department.” Thus, the Department indicates that a general permit is not applicable under A.R.S. § 1037(A)(3) because it would not meet the applicable statutory requirements.

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

The Department states it did not rely on any study for this expedited rulemaking.

**9. Conclusion**

In this expedited rulemaking, the Department seeks to amend the rules consistent with a proposed course of action in the most recent 5YRR for these rules, which the Council approved in December 2019. The amended rules would be more clear, concise, understandable, effective, and consistent with other rules and statutes. If approved, the rulemaking would be effective immediately upon the Department filing its Certificate of Approval with the Secretary of State’s office. Council staff recommends approval of this rulemaking.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

July 20, 2020

**VIA EMAIL: [grrc@azdoa.gov](mailto: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. 3, Expedited Rulemaking

Dear Ms. Sornsin:

1. The close of record date: July 6, 2020
2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):  
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. The rulemaking implements, without material change, a course of action that was proposed in a five-year review report approved by the Council on December 3, 2019, pursuant to section A.R.S. § 41-1056. Changes to the rules include updating outdated definitions and statutory references and making the rules consistent with statutes. Thus, the Department believes the rulemaking complies with criteria for expedited rulemaking under A.R.S. § 41-1027(A)(7).
3. 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. 3 relates to a five-year-review report approved by the Council on December 3, 2019.

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.

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

The Department's point of contact for questions about the rulemaking documents is Teresa Koehler at [Teresa.Koehler@azdhs.gov](mailto:Teresa.Koehler@azdhs.gov).

Sincerely,



Robert Lane  
Director's Designee

RL:tk

Enclosures

Douglas A. Ducey | Governor    Cara M. Christ, MD, MS | Director

**NOTICE OF FINAL EXPEDITED RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 3. DEPARTMENT OF HEALTH SERVICES – CHILD CARE GROUP HOMES**

**PREAMBLE**

<b><u>1.</u></b>	<b><u>Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
	R9-3-101.	Amend
	R9-3-102.	Amend
	Table 1.1.	Amend
	R9-3-201.	Amend
	R9-3-202.	Amend
	R9-3-203.	Amend
	R9-3-205.	Amend
	R9-3-206.	Amend
	R9-3-301.	Amend
	R9-3-302.	Amend
	R9-3-303.	Amend
	R9-3-304.	Amend
	R9-3-306.	Amend
	R9-3-308.	Amend
	R9-3-309.	Amend
	R9-3-401.	Amend
	R9-3-402.	Amend
	R9-3-403.	Amend
	R9-3-404.	Amend
	Table 4.2.	Amend
	R9-3-407.	Amend
	R9-3-408.	Amend
	R9-3-504.	Amend
	R9-3-506.	Amend
	R9-3-507.	Amend
<b><u>2.</u></b>	<b><u>Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):</u></b>	
	Authorizing statutes: A.R.S. §§ 36-132(A) and 36-136(G)	

Implementing statutes: A.R.S. §§ 36-897.01 through 36-897.13

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

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

**4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed expedited rulemaking:**

Notice of Rulemaking Docket Opening: 26 A.A.R. 1232, June 19, 2020

Notice of Proposed Expedited Rulemaking: 26 A.A.R. 1201, June 19, 2020

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

Name: Thomas Salow, Branch Chief

Address: Arizona Department of Health Services  
Division of Licensing Services  
150 N. 18th Ave., Suite 400  
Phoenix, AZ 85007

Telephone: (602) 364-1935

Fax: (602) 364-4808

E-mail: [Thomas.Salow@azdhs.gov](mailto:Thomas.Salow@azdhs.gov)

or

Name: Robert Lane, Chief

Address: Arizona Department of Health Services  
Office of Administrative Counsel and Rules  
150 N. 18th Ave., Suite 200  
Phoenix, AZ 85007

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: [Robert.Lane@azdhs.gov](mailto: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 expedited rulemaking:**

The five-year-review report (Report) for 9 A.A.C. 3 was approved by the Governor's Regulatory Review Council on December 3, 2019. The Report identified that the rules are effective, however could be improved to make clearer and increase understandability of the rules by simplifying and clarifying some requirements, updating antiquated language and outdated definition and references, and making minor technical and grammatical changes. Changes include adding and updating antiquated terms, such as "accredited" "enrolled children," "modification" and

“positioning device.” Other changes include clarifying fingerprint clearance cards, updating the Department of Agriculture Child and Adult Care Food Program Meal Patterns for children and infants, and clarifying adult staff member high school education requirement. Additionally, requirements related to child passenger restraint system will be changed to make consistent with A.R.S. § 28-907. The Report also stated that the Arizona Department of Health Services (Department) plans to amend the rules as identified in the Report. The changes identified will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of a regulated person. Amending the rules as identified in the Report meets the criteria for expedited rulemaking and implements a course of action proposed in a five-year-review report. This rulemaking achieves the purpose prescribed in A.R.S. § 41-1027(A)(7) to implement a course of action proposed in a five-year-review report. The Department believes amending these rules will eliminate confusion and reduce regulatory burden. This rulemaking improves the health and safety of children residing at a child care group home. The amendments 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 expedited rulemaking.

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

This final expedited rulemaking does not diminish a previous grant of authority of a political subdivision of this state.

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

The agency is excluded from providing an economic, small business, and consumer impact statement pursuant to A.R.S. § 41-1055(D)(2).

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

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

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

The Department did not receive public or stakeholder comments about the expedited rulemaking.

**12. Any agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rules 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 specifically to the Department or this specific expedited 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:**

A.R.S. § 36-897.01(A) provides that “A child care group home be certified by the department. An application for a certificate shall be made on a written or electronic form prescribed by the department and shall contain all information required by the department.” The Department believes that under A.R.S. § 41-1037(A)(3) that a general permit is not applicable.

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

There are no federal rules applicable to the subject of the rule.

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

No such analysis was submitted.

**13. Incorporations by reference and their 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:**

The rule was not previously made as an emergency rule.

**15. The full text of the rule follows:**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 3. DEPARTMENT OF HEALTH SERVICES – OCCUPATIONAL LICENSING  
CHILD CARE GROUP HOMES**

**ARTICLE 1. GENERAL**

- R9-3-101. Definitions
- R9-3-102. Time-frames
- Table 1.1. Time-frames (in calendar days)

**ARTICLE 2. CERTIFICATION**

- R9-3-201. Application for a Certificate
- R9-3-202. Fingerprinting and Central Registry ~~Background Check~~ Requirements
- R9-3-203. Certification Fees
- R9-3-205. Changes Affecting a Certificate
- R9-3-206. Inspections; Investigations

**ARTICLE 3. OPERATING A CHILD CARE GROUP HOME**

- R9-3-301. Certificate Holder and Provider Responsibilities
- R9-3-302. Staff Training
- R9-3-303. Enrollment of Children
- R9-3-304. Enrolled Child Immunization Requirements
- R9-3-306. Pesticides
- R9-3-308. Suspected Abuse or Neglect of an Enrolled Child
- R9-3-309. Medications

**ARTICLE 4. PROGRAM AND EQUIPMENT STANDARDS**

- R9-3-401. General Program, Equipment, and Health and Safety Standards
- R9-3-402. Supplemental Standards for Napping or Sleeping
- R9-3-403. Supplemental Standards for Care of an Enrolled Infant or One- or Two-Year-Old Child
- R9-3-404. Supplemental Standards for Care of an Enrolled Child with Special Needs
- Table 4.2. Meal Pattern Requirements for Children
- R9-3-407. General Food Service and Food Handling Standards
- R9-3-408. Field Trips and Other Trips Away from the Child Care Group Home

**ARTICLE 5. PHYSICAL ENVIRONMENT STANDARDS**

- R9-3-504. Fire Safety, Gas Safety, and Emergency Standards
- R9-3-506. General Cleaning and Sanitation Standards
- R9-3-507. Diaper-Changing Standards

## ARTICLE 1. GENERAL

### R9-3-101. Definitions

In addition to the definitions in A.R.S. § 36-897 and unless the context indicates otherwise, the following definitions apply in this Chapter:

1. “Abuse” has the meaning in A.R.S. § 8-201.
2. “Accident” means an unexpected occurrence that:
  - a. Causes physical injury to an enrolled child, and
  - b. May or may not be an emergency.
3. “Accredited” means approved by the:
  - a. New England ~~Association of Schools and Colleges~~, Commission of Institution of Higher Education
  - b. Middle States ~~Association of Colleges and Secondary Schools~~, Commission of Higher Education
  - c. North Central ~~Association of Colleges and Schools~~, the Higher Learning Commission
  - d. Northwest Association of Schools and Colleges,
  - e. ~~Southern Association of Colleges and Schools~~, Commission on Colleges, or
  - f. Western Association of Colleges and Schools.
4. “Activity” means an action planned by a certificate holder or staff member and performed by an enrolled child while supervised by a staff member.
5. “Adaptive device” means equipment used to augment an individual’s use of the individual’s arms, legs, sight, hearing, or other physical part or function.
6. “Adult” means an individual 18 years of age or older.
7. “Age-appropriate” means consistent with a child’s age and age-related stage of physical growth and mental development.
8. “Applicant” means an individual or business organization requesting one of the following:
  - a. A certificate under R9-3-201, or
  - b. Approval of a change affecting a certificate under R9-3-205.
9. “Application” means the documents that an applicant is required to submit to the Department to request a certificate or approval of a request for a change affecting a certificate.
10. “Business organization” has the same meaning as “entity” in A.R.S. § 10-140.
11. “Calendar day” means each day, not including the day of the act, event, or default from

which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

- 11.12. “Capacity” means the maximum number of enrolled children authorized by the Department to be present at a child care group home during hours of operation.
12. ~~“Certificate” means the written authorization issued by the Department to operate a child care group home in Arizona.~~
13. “Certificate holder” means a person to whom the Department has issued a certificate.
14. “Change in ownership” means a transfer of controlling legal or controlling equitable interest and authority in the operation of a child care group home.
15. “Child” means any individual younger than 13 years of age.
16. “Child care experience” means an individual’s documented work with children in:
  - a. A child care facility or a child care group home that was licensed, certified, or approved by a state in the United States or by one of the Uniformed Services of the United States;
  - b. A public school, a charter school, a private school, or an accommodation school; or
  - c. A public or private educational institution authorized under the laws of another state where instruction was provided for any grade or combination of grades between pre-kindergarten and grade 12.
17. “Child care services” means the range of activities and programs provided by a certificate holder to an enrolled child, including personal care, supervision, education, guidance, and transportation.
18. “Child with special needs” means:
  - a. A child with a documented diagnosis from a physician, physician assistant, or registered nurse practitioner of a physical or mental condition that substantially limits the child in providing self-care or performing manual tasks or any other major life function such as walking, seeing, hearing, speaking, breathing, or learning;
  - b. A child with a “developmental disability” as defined in A.R.S. § 36-551; or
  - c. A “child with a disability” as defined in A.R.S. § 15-761.
19. “Clean” means:
  - a. To remove dirt or debris by methods such as washing with soap and water, vacuuming, wiping, dusting, or sweeping; or

- b. Free of dirt and debris.
- 20. “Communicable disease” has the meaning in A.A.C. R9-6-101.
- 21. “Compensation” means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit, that is received as payment.
- 22. “Controlling person” has the meaning in A.R.S. § 36-881.
- 23. “Corporal punishment” means any physical act used to discipline a child that inflicts pain to the body of the child, or that may result in physical injury to the child.
- 24. “CPR” means cardiopulmonary resuscitation.
- 25. “Credit hour” means an academic unit earned through an accredited college or university for completing the equivalent of one hour of class time each week during a semester or equivalent shorter course term, as designated by the accredited college or university.
- ~~26.~~ ~~“Days” means calendar days, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or state holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or state holiday.~~
- ~~27.~~26. “Designated agent” means an individual who is authorized by an applicant or certificate holder to receive communications from the Department, including legal service of process, and to file or sign documents on behalf of the applicant or certificate holder.
- ~~28.~~27. “Developmentally appropriate” means consistent with a child’s physical, emotional, social, cultural, and cognitive development, based on the child’s age and family background and the child’s personality, learning style, and pattern and timing of growth.
- ~~29.~~28. “Discipline” means the on-going process of helping a child develop self-control and assume responsibility for the child’s own actions.
- ~~30.~~29. “Documentation” means information in written, photographic, electronic, or other permanent form.
- ~~31.~~30. “Emergency” means a potentially life-threatening occurrence involving an enrolled child or staff member that requires an immediate response or medical treatment.
- ~~32.~~31. “Endanger” means to expose an individual to a situation where physical or mental injury to the individual may occur.
- ~~33.~~32. “Enrolled child” means a child:
  - a. Who is not a resident; and
  - b. Who has been placed by a parent or guardian, ~~who may be a staff member~~, to receive child care services at the child care group home regardless of payment.

- 34.33. “Fall zone” means the surface under and around a piece of equipment onto which a child falling from or exiting from the equipment would be expected to land.
- 35.34. “Field trip” means travel for a specific activity to a location away from an area of the child care group home approved for providing child care services.
- 36.35. “Food” means a raw, cooked, or processed edible substance or ingredient, including a beverage, used or intended for use in whole or in part for human consumption.
- 37.36. “Guidance” means the ongoing direction, counseling, teaching, or modeling of generally accepted social behavior through which a child learns to develop and maintain the self-control, self-reliance, and self-esteem necessary to assume responsibilities, make daily living decisions, and live according to generally accepted social behavior.
- 38.37. “Hazard” means a source of endangerment.
- 39.38. “High school equivalency diploma” means:
- a. A document issued by the Arizona ~~Department of Education~~ State Board of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B);
  - b. A document issued by another state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B); or
  - c. A document issued by another country to an individual who has completed that country’s equivalent of a 12th grade education, as determined by the Department based upon information obtained from American or foreign consulates or embassies or other governmental entities.
- 40.39. “Hours of operation” means the specific days of the week and time period during a day when a certificate holder provides child care services on a regular basis.
- 41.40. “Illness” means physical manifestation or signs of sickness such as pain, vomiting, rash, fever, discharge, or diarrhea.
- 42.41. “Immediate” or “Immediately” means without restriction, delay, or hesitation.
- 43.42. “Inaccessible” means:
- a. Out of an enrolled child’s reach, or
  - b. Locked.
43. “Individual plan” means a written description of the daily activities required for an enrolled child with special needs.
44. “Infant” means a child 12 months of age or younger.
45. “Infestation” means the presence of lice, pinworms, scabies, or other parasites.

- ~~46.~~ 46. “Licensed applicator” means an individual who complies with A.A.C. R3-8-201(C).
- ~~46.~~~~47.~~ 47. “Mat” means a foam pad that has a waterproof cover.
- ~~47.~~~~48.~~ 48. “Mechanical restraint” means a device, article, or garment attached or adjacent to a child’s body that the child cannot easily remove and that restricts the child’s freedom of movement or normal access to the child’s body, but does not include a device, article, or garment:
- a. Used for orthopedic purposes, or
  - b. Necessary to allow a child to heal from a medical condition.
- ~~48.~~~~49.~~ 49. “Medication” means a substance prescribed by a physician, physician assistant, or registered nurse practitioner or that is available without a prescription for the treatment or prevention of illness or infestation.
- ~~49.~~~~50.~~ 50. “Menu” means a written description of food that a child care group home provides and serves as a meal or snack.
- ~~50.~~~~51.~~ 51. “Modification” means the substantial improvement, enlargement, reduction, alternation, or other substantial change in the facility or another structure on the premises at a child care group home.
- ~~50.~~~~52.~~ 52. “Motor vehicle” has the meaning in A.R.S. § 28-101.
- ~~51.~~~~53.~~ 53. “Neglect” has the meaning in A.R.S. § 8-201.
- ~~52.~~~~54.~~ 54. “Outbreak” has the meaning in A.A.C. R9-6-101.
- ~~53.~~~~55.~~ 55. “Parent” means:
- a. A natural or adoptive mother or father,
  - b. A legal guardian appointed by a court of competent jurisdiction, or
  - c. A “custodian” as defined in A.R.S. § 8-201.
- ~~54.~~~~56.~~ 56. “Perishable food” means food that becomes unfit for human consumption if not stored to prevent spoilage.
- ~~55.~~~~57.~~ 57. “Person” has the meaning in A.R.S. § 1-215.
- ~~56.~~~~58.~~ 58. “Personal items” means those articles of property that belong to an enrolled child and are brought to the child care group home for that enrolled child’s exclusive use, such as clothing, a blanket, a sheet, a toothbrush, a pacifier, a hairbrush, a comb, a washcloth, or a towel.
- ~~57.~~~~59.~~ 59. “Physician” means an individual licensed as a doctor of:
- a. Allopathic medicine under A.R.S. Title 32, Chapter 13;
  - b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;
  - c. Osteopathic medicine under A.R.S. Title 32, Chapter 17;

- d. Homeopathic medicine under A.R.S. Title 32, Chapter 29; or
  - e. Allopathic, naturopathic, osteopathic, or homeopathic medicine under the laws of another state.
- ~~58-60.~~ “Physician assistant” means:
- a. The same as in A.R.S. § 32-2501, or
  - b. An individual licensed as a physician assistant under the laws of another state.
- ~~61.~~ “Positioning device” means a belt or harness that prevents an enrolled infant’s movement.
- ~~59-62.~~ “Premises” means a child care group home’s residence and the surrounding property, including any structures on the property, that can be enclosed by a single unbroken boundary line that does not encompass property owned or leased by another person.
- ~~60-63.~~ “Registered nurse practitioner” means:
- a. The same as in A.R.S. § 32-1601, or
  - b. An individual licensed as a registered nurse practitioner under the laws of another state.
- ~~61-64.~~ “Regular basis” means at recurring, fixed, or uniform intervals.
- ~~62-65.~~ “Residence” means a dwelling, such as a house, used for human habitation.
- ~~63-66.~~ “Resident” means an individual who receives child care services and uses a child care group home as the individual’s principal place of habitation for 30 calendar days or more during the calendar year.
- ~~64-67.~~ “Sanitize” means to use heat, a chemical agent, or a germicidal solution to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
- ~~65-68.~~ “School-age child” means a child who attends:
- a. A public school, as defined for “school” in A.R.S. § 15-101; or
  - b. A private school, as defined in A.R.S. § 15-101.
- ~~66-69.~~ “Separate” means to exclude a child from and have the child physically move away from other children, while keeping the child under supervision.
- ~~67-70.~~ “Signed” means affixed with an individual’s signature or, if the individual is unable to write the individual’s name, with a symbol representing the individual’s signature.
- ~~68-71.~~ “Sippy cup” means a lidded drinking container that is designed to be leak-proof or leak-resistant and from which a child drinks through a spout or straw.
- ~~69-72.~~ “Space utilization” means the designated use of specific areas on the premises for providing child care services.
- ~~70-73.~~ “Staff member” means an individual who works at a child care group home providing

child care services, regardless of whether compensation is received by the individual in return for providing child care services, and includes a provider.

~~71.~~74. “Supervision” means:

- a. For a child who is awake, knowledge of and accountability for the actions and whereabouts of the child, including the ability to see or hear the child at all times, to interact with the child, and to provide guidance to the child;
- b. For a child who is asleep, knowledge of and accountability for the actions and whereabouts of the child, including the ability to see or hear the child at all times and to respond to the child;
- c. For a staff member who is not an adult, knowledge of and accountability for the actions and whereabouts of the staff member and the ability to interact with and provide guidance to the staff member; or
- d. For an individual other than a child or staff member, knowledge of and accountability for the actions and whereabouts of the individual, including the ability to see and hear the individual when the individual is in the presence of an enrolled child and the ability to intervene in the individual’s actions to prevent harm to enrolled children.

~~72.~~75. “Swimming pool” has the meaning in A.A.C. R18-5-201.

~~73.~~76. “Training” means instruction received through:

- a. Completion of a live or computerized conference, seminar, lecture, workshop, class, or course; or
- b. Watching a video presentation ~~and completing a Department provided form to document the video instruction.~~

~~74.~~77. “Week” means a seven-day period beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m.

~~75.~~78. “Working day” means the period between 8:00 a.m. and 5:00 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday.

**R9-3-102. Time-frames**

- A. The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Chapter is set forth in ~~Table 4~~ Table 1.1. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type

of approval granted by the Department under this Chapter is set forth in ~~Table 1~~ Table 1.1 and begins on the date that the Department receives an application.

1. The Department shall send a notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
  - a. A notice of deficiencies shall list each deficiency and the information or items needed to complete the application.
  - b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice of deficiencies is sent until the date that the Department receives all of the missing information or items from the applicant.
  - c. If an applicant fails to submit to the Department all of the information or items listed in the notice of deficiencies within 180 calendar days after the date that the Department sent the notice of deficiencies, the Department shall consider the application withdrawn.
2. If the Department issues a certificate or other approval to the applicant during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. The substantive review time-frame described in A.R.S. § 41-1072 is set forth in Table 1 and begins on the date of the notice of administrative completeness.

1. As part of the substantive review for an application for a certificate, the Department shall conduct an inspection that may require more than one visit to the child care group home or premises.
2. As part of the substantive review for a request for approval of a change affecting a certificate that requires a change in the use of physical space at a child care group home, the Department shall conduct an inspection that may require more than one visit to the child care group home.
3. The Department shall send a certificate or a written notice of approval or denial of a certificate or other request for approval to an applicant within the substantive review time-frame.
4. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the Department and the applicant have agreed in writing to allow the Department to submit supplemental requests for information.
  - a. If the Department determines that an applicant, a child care group home, or the

premises are not in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter, the Department shall send a comprehensive written request for additional information that includes a written statement of deficiencies stating each statute and rule upon which noncompliance is based.

- b. An applicant shall submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including, if applicable, documentation of the corrections required in a statement of deficiencies, within 30 calendar days after the date of the comprehensive written request for additional information or the supplemental request for information.
  - c. The substantive review time-frame and the overall time-frame are suspended from the date that the Department sends a comprehensive written request for additional information or a supplemental request for information until the date that the Department receives all of the information requested, including, if applicable, documentation of corrections required in a statement of deficiencies.
  - d. If an applicant fails to submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including, if applicable, documentation of corrections required in a statement of deficiencies, within the time prescribed in subsection (C)(4)(b), the Department shall deny the application.
5. The Department shall issue a certificate or approval if the Department determines that the applicant and the child care group home or premises are in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter, and the applicant submits documentation of corrections, which is acceptable to the Department, for any deficiencies.
6. If the Department denies a certificate or approval, the Department shall send to the applicant a written notice of denial setting forth the reasons for denial and all other information required by A.R.S. § 41-1076.

**Table 1.1. Time-frames (in calendar days)**

<b>Type of Approval</b>	<b>Statutory Authority</b>	<b>Overall Time-frame</b>	<b>Administrative Completeness Review Time-frame</b>	<b>Substantive Review Time-frame</b>
Certificate under R9-3-201	A.R.S. § 36-897.01	150	30	120

Approval of Change Affecting Certificate under R9-3-205(B)	A.R.S. §§ 36-897.01 and 36-897.02	75	30	45
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## ARTICLE 2. CERTIFICATION

### R9-3-201. Application for a Certificate

An applicant for a certificate shall:

1. Be at least 21 years of age, and
2. Submit to the Department an application packet containing:
  - a. An application on a form provided by the Department that contains:
    - i. The applicant's name and date of birth;
    - ii. The name to be used for the child care group home, if any;
    - iii. The address and telephone number of the residence;
    - iv. The mailing address of the applicant, if different from the address of the residence;
    - v. The applicant's contact telephone number, if different from the telephone number of the residence;
    - vi. The applicant's e-mail address, if applicable;
    - vii. The name of the provider, if different from the applicant;
    - viii. The requested capacity for the child care group home;
    - ix. The anticipated hours of operation for the child care group home;
    - x. Whether the applicant agrees to allow the Department to submit supplemental requests for information;
    - xi. Whether the applicant or any controlling person has been denied a certificate or license to operate a child care group home or child care facility in this state or another state or has had a certificate or license to operate a child care group home or child care facility revoked in this state or another state and, if so:
      - (1) The name of the individual who had the certificate or license denied or revoked,
      - (2) The reason for the denial or revocation,
      - (3) The date of the denial or revocation, and
      - (4) The name and address of the certifying or licensing agency that denied or revoked the certificate or license;

- xii. A statement that the applicant has read and will comply with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;
- xiii. A statement that the applicant has sufficient financial resources to comply with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;
- xiv. A statement that the information provided in the application packet is accurate and complete; and
- xv. The applicant's signature and date the applicant signed the application;
- b. A copy of the applicant's:
  - i. U.S. passport,
  - ii. Birth certificate,
  - iii. Naturalization documents, or
  - iv. Documentation of legal resident alien status;
- c. A copy of the applicant's valid fingerprint clearance card issued, both front and back, according to A.R.S. Title 41, Chapter 12, Article 3.1;
- d. A copy of the form required in A.R.S. § 36-897.03(B) for the applicant;
- e. A document issued by the Department showing that the applicant has completed Department-provided orientation training that included the Department's role in certifying and regulating child care group homes under A.R.S. Title 36, Chapter 7.1, Article 4, and this Chapter;
- f. A floor plan of the residence where child care services will be provided, showing:
  - i. The location and dimensions of each room in the residence, with designation of the rooms to be used for providing child care services;
  - ii. The location of each exit from the residence;
  - iii. The location of each sink and toilet available for use by enrolled children;
  - iv. The location of each smoke detector in the residence; and
  - v. The location of each fire extinguisher in the residence;
- g. A site plan of the premises showing:
  - i. The location and dimensions of the outdoor activity area;
  - ii. The height of the fence around the outdoor activity area;
  - iii. The location of each exit from the outdoor activity area;
  - iv. The location of the residence;
  - v. The location of each swimming pool, if applicable;

- vi. The location and height of the fence around each swimming pool, if applicable; and
- vii. The location and dimensions of any other building or structure on the premises, if applicable;
- h. If the child care group home is located within one-fourth of a mile of agricultural land:
  - i. The names and addresses of the owners or lessees of each parcel of agricultural land located within one-fourth mile of the child care group home, and
  - ii. A copy of an agreement complying with A.R.S. § 36-897.01(B) for each parcel of agricultural land;
- i. The applicable fee in R9-3-203; and
- j. If the applicant is a business organization, a form provided by the Department that contains:
  - i. The name, street address, city, state, and zip code of the business organization;
  - ii. The type of business organization;
  - iii. The name, date of birth, title, street address, city, state, and zip code of the designated agent;
  - iv. The name, date of birth, title, street address, city, state, and zip code of each other controlling person;
  - v. A copy of the business organization's articles of incorporation, articles of organization, partnership documents, or joint venture documents, if applicable; and
  - vi. Documentation of good standing issued by the Arizona Corporation Commission and dated no earlier than three months before the date of the application, if applicable.

**R9-3-202. Fingerprinting and Central Registry ~~Background Check~~ Requirements**

- A. A certificate holder shall ensure that:
  - 1. A staff member completes, signs, dates, and submits to the certificate holder before the staff member's starting date of employment or volunteer service:
    - a. The form required in A.R.S. § 36-897.03(B); and
    - b. If required by A.R.S. § 8-804, the form in A.R.S. § 8-804(I); and
  - 2. An adult resident completes, signs, dates, and submits to the certificate holder before the

resident's starting date of residency or the date of certification of the child care group home the form required in A.R.S. § 36-897.03(B).

- B.** A certificate holder shall maintain documentation of a valid fingerprint clearance card issued under A.R.S. § 41-1758.03.
- C.** Except as provided in A.R.S. § 41-1758.03, a certificate holder shall ensure that a staff member or adult resident submits ~~to the certificate holder~~ a copy of:
  - 1. ~~The staff member's or adult resident's~~ A valid fingerprint clearance card, front and back, issued under A.R.S. Title 41, Chapter 12, Article 3.1; or
  - 2. The fingerprint clearance card application that ~~staff member or adult resident~~ was submitted to the Department of Public Safety under A.R.S. § 41-1758.02:
    - a. For the staff member, within seven working days after the staff member's starting date of employment or volunteer service; and
    - b. For the adult resident, within seven working days after the resident's starting date of residency or the date of certification of the child care group home.
- D.** A certificate holder shall ensure that each individual who is a staff member or an adult resident submits to the certificate holder a copy of the individual's valid fingerprint clearance card each time the fingerprint clearance card is issued or renewed.
- E.** If a staff member or resident possesses a fingerprint clearance card that was issued before the staff member or resident became a staff member or resident at the child care group home, a certificate holder shall:
  - 1. Contact the Department of Public Safety within seven working days after the individual becomes a staff member or resident to determine whether the fingerprint clearance card is valid; and
  - 2. Document this determination, including the name of the staff member or resident, the date of contact with the Department of Public Safety, and whether the fingerprint clearance card is valid.
- F.** If required by A.R.S. § 8-804, before an individual's starting date of employment or volunteer service, a certificate holder shall comply with the submission requirements in A.R.S. § 8-804(C) for the individual.
- G.** A certificate holder shall not allow an adult individual to be a staff member or a resident if the individual:
  - 1. Has been denied a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1, and has not received an interim approval under A.R.S. § 41-619.55;
  - 2. Receives an interim approval under A.R.S. § 41-619.55 but is subsequently denied a

good cause exception under A.R.S. § 41-619.55 and a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1;

3. Is a parent or guardian of a child adjudicated to be a dependent child as defined in A.R.S. § 8-201;
4. Has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;
5. Has had a license to operate a child care facility or certificate to operate a child care group home in this state or another state revoked for reasons related to the endangerment of the health and safety of children;
6. If applicable, has stated on the form required in A.R.S. § 8-804(I) that the individual is currently under investigation for an allegation of abuse or neglect or has a substantiated allegation of abuse or neglect and has not subsequently received a central registry exception according to A.R.S. § 41-619.57; or
7. If applicable, is disqualified from employment or volunteer service as a staff member according to A.R.S. § 8-804 and has not subsequently received a central registry exception according to A.R.S. § 41-619.57.

**R9-3-203. Certification Fees**

- A. Except as provided in subsection (B), the certification fee for a certificate holder is \$1,000.
- B. If a certificate holder participates in a Department-approved program, the Department may discount the certification fee, based on available funding.
- C. A certificate holder shall submit to the Department, every three years and no more than 60 calendar days before the anniversary date of the child care group home's certificate:
  1. A form provided by the Department that contains:
    - a. The certificate holder's name;
    - b. The child care group home's name, if applicable, and certificate number; and
    - c. Whether the certificate holder intends to submit the applicable fee:
      - i. With the form, or
      - ii. According to the payment plan in subsection (C)(2)(b); and
  2. Either:
    - a. The applicable fee in subsection (A) or (B), or
    - b. One-half of the applicable fee in subsection (A) or (B) with the form and the remainder of the applicable fee due no later than 120 calendar days after the anniversary date of the child care group home's certificate.

**R9-3-205. Changes Affecting a Certificate**

- A.** For an intended change in a certificate holder's name or the name of a child care group home:
1. The certificate holder shall send the Department written notice of the name change at least 30 calendar days before the intended date of the name change; and
  2. Upon receipt of the written notice required in subsection (A)(1), the Department shall issue an amended certificate that incorporates the name change but retains the anniversary date of the certificate.
- B.** At least 30 calendar days before the date of an intended change in a child care group home's space utilization or capacity, a certificate holder shall submit to the Department a written request for approval of the intended change that includes:
1. The certificate holder's name;
  2. The child care group home's name, if applicable;
  3. The name, telephone number, e-mail address, and fax number of a point of contact for the request;
  4. The child care group home's certificate number;
  5. The type of change intended:
    - a. Space utilization, or
    - b. Capacity;
  6. A narrative description of the intended change; and
  7. The following additional information, as applicable:
    - a. If requesting a change in capacity, the square footage of the outdoor activity area and the square footage of the indoor areas where child care services will be provided;
    - b. If requesting a change that involves a modification of the residence that requires a building permit, a copy of the building permit;
    - c. If requesting a change in space utilization that affects individual rooms:
      - i. A floor plan of the residence that complies with R9-3-201(2)(f) and shows the intended changes, and
      - ii. The square footage of each affected room; and
    - d. If requesting a change in space utilization that affects the outdoor activity area:
      - i. A site plan of the premises that complies with R9-3-201(2)(g) and shows the intended changes, and
      - ii. The square footage of the intended outdoor activity area.
- C.** The Department shall review a request submitted under subsection (B) according to R9-3-102. If the intended change is in compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and this

Chapter, the Department shall send the certificate holder an approval of the request and, if necessary, an amended certificate that incorporates the change but retains the anniversary date of the current certificate.

**D.** A certificate holder shall not implement any change in subsection (B) until the Department issues an approval or amended certificate.

**E.** ~~At least 30 days before the date of a change in ownership, a certificate holder shall send the Department written notice of the change in ownership.~~

**F.** ~~A person planning to assume operation of a child care group home shall obtain a new certificate as prescribed in R9-3-201 before beginning operation of the child care group home.~~

At least 30 calendar days before the date of a change in ownership:

1. A certificate holder shall send the Department written notice of the change in ownership; and

2. A person planning to assume operation of a child care group home shall obtain a new certificate as specified in R9-3-201 before beginning operation of the child care group home.

**G.F.** A certificate holder changing a child care group home's location shall:

1. Apply for a new certificate as prescribed in R9-3-201, and
2. Obtain a new certificate from the Department before beginning operation of the child care group home at the new location.

**H.G.** Within 30 calendar days after the date of a change in the business organization information provided under R9-3-201(2)(j), other than a change in ownership, a certificate holder that is a business organization shall send the Department written notice of the change.

**R9-3-206. Inspections; Investigations**

**A.** An applicant, certificate holder, or provider shall allow ~~the Department~~ immediate access to all areas of the premises that may affect the health, safety, or welfare of an enrolled child or to which an enrolled child may have access during hours of operation: to representatives from:

1. The Department,
2. The local health department,
3. Arizona Department of Child Safety, or
4. The local fire department or State Fire Marshal.

**B.** A certificate holder or provider shall permit the Department to interview each staff member or enrolled child outside of the presence of others as part of an investigation.

### ARTICLE 3. OPERATING A CHILD CARE GROUP HOME

#### R9-3-301. Certificate Holder and Provider Responsibilities

- A. A certificate holder shall:
1. Designate a provider who:
    - a. Lives in the residence;
    - b. Is 21 years of age or older;
    - c. Has a high school diploma, high school equivalency diploma, associate degree, or bachelor degree;
    - d. Meets one of the following:
      - i. Has completed at least three credit hours in child growth and development, nutrition, psychology, or early childhood education;
      - ii. Has completed at least 60 hours of training in child growth and development, nutrition, psychology, early childhood education, or management of a child care business; or
      - iii. Has at least 12 months of child care experience; and
    - e. Has completed Department-provided orientation training that includes the Department's role in certifying and regulating child care group homes under A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;
  2. Ensure that each staff member is 16 years of age or older;
  3. Ensure that each resident 12 years of age or older and each staff member submits, on or before the starting date of residency, employment, or volunteer services, one of the following as evidence of freedom from infectious active tuberculosis:
    - a. Documentation of a negative Mantoux skin test or other tuberculosis screening test recommended by the U.S. Centers for Disease Control and Prevention, administered within 12 months before the starting date of residency, employment, or volunteer service, that includes the date and the type of tuberculosis screening test; or
    - b. If the resident or staff member has had a positive Mantoux skin test or other tuberculosis screening test, a written statement that the resident or staff member is free from infectious active tuberculosis that is signed and dated by a physician, physician assistant, or registered nurse practitioner within six months before the starting date of residency, employment, or volunteer service; and
  4. Ensure that the provider:

- a. Supervises or assigns an adult staff member to supervise each staff member who is not an adult;
- b. Maintains on the premises a file for each staff member, for 12 months after the date the staff member last worked at the child care group home, containing:
  - i. The staff member's name, date of birth, home address, and telephone number;
  - ii. The staff member's starting date of employment or volunteer service;
  - iii. The staff member's ending date of employment or volunteer service, if applicable;
  - iv. The staff member's written statement attesting to current immunity against measles, rubella, diphtheria, mumps, and pertussis;
  - v. The form required in A.R.S. § 36-897.03(B);
  - vi. For an adult staff member, a copy of the staff member's valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1;
  - vii. Documents required by subsection (A)(3);
  - viii. Documentation of the requirements in A.R.S. § 36-897.03(C);
  - ix. If applicable:
    - (1) The form required in A.R.S. § 8-804(I);
    - (2) Documentation of the submission required in A.R.S. § 8-804(C) and the information received as a result of the submission; and
    - (3) Documentation of the completion of the Department-provided orientation training specified in subsection (A)(1)(e), if applicable;
  - x. Documentation of the training required in R9-3-302; and
  - xi. Documentation of a high school diploma, high school equivalency diploma, associate degree, or bachelor degree, if applicable;
- c. Maintains on the premises a file for each resident, for 12 months after the date the resident last resided at the child care group home, containing:
  - i. The resident's name and date of birth;
  - ii. The resident's relationship to the provider;
  - iii. The date the resident began residing at the child care group home;
  - iv. The date the resident last resided at the child care group home, if applicable;

- v. A written statement by the resident or, if the resident is a minor, the provider attesting to the resident's current immunity against measles, rubella, diphtheria, mumps, and pertussis;
  - vi. If the resident is an adult, the form required in A.R.S. § 36-897.03(B);
  - vii. If the resident is an adult, the documents required by R9-3-202(C)(2) or R9-3-202(D); and
  - viii. If the resident is 12 years of age or older, the documents required by subsection (A)(3);
- d. Prepares a dated attendance record for each day and ensures that each staff member records on the attendance record the staff member's start time and end time of providing child care services for the child care group home;
  - e. Maintains on the premises the dated attendance record required in subsection (A)(4)(d) for 12 months after the date on the attendance record;
  - f. Except as specified in R9-3-408, provides child care services only in areas:
    - i. Designated as provided in R9-3-201(2)(f)(i) or R9-3-201(2)(g)(i), or
    - ii. Approved under R9-3-205(C);
  - g. Does not engage in outside employment during hours of operation or operate another business at or out of the residence during hours of operation;
  - h. Does not allow another staff member to engage in or operate another business at or out of the residence during the staff member's assigned work hours at the child care group home;
  - i. Does not allow the operation of another business on the premises during hours of operation unless the operation of the business does not involve persons coming onto the premises during hours of operation because of the business; and
  - j. Does not allow the cultivation of medical marijuana on the premises.
- B.** A certificate holder shall ensure that all of the records required to be maintained by this Chapter either are written in English or, if written in a language other than English, include an English translation.
- C.** A certificate holder shall:
- 1. Secure and maintain general liability insurance of at least \$100,000 for the child care group home; and
  - 2. Maintain on the premises documentation of the insurance coverage required in subsection (C)(1).
- D.** A certificate holder shall ensure that:

- ~~1. An adult staff member with one of the following is on the premises and acting on behalf of the certificate holder when the provider is not present at the child care group home:~~
  1. While acting on behalf of the certificate holder when the provider is not present at the child care group home, an adult staff member with a high school diploma or high school equivalency certificate and one of the following is on the premises:
    - a. At least six months of child care experience;
    - b. Two or more credit hours in child growth and development, nutrition, psychology, or early childhood education; or
    - c. At least 30 hours of training in child growth and development, nutrition, psychology, or early childhood education; and
  2. At least one adult staff member, in addition to the provider or the staff member specified in subsection (D)(1), is on the premises when six or more enrolled children are at the child care group home.
- E.** A certificate holder shall ensure that a parent, ~~of an enrolled child~~ or an individual designated in writing by the parent, or legal guardian of an enrolled child is allowed immediate access during hours of operation to the areas of the premises where the enrolled child is receiving child care services.
- F.** A certificate holder shall:
1. Prepare a document that includes the following information:
    - a. The name and contact telephone number of the provider;
    - b. The hours of operation of the child care group home;
    - c. Charges, fees, and payment requirements for child care services;
    - d. Whether medications are administered at the child care group home and, if so, a description of what the parent is required to give to the child care group home;
    - e. Whether enrolled children go on field trips under the supervision of a staff member;
    - f. Whether the child care group home provides transportation for enrolled children to or from school, a school bus stop, or other locations;
    - g. The mechanism by which a staff member will verify that an individual contacting the child care group home by telephone claiming to be the parent of an enrolled child is the enrolled child's parent;
    - h. A statement that a parent has access to the areas on the premises where the parent's enrolled child is receiving child care services;

- i. A statement that inspection reports for the child care group home are available for review at the child care group home; and
    - j. The local address and contact telephone number for the Department; and
  - 2. Ensure that a staff member provides the document required in subsection (F)(1) to a parent of an enrolled child.
- G.** A certificate holder shall ensure that a staff member posts in a place that can be conspicuously viewed by individuals entering or leaving the child care group home:
- 1. The child care group home certificate;
  - 2. The name of the provider;
  - 3. The name of the staff member designated to act on behalf of the certificate holder when the provider is not present at the child care group home;
  - 4. The hours of operation for the child care group home;
  - 5. The weekly activity schedule required in R9-3-401(B)(4)(b);
  - 6. The amount of time in minutes enrolled children may watch television, videos, or DVDs at the child care group home; and
  - 7. The weekly menu, required in R9-3-406(F), before the first meal or snack of the week.
- H.** A certificate holder shall ensure that a staff member supervises any individual who is not a staff member and is on the premises where enrolled children are present.
- I.** A certificate holder shall ensure that a staff member who has current training in first aid and CPR is present during hours of operation when an enrolled child is on the premises or on a trip away from the premises under the supervision of a staff member.
- J.** A certificate holder shall ensure that if a staff member or resident lacks documentation of immunization or evidence of immunity that complies with A.A.C. R9-6-704 for a communicable disease listed in ~~A.A.C. R9-6-702(A)~~ A.A.C. R9-6-702:
- 1. The staff member or resident is excluded from the child care group home between the start and end of an outbreak of the communicable disease at the child care group home, or
  - 2. The child care group home is closed until the end of an outbreak at the child care group home.
- K.** Within 72 hours after changing a provider, a certificate holder shall send the Department written notice of the change, including the name of the new provider.
- L.** Except as provided in subsections (M) and (N), a certificate holder shall notify the Department in writing of a planned change in a child care group home's hours of operation at least three calendar days before the date of the planned change, including:
- 1. The certificate holder's name;

2. The child care group home's certificate number; and
  3. The current and intended hours of operation.
- M.** A certificate holder is not required to notify the Department of a change in a child care group home's hours of operation when the change in the child care group home's hours of operation is due to the occurrence of a state or federal holiday on a day of the week the child care group home regularly provides child care services.
- N.** When the premises of a child care group home are left unoccupied during hours of operation or the child care group home is temporarily closed due to an unexpected event, a certificate holder shall ensure that a staff member notifies the Department before leaving the child care group home unoccupied or closing the child care group home, stating the period of time during which the child care group home will be unoccupied or closed.

**R9-3-302. Staff Training**

- A.** Within 10 calendar days after the starting date of employment or volunteer service, a certificate holder shall provide, and each staff member shall complete, training for new staff members that includes all of the following:
1. Names, ages, and developmental stages of enrolled children;
  2. Health needs, nutritional requirements, any known allergies, and information about adaptive devices of enrolled children;
  3. Guiding and disciplining children;
  4. Hand washing techniques;
  5. Diapering techniques and toileting, if any enrolled children are in diapers or require assistance in using the toilet;
  6. Sudden infant death syndrome awareness, if child care services are provided to an infant or a one-year-old child;
  7. Preparing, serving, and storing food;
  8. Preparing, handling, and storing infant formula and breast milk, if any enrolled children are fed infant formula or breast milk;
  9. Recognizing signs of illness and infestation;
  10. Detecting, preventing, and reporting child abuse or neglect;
  11. Responding to accidents and emergencies;
  12. Sun safety;
  13. Procedures for trips away from the child care group home, if applicable; and
  14. Staff responsibilities as required by A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter.

- B. A certificate holder shall ensure that a staff member's completion of the training required by subsection (A) is documented and signed by the provider, including the date of completion of the training.
- C. A certificate holder shall ensure that each staff member completes a total of 12 or more actual hours of training every 12 months after becoming a staff member in two or more of the following:
  1. Child growth and development, which may include sudden infant death prevention;
  2. Developmentally appropriate activities;
  3. Nutrition and developmentally appropriate eating habits;
  4. Responding to accidents and emergencies, including CPR and first aid for infants and children;
  5. Recognizing signs of illness and infestation;
  6. Detecting, preventing, and reporting child abuse or neglect;
  7. Guiding and disciplining children; and
  8. Availability of community services and resources, including those available to children with special needs.
- D. A certificate holder shall ensure that a staff member submits to the certificate holder documentation of training received as required by subsection (C) as the training is completed.
- E. A certificate holder shall ensure that a staff member required by R9-3-301(I) meets all of the following:
  1. The staff member obtains first aid training specific to infants and children;
  2. The staff member obtains CPR training specific to infants and children, which includes a demonstration of the staff member's ability to perform CPR;
  3. The staff member maintains current training in first aid and CPR; and
  4. The staff member provides the certificate holder with a copy of the front and back of the current card ~~issued by the agency or instructor~~ issued to the staff member upon completing first aid and CPR training as proof of completion of the requirements ~~of~~ in this subsection.

**R9-3-303. Enrollment of Children**

- A. A certificate holder shall require that a child be enrolled by the child's parent or by an individual authorized in writing by the child's parent.
- B. Except as required in ~~A.R.S. § 36-3009~~ A.R.S. § 36-309, before a child ~~receives child care services~~ is enrolled at a child care group home, a certificate holder shall require the individual enrolling the child to complete a Department-provided Emergency, Information, and Immunization Record card containing:

1. The child's name, home address, city, state, zip code, sex, and date of birth;
  2. The date of the child's enrollment;
  3. The name, home address, city, state, zip code, and contact telephone number of each parent of the child;
  4. The name and contact telephone number of at least two individuals authorized by the child's parent to collect the child from the child care group home or to be contacted if the child's parent cannot be contacted;
  5. The name and contact telephone number of the child's physician, physician assistant, or registered nurse practitioner;
  6. Written authorization for emergency medical care of the child;
  7. The name of the individual to be contacted in case of injury or sudden illness of the child;
  8. A written description provided by a child's parent of the nutritional and dietary needs of the child;
  9. A written description provided by the child's parent noting the child's susceptibility to illness, physical conditions of which a staff member should be aware, and any individual requirements for health maintenance; and
  10. The dated signature of the individual completing the Emergency, Information, and Immunization Record card.
- C.** A certificate holder shall maintain a current Emergency, Information, and Immunization Record card for each enrolled child on the premises in a place that provides a staff member ready access to the card in the event of an emergency at, or evacuation of, the child care group home.
- D.** When a child is disenrolled from a child care group home, the certificate holder shall ensure that a staff member:
1. Enters the date of disenrollment on the child's Emergency, Information, and Immunization Record card; and
  2. Maintains the records in subsection (D)(1) for 12 months after the date of disenrollment on the premises in a place separate from the current Emergency, Information, and Immunization Record cards.

**R9-3-304. Enrolled Child Immunization Requirements**

- A.** A certificate holder shall not permit an enrolled child to receive child care services at a child care group home until the child care group home receives:
1. An immunization record for the enrolled child with the information required in 9 A.A.C. 6, Article 7, stating that the enrolled child has received all current, age-appropriate immunizations required under 9 A.A.C. 6, Article 7, that is:

- a. Provided by a physician, physician assistant, registered nurse practitioner, or another individual authorized by state law to administer immunizations; or
  - b. Generated from the Arizona State Immunization Information System, which is the Department's child immunization reporting system established in A.R.S. § 36-135; or
- 2. An exemption affidavit for the enrolled child provided by the enrolled child's parent that contains:
  - a. A statement, signed by the enrolled child's physician, physician assistant, or registered nurse practitioner, that the immunizations required by 9 A.A.C. 6, Article 7 would endanger the enrolled child's health or medical condition; or
  - b. A statement, signed by the enrolled child's parent, that the enrolled child is being raised in a religion whose teachings are in opposition to immunization.
- B.** A certificate holder shall ensure that a staff member attaches an enrolled child's written immunization record or exemption affidavit, required in subsection (A), to the enrolled child's Emergency, Information, and Immunization Record card, required in R9-3-303(B).
- C.** A certificate holder shall ensure that a staff member updates an enrolled child's written immunization record required in subsection (A)(1)(a) each time the enrolled child's parent provides the child care group home with a written statement from the enrolled child's physician, physician assistant, or registered nurse practitioner that the enrolled child has received an age-appropriate immunization required by 9 A.A.C. 6, Article 7.
- D.** If an enrolled child's immunization record indicates that the enrolled child has not received an age-appropriate immunization required by 9 A.A.C. 6, Article 7, a certificate holder shall ensure that a staff member:
  - 1. Notifies the enrolled child's parent in writing that the enrolled child may attend the child care group home for not more than 15 calendar days after the date of the notification unless the enrolled child's parent complies with the immunization requirements in 9 A.A.C. 6, Article 7; and
  - 2. Documents on the enrolled child's Emergency, Information, and Immunization Record card the date on which the enrolled child's parent is notified of an immunization required by the Department.
- E.** For an outbreak of a disease listed in ~~A.A.C. R9-6-702(A)~~ A.A.C. R9-6-702(A) at a child care group home, a certificate holder shall:
  - 1. Not allow an enrolled child to attend the child care group home between the start and end of the outbreak if the enrolled child lacks documentation of immunization or evidence of

immunity to the disease that complies with A.A.C. R9-6-704, and

2. Permit the enrolled child to attend the child care group home if a parent of the enrolled child provides any of the documents in A.A.C. R9-6-704 for the enrolled child.

**R9-3-306. Pesticides**

Except as prescribed by A.R.S. § 36-898(C), a certificate holder shall ensure that a staff member makes the following pesticide information available in writing to the parent of an enrolled child, upon the parent's request, at least 48 hours before a pesticide application occurs on the premises:

1. ~~The brand, concentration, rate of application, and any use restrictions required by the label of the herbicide or specific pesticide;~~  
The name and telephone number of the pesticide business licensee and the name of the licensed applicator providing pesticide services;
2. The date and time of the pesticide application;
3. The pesticide label, including a warning label stating that the pesticide should not be applied when children are present, and the material safety data sheet; and
4. ~~The name and telephone number of the pesticide business licensee and the name of the licensed applicator.~~  
The brand, concentration, rate of application, and any use restrictions required by the label of the herbicide or specific pesticide.

**R9-3-308. Suspected Abuse or Neglect of an Enrolled Child**

A certificate holder shall ensure that:

1. The certificate holder or a staff member immediately reports suspected abuse or neglect of an enrolled child to ~~Child Protective Services, established within the Arizona Department of Economic Security under A.R.S. Title 8, Chapter 10, Article 1, or to a local law enforcement agency, as required by A.R.S. § 13-3620~~ under A.R.S. Title 8, Chapter 4, Article 8, or to a local law enforcement agency, as required by A.R.S. § 13-3620;
2. If a staff member or resident is suspected of abuse or neglect of an enrolled child, the certificate holder also reports the suspected abuse or neglect to the Department; and
3. Documentation of a report required in subsection (1) or (2) is maintained on the premises for 12 months after the date of the report.

**R9-3-309. Medications**

A. A certificate holder shall ensure that a document is prepared and maintained on the premises that specifies:

1. Whether prescription or nonprescription medications are administered to enrolled

children; and

2. If prescription or nonprescription medications are administered, the requirements in subsection (B) for administering the prescription or nonprescription medications.

**B.** If prescription or nonprescription medications are administered at a child care group home, a certificate holder shall ensure that:

1. The provider or another staff member designated in writing by the provider is responsible for:
  - a. Administering medications at the child care group home,
  - b. Storing medications at the child care group home,
  - c. Supervising the ingestion of medications, and
  - d. Documenting the administration of medications;
2. At any given time, only one designated staff member at the child care group home is responsible for the duties described in subsection (B)(1);
3. The designated staff member does not administer a medication to an enrolled child unless the child care group home receives written authorization on a completed Department-provided authorization form that includes:
  - a. The child's first and last ~~names~~ name;
  - b. The name of the medication;
  - c. The prescription number, if any;
  - d. Instructions for administration specifying:
    - i. The dosage,
    - ii. The route of administration,
    - iii. The first and last dates that the medication is to be administered, and
    - iv. The times and frequency of administration;
  - e. The reason for the medication;
  - f. The signature of the child's parent; and
  - g. The date of signature; and
4. The designated staff member:
  - a. Measures liquid medications for oral administration using a measuring cup, spoon, or dropper specifically made for measuring liquid medication;
  - b. Administers prescription medications provided by an enrolled child's parent to the enrolled child only from a container dispensed by a pharmacy and accompanied by a pharmacy-generated prescription label that includes the child's first and last ~~names~~ name and administration instructions;

- c. Administers nonprescription medications provided by an enrolled child’s parent to the enrolled child only from an original manufacturer’s container labeled with the enrolled child’s first and last ~~names~~ name;
  - d. Does not administer a medication that has been transferred from one container to another;
  - e. Does not administer a nonprescription medication to an enrolled child inconsistent with the instructions on the nonprescription medication’s label, unless the child care group home receives written administration instructions from the enrolled child’s physician, physician assistant, or registered nurse practitioner;
  - f. Documents each administration of medication to an enrolled child on the Department-provided form required in subsection (B)(3) including:
    - i. The name of the enrolled child;
    - ii. The name and amount of medication administered and the prescription number, if any;
    - iii. The date and time the medication was administered; and
    - iv. The signature of the staff member who administered the medication to the enrolled child; and
  - g. Maintains the record on the premises for 12 months after the date the medication is administered.
- C.** A certificate holder shall allow an enrolled child to receive an injection at the child care group home only after obtaining written authorization from a physician, physician assistant, or registered nurse practitioner. The certificate holder shall maintain the written authorization on the premises for 12 months after the date of the last injection.
- D.** An individual authorized by state law to give injections may give an injection to an enrolled child. In an emergency, an individual may give an injection to an enrolled child according to A.R.S. §§ 32-1421(A)(1) and 32-1631(2).
- E.** A certificate holder shall return unused prescription or nonprescription medication to a parent when the medication is no longer being administered to the enrolled child or has expired, whichever comes first, or dispose of the medication according to state and federal laws, if the child is no longer enrolled at the child care group home and the certificate holder is unable to locate the child’s parent.
- F.** Except as provided in subsection (G), a certificate holder shall ensure that:
- 1. Medication belonging to an enrolled child is;

- ~~a. stored in a locked, leak-proof storage cabinet or container that is used only for storing medications belonging to enrolled children; and~~
    - Stored in a locked, leak-proof storage cabinet or container that is used only for storing enrolled children’s medication.
    - b. Stored in a secured refrigeration unit that is used only for storing enrolled children’s medications that requires refrigeration.
  - 2. Medication belonging to a staff member or resident is stored in a locked, leak-proof storage cabinet or container that is separate from the storage container for enrolled children’s medications.
- G. A certificate holder shall ensure that a staff member’s or enrolled child’s prescription medication necessary to treat life-threatening symptoms is kept in a location inaccessible to enrolled children except when the prescription medication is administered to treat the life-threatening symptoms.
- H. A certificate holder shall ensure that a child care group home does not stock a supply of prescription or nonprescription medications for administration to enrolled children.

**ARTICLE 4. PROGRAM AND EQUIPMENT STANDARDS**

**R9-3-401. General Program, Equipment, and Health and Safety Standards**

- A. In addition to complying with the requirements in this Chapter, a certificate holder shall ensure that the health, safety, or welfare of an enrolled child is not placed at risk of harm.
- B. A certificate holder shall ensure that:
  - 1. A staff member:
    - a. Supervises each enrolled child at all times,
    - b. Plays and communicates with an enrolled child throughout the day, and
    - c. Responds immediately to signs of distress from an enrolled child;
  - 2. The areas of the child care group home approved for providing child care services are maintained free from hazards;
  - 3. The toys, materials, and equipment for use by enrolled children:
    - a. Include, as appropriate to the ages of the enrolled children at the child care group home:
      - i. Arts supplies,
      - ii. Manipulatives to enhance small motor development,
      - iii. Indoor and outdoor equipment to enhance large motor development,
      - iv. Creative play materials,
      - v. Books, and

- vi. Musical instruments;
    - b. Are sufficient in number and type to meet the needs of the enrolled children in attendance at the child care group home;
    - c. Are accessible to enrolled children; and
    - d. Are maintained free from hazards and in a condition that allows the toys, materials, and equipment to be used for their original purpose;
  - 4. The activities at the child care group home are:
    - a. Structured to meet the age and developmental level of each enrolled child; and
    - b. Based upon a written weekly schedule that includes:
      - i. Routines, such as meals, snacks, and rest periods, that follow a familiar and consistent pattern;
      - ii. If weather and air quality permit, outdoor activities to enhance large muscle development;
      - iii. Stories, music, dancing, singing, and reading;
      - iv. Listening and talking opportunities; and
      - v. Creative activities such as water play, cutting and pasting, painting, coloring, dramatic play, and playing with blocks;
  - 5. Clean clothing is available to an enrolled child; and
  - 6. Drinking water is available to enrolled infants and one- or two-year-old children and is accessible to older enrolled children at all times.
- C. A certificate holder shall ensure that a staff member:
- 1. Monitors an enrolled child for overheating or overexposure to the sun and, if an enrolled child exhibits signs of overheating or overexposure to the sun, notifies a staff member who has current training in first aid to evaluate the enrolled child;
  - 2. When an enrolled child's clothing is wet or soiled:
    - a. Except for an enrolled child who can change the enrolled child's own clothing, changes the enrolled child's wet or soiled clothing;
    - b. If the clothing is soiled with feces, empties the feces into a flush toilet without rinsing the clothing;
    - c. Stores the enrolled child's wet or soiled clothing in a sealed plastic bag labeled with an identifier that is specific to the enrolled child; and
    - d. Sends the enrolled child's wet or soiled clothing home with the enrolled child or the enrolled child's parent;

3. Bathes an enrolled child at the child care group home only if the child care group home has received written permission from the enrolled child's parent;
4. Except as specified in subsection (C)(5), labels the personal items of an enrolled child with an identifier that is specific to the enrolled child and stores the personal items separately from the personal items of other enrolled children and residents;
5. Stores diapering products in a location that is inaccessible to enrolled children but accessible for diaper changing; ~~and~~
6. If a parent of an enrolled child permits or asks a staff member to apply sunscreen, diapering products, or other substances to the skin of an enrolled child, obtains:
  - a. The sunscreen, diapering products, or other substances from the enrolled child's parent; or
  - b. If the child care group home supplies the sunscreen, diapering products, or other substances, written permission from the enrolled child's parent for the application of the specific sunscreen, diapering products, or other substances- ~~and~~
7. Allows an enrolled school-age child to possess and use a topical sunscreen product if the parent of the enrolled school-age child provides notice to the child care group home without having to have a note or prescription from a licensed health care professional.

**R9-3-402. Supplemental Standards for Napping or Sleeping**

- A.** A certificate holder shall ensure that:
1. Each enrolled child who naps or sleeps at the child care group home is furnished with a bed, cot, mat, or crib that accommodates the enrolled child's height and weight;
  2. The bed, cot, mat, or crib is not used by another individual while in use by the enrolled child;
  3. The cot, mat, or bed's mattress is covered with a clean sheet that is laundered when soiled, at least once every seven calendar days, and before use by a different enrolled child;
  4. The crib mattress is covered with a clean fitted-sheet designed for the crib mattress size that is laundered when soiled, at least once every 24 hours, and before use by a different enrolled child; and
  5. A clean blanket or sheet ~~is available for~~ is provided to each enrolled child.
- B.** A certificate holder shall not allow an enrolled child to use:
1. A waterbed,
  2. The upper bed of a bunk bed, or
  3. A stacked crib.

- C. A certificate holder shall ensure that a crib used by an enrolled child:
1. Has bars or openings spaced no more than 2 3/8 inches apart;
  2. Has a crib mattress that is:
    - a. Measured to fit not more than 1/2 inch from the crib side, and
    - b. Commercially waterproofed or covered with a waterproof crib mattress cover;
  3. Is cleaned and sanitized when soiled; and
  4. Does not contain bumper pads, pillows, comforters, sheepskins, stuffed toys, or other soft products when an enrolled child is in the crib.
- D. When enrolled children are present at a child care group home during hours of operation, a certificate holder shall ensure that a staff member:
1. Remains awake until all enrolled children are asleep, and
  2. Is allowed to sleep only:
    - a. During the hours of 8:00 p.m. to 5:00 a.m., and
    - b. If the staff member can hear and respond to an enrolled child waking from sleep.

**R9-3-403. Supplemental Standards for Care of an Enrolled Infant or One- or Two-Year-Old Child**

- A. A certificate holder shall ensure that:
1. A staff member:
    - a. Does not allow an enrolled infant or one- or two-year-old child to spend more than 30 consecutive minutes of time while awake in a crib, playpen, swing, feeding chair, infant seat, or other confining piece of equipment;
    - b. Allows each enrolled infant to maintain an individual pattern of sleeping, waking, and eating, unless the enrolled infant's parent has instructed otherwise;
    - c. If providing a bottle or sippy cup to an enrolled infant or one- or two-year-old child before the enrolled infant or one- or two-year-old child naps or sleeps:
      - i. Ensures that only water is in the bottle or sippy cup unless the written instructions required by subsection (A)(3)(b) state otherwise;
      - ii. Removes the used bottle or sippy cup from the enrolled infant or one- or two-year-old child's crib, bed, cot, or mat as soon as the enrolled infant or one- or two-year-old child finishes drinking or falls asleep; and
      - iii. Cleans the used bottle or sippy cup before the bottle or sippy cup is reused;
    - d. Checks the diaper of each enrolled infant or one- or two-year-old child throughout the day and changes a diaper as soon as it is wet or soiled;

- e. Ensures that toys provided for an enrolled infant or one- or two-year-old child are too large to swallow; and
  - f. Does not permit an enrolled infant to use a walker;
2. When putting an enrolled infant to sleep, a staff member:
- a. Places the enrolled infant on the enrolled infant's back to sleep, unless the enrolled infant's physician, physician assistant, or registered nurse practitioner has instructed otherwise in writing;
  - b. Provides a clean blanket or sheet to the enrolled infant;
  - ~~b.c.~~ Does not use a positioning device that restricts movement, unless the enrolled infant's physician, physician assistant, or registered nurse practitioner has instructed otherwise in writing; and
  - ~~e.d.~~ Does not use a mechanical restraint on the enrolled infant in a crib;
3. When feeding an enrolled infant, a staff member:
- a. Prepares and stores the enrolled infant's formula, breast milk, or other food according to written instructions from the enrolled infant's parent;
  - b. Feeds formula, breast milk, or other food to the enrolled infant according to current written instructions from the enrolled infant's parent; and
  - c. If the enrolled infant is younger than six months of age or cannot hold a bottle for feeding, holds the enrolled infant for feeding; and
4. When feeding an enrolled infant who is no longer being held for feeding or an enrolled one- or two-year-old child, a staff member:
- a. Seats the enrolled infant or one- or two-year-old child in a feeding chair or at a table with a chair that allows the enrolled infant or one- or two-year-old child to reach food while sitting; and
  - b. If the feeding chair is manufactured with a safety strap, fastens the safety strap around the enrolled infant or one- or two-year-old child while the enrolled infant or one- or two-year-old child is seated in the feeding chair.
- B.** A certificate holder shall ensure that a staff member:
- 1. Consults with an enrolled child's parent to establish a written plan for toilet training for the enrolled child,
  - 2. Implements the toilet training plan,
  - 3. Provides the parent with information about the enrolled child's progress in toilet training, and
  - 4. Ensures that toilet training is not forced on the enrolled child.

**R9-3-404. Supplemental Standards for Care of an Enrolled Child with Special Needs**

- A.** Before an enrolled child with special needs receives child care services at a child care group home, the certificate holder shall ensure that the ~~child care group home~~ provider obtains from the enrolled child's parent ~~written instructions for providing care~~ an individual plan for the enrolled child, ~~including as applicable for the enrolled child that includes, as applicable, the following:~~
1. A medication schedule,
  2. Nutrition and feeding instructions,
  3. Instructions for medical equipment or adaptive devices used by the enrolled child,
  4. Emergency instructions,
  5. Toileting and personal hygiene instructions,
  6. Identification of specific child care services to be provided at the child care group home, and
  7. Instructions for fire and emergency evacuation drills.
- B.** A certificate holder shall ensure that:
1. At least one staff member receives instructions from the parent of an enrolled child with special needs that enables the staff member to interact with, feed, and care for the enrolled child with special needs;
  2. Documentation of the instructions required in subsection (B)(1) is maintained on the premises for 12 months after the child is disenrolled;
  3. When tube feeding an enrolled child, a staff member only uses:
    - a. Commercially prepackaged formula in a ready-to-use state, stored according to directions on the package;
    - b. Formula prepared by the enrolled child's parent and brought to the child care group home in an unbreakable container; or
    - c. Breast milk brought to the child care group home in an unbreakable container;
  4. Only a staff member who received the instructions required in subsection (B)(1):
    - a. Feeds an enrolled child who requires tube feeding using the enrolled child's tube-feeding apparatus, and
    - b. Cleans the enrolled child's tube-feeding apparatus; and
  5. A staff member:
    - a. Assists an enrolled child with special needs to enable the enrolled child to participate in activities at the child care group home; and
    - b. Ensures that the enrolled child is provided with developmentally appropriate toys, materials, and equipment.

- C. In addition to complying with the requirements in R9-3-408, a certificate holder shall ensure that a staff member transporting an enrolled child with special needs in a wheelchair in a motor vehicle operated by the child care group home ensures that:
1. The enrolled child’s wheelchair is manufactured to be secured in a motor vehicle;
  2. The enrolled child’s wheelchair is secured in the motor vehicle using a minimum of four anchorages attached to the motor vehicle floor, and four securement devices, such as straps or webbing that have buckles and fasteners, that attach the wheelchair to the anchorages;
  3. The enrolled child is secured in the wheelchair by means of a wheelchair restraint that is a combination of pelvic and upper body belts intended to secure a passenger in a wheelchair; and
  4. The enrolled child’s wheelchair is placed in a position in the motor vehicle that does not prevent access to the enrolled child in the wheelchair or passage to the front and rear of the motor vehicle.

**Table 4.2. Meal Pattern Requirements for Children**

Food Components	Ages 1 through 2 years	Ages 3 through 5 years	Ages 6 and Older
Breakfast:			
1. Milk, fluid	1/2 cup	3/4 cup	1 cup
2. Vegetable, fruit, or <del>full strength juice</del> <u>both</u>	1/4 cup	1/2 cup	1/2 cup
3. <del>Bread and bread alternates (whole grain or enriched);</del>			
<del>Bread</del>	<del>1/2 slice</del>	<del>1/2 slice</del>	<del>1 slice</del>
<del>or cornbread, rolls, muffins, or biscuits</del>	<del>1/2 serving</del>	<del>1/2 serving</del>	<del>1 serving</del>
<del>or cold dry cereal (volume or weight, whichever is less)</del>	<del>1/4 cup</del>	<del>1/3 cup</del>	<del>3/4 cup</del>
<del>or cooked cereal, pasta, noodle products, or cereal grains</del> <u>Grains</u>	<del>1/4 cup</del> <u>1/2 oz eq<sup>1</sup></u>	<del>1/4 cup</del> <u>1/2 oz eq<sup>1</sup></u>	<del>1/2 cup</del> <u>1 oz eq<sup>1</sup></u>
Lunch or Supper:			
1. Milk, fluid	1/2 cup	3/4 cup	1 cup
2. <del>Vegetable</del> <u>Vegetables</u> and/or fruit (2 or more kinds)	<del>1/4 cup total</del> <u>1/8 cup</u>	<del>1/2 cup total</del> <u>1/4 cup</u>	<del>3/4 cup total</del> <u>1/2 cup</u>
<del>Fruits</del>			
3. <del>Bread and bread alternates (whole grain or enriched);</del>			
<del>Bread</del>	<del>1/8 cup</del>	<del>1/4 cup</del>	<del>1/4 cup</del>
<del>or cornbread, rolls, muffins, or biscuits</del>	<del>1/2 slice</del>	<del>1/2 slice</del>	<del>1 slice</del>
<del>or cold dry cereal (volume or weight, whichever is less)</del>	<del>1/2 serving</del>	<del>1/2 serving</del>	<del>1 serving</del>
<del>or cooked cereal, pasta, noodle products, or cereal grains</del> <u>Grains</u>	<del>1/4 cup</del>	<del>1/3 cup</del>	<del>3/4 cup</del>
4. Meat or meat alternates:	<del>1/4 cup</del> <u>1/2 oz eq<sup>1</sup></u>	<del>1/4 cup</del> <u>1/2 oz eq<sup>1</sup></u>	<del>1/2 cup</del> <u>1 oz eq<sup>1</sup></u>
<del>Lean meat, fish, or poultry (edible portion as served)</del>	<del>1 oz.</del>	<del>1 1/2 oz.</del>	<del>2 oz.</del>
<del>or cheese</del>	<del>1 oz.</del>	<del>1 1/2 oz.</del>	<del>2 oz.</del>
<del>or egg</del>	<del>1/2 egg</del>	<del>3/4 egg</del>	<del>1 egg</del>
<del>or cooked dry beans or peas*</del>	<del>1/4 cup</del>	<del>3/8 cup</del>	<del>1/2 cup</del>

<p>or peanut butter, soy nut butter, or other nut or seed butters</p> <p>or peanuts, soy nuts, tree nuts, or seeds</p> <p>or an equivalent quantity of any combination of the above</p> <p>meat/meat alternates</p> <p>or yogurt</p>	<p>2 tbsps**</p> <p>1/2 oz.**</p> <p>4 oz. 1 oz.</p>	<p>3 tbsps**</p> <p>3/4 oz.**</p> <p>6 oz. 1 1/2 oz.</p>	<p>4 tbsps**</p> <p>1 oz.**</p> <p>8 oz. 2 oz.</p>
<p>Snack: (select 2 of these 4 components)***</p> <p>1. Milk, fluid</p> <p>2. <del>Vegetable, Vegetables</del> fruit, or full strength juice</p> <p><u>Fruits</u></p> <p>3. Bread and bread alternates (whole grain or enriched):</p> <p>Bread</p> <p>or cornbread, rolls, muffins, or biscuits</p> <p>or cold dry cereal (volume or weight, whichever is less)</p> <p>or cooked cereal, pasta, noodle products, or cereal grains <u>Grains</u></p> <p>4. Meat or meat alternates:</p> <p>Lean meat, fish, or poultry (edible portion as served)</p> <p>or cheese</p> <p>or egg</p> <p>or cooked dry beans or peas*</p> <p>or peanut butter, soy nut butter, or other nut or seed butters</p> <p>or peanuts, soy nuts, tree nuts, or seeds</p> <p>or an equivalent quantity of any combination of the above meat/meat alternates</p> <p>or yogurt</p>	<p>1/2 cup</p> <p>1/2 cup</p> <p>1/2 cup</p> <p>1/2 slice</p> <p>1/2 serving</p> <p>1/4 cup</p> <p>1/4 cup 1/2 oz.</p> <p>1/2 oz.</p> <p>1/2 oz.</p> <p>1/2 oz.</p> <p>1/2 egg</p> <p>1/8 cup</p> <p>1 tbsps</p> <p>1/2 oz.</p> <p>2 oz.</p>	<p>1/2 cup</p> <p>1/2 cup</p> <p>1/2 cup</p> <p>1/2 slice</p> <p>1/2 serving</p> <p>1/3 cup</p> <p>1/4 cup 1/2 oz.</p> <p>1/2 oz.</p> <p>1/2 oz.</p> <p>1/2 oz.</p> <p>1/2 egg</p> <p>1/8 cup</p> <p>1 tbsps</p> <p>1/2 oz.</p> <p>2 oz.</p>	<p>1 cup</p> <p>3/4 cup</p> <p>3/4 cup</p> <p>1 slice</p> <p>1 serving</p> <p>3/4 cup</p> <p>1/2 cup 1 oz.</p> <p>1 oz.</p> <p>1 oz.</p> <p>1 oz.</p> <p>1/2 egg</p> <p>1/4 cup</p> <p>2 tbsps</p> <p>1 oz.</p> <p>4 oz.</p>

<sup>1</sup> Meat and meat alternates may be used to substitute the entire grains component a maximum of three times per week. Oz eq = ounce equivalents

\* In the same meal service, dried beans or dried peas may be used as a meat alternate or as a vegetable; however, such use does not satisfy the requirement for both components.

\*\* At lunch and supper, no more than 50% of the requirement shall be met with nuts, seeds, or nut butters. Nuts, seeds, or nut butters shall be combined with another meat or meat alternative to fulfill the requirement. Two tablespoons of nut butter or one ounce of nuts or seeds equals one ounce of meat.

\*\*\* Juice may not be served when milk is served as the only other component.

### R9-3-407. General Food Service and Food Handling Standards

A. A certificate holder shall ensure that:

1. Except as provided in subsection (B), each staff member washes the staff member's hands with soap and running water before handling food, after handling potentially hazardous food, and before serving food;
2. Except as provided in subsection (B), enrolled children, except infants and children with special needs who cannot wash their own hands, wash their hands with soap and running water before and after handling or eating food;
3. A staff member:
  - a. Washes with a washcloth, paper towel, disposable wipe, or soap and running

- water the hands of an enrolled infant or child with special needs who cannot wash the child's own hands before and after the enrolled infant or child with special needs handles or eats food; and
- b. If using a washcloth, paper towel, or disposable wipes, uses each washcloth, paper towel, or disposable wipe only once before it is laundered or discarded;
4. A staff member:
    - a. Encourages, but never forces, an enrolled child to eat;
    - b. Assists each enrolled child who needs assistance with eating; and
    - c. Teaches self-feeding skills and habits of good nutrition to each enrolled child as necessary;
  5. Food served to an enrolled child younger than five years of age is prepared so as not to present a choking hazard;
  6. Each enrolled child is supplied with drinking and eating utensils for the child's own use;
  7. Each enrolled child's bottle or sippy cup is marked with an identifier that is specific to the enrolled child;
  8. An enrolled child is not allowed to drink from the bottle, sippy cup, cup, or glass of another individual;
  9. An enrolled child is not allowed to eat food directly off the floor, carpet, or ground;
  10. An enrolled child's parent is notified when the child consistently refuses to eat or exhibits unusual eating behavior;
  11. Each staff member is informed of a modified diet prescribed for an enrolled child by the child's parent, physician, physician assistant, or registered nurse practitioner, as specified in R9-3-303(B)(8), and is written and posted in the kitchen;
  12. The food served to an enrolled child is consistent with a modified diet prescribed for the child by the child's parent, physician, physician assistant, or registered nurse , as specified in R9-3-303(B)(8), and is written and posted in the kitchen;
  13. After each use, non-single-use utensils and equipment used in preparing, eating, or drinking food are:
    - a. Washed in an automatic dishwasher and air dried or heat dried; or
    - b. Washed in hot soapy water, rinsed in clean water, and air dried or heat dried;
  14. Single-use utensils and equipment are disposed of after being used;
  15. Perishable foods are covered and stored in a refrigerator;
  16. A refrigerator at the child care group home maintains a temperature of 41° F or below, as shown by a thermometer kept in the refrigerator at all times;

17. A freezer at the child care group home maintains a temperature of 0° F or below, as shown by a thermometer kept in the freezer at all times;
  18. Foods are prepared as close as possible to serving time and, if prepared in advance, are either:
    - a. Cold held at a temperature of 45° F or below or hot held at a temperature of 130° F or above until served, or
    - b. Cold held at a temperature of 45° F or below and then reheated to a temperature of at least 165° F before being served;
  19. ~~Fresh milk is served from the original, commercially filled container to a container used for meal service or a cup, and unused portions are not returned to the original container;~~  
When fresh milk is poured from the original-commercial milk container into a serving container used at a meal or a cup, the unused milk is not returned to the original-commercial milk container;
  20. Food leftover from a meal where enrolled children pass a serving container from individual to individual or from the provider's family meal is not served to an enrolled child; and
  21. A food is not served past its expiration date or after it has begun to spoil.
- B.** If soap and running water are not available at the location where food is served, such as on a field trip, a staff member may use disposable wipes or hand sanitizer as a substitute for washing hands with soap and running water.

**R9-3-408. Field Trips and Other Trips Away from the Child Care Group Home**

- A.** A certificate holder shall only allow a staff member to take an enrolled child away from an area of the child care group home approved for providing child care services during hours of operation with written permission from the enrolled child's parent as follows:
1. For a trip to drop off the enrolled child at or pick up the enrolled child from the enrolled child's school, bus stop, or another location, the written permission shall include:
    - a. The enrolled child's name;
    - b. The location where the enrolled child will be dropped off or picked up;
    - c. The time at which the enrolled child will be dropped off or picked up;
    - d. The time period, not to exceed 12 months, during which the permission is given; and
    - e. The dated signature of the enrolled child's parent; and
  2. For a field trip, the written permission shall include:
    - a. The enrolled child's name;

- b. A description of the field trip;
- c. The name of the field trip destination, if applicable;
- d. The street address and, if available, the telephone number of the field trip destination, if applicable;
- e. Either:
  - i. The date or dates of the field trip; or
  - ii. The time period, not to exceed 12 months, during which the permission is given;
- f. The projected time of departure from the child care group home;
- g. The projected time of arrival back at the child care group home; and
- h. The dated signature of the enrolled child's parent.

**B.** A certificate holder shall ensure that a staff member maintains a copy of the written permission required in subsection (A) for 12 months after:

- 1. For a trip under subsection (A)(1), the date of the last trip; and
- 2. For a trip under subsection (A)(2), the last date for which permission was given.

**C.** A certificate holder shall ensure that:

- 1. Each motor vehicle used by an individual to transport an enrolled child:
  - a. Is maintained in a mechanically safe condition;
  - b. Is free from hazards;
  - c. Is registered by the Arizona Department of Transportation as required by A.R.S. Title 28, Chapter 7;
  - d. Has documentation of current motor vehicle insurance coverage maintained inside the motor vehicle that includes the legal name of the child care group home or certificate holder and, if transporting enrolled children and infants, liability information;
  - e. Has an operational heating system;
  - f. Has an operational air-conditioning system; and
  - g. Is equipped with:
    - i. A first-aid kit that meets the requirements in R9-3-310; and
    - ii. Two large, clean towels or blankets;
- 2. An enrolled child is not transported in a truck bed, camper, or trailer attached to a motor vehicle; and
- 3. The Department is notified by telephone or other equally expeditious means within 24 hours after a motor vehicle accident that involves a motor vehicle transporting an

enrolled child, including a description of the accident.

**D.** A certificate holder shall ensure that an individual who drives a motor vehicle used to transport an enrolled child:

1. Is 18 years of age or older, and
2. Holds a valid driver's license.

**E.** A certificate holder shall ensure that an individual transporting an enrolled child in a motor vehicle:

1. Requires that each door be locked before the motor vehicle is set in motion and keeps the doors locked while the motor vehicle is in motion;
2. Does not permit an enrolled child to be seated in front of a motor vehicle's air bag;
3. Requires that each enrolled child remain seated and entirely inside the motor vehicle while the motor vehicle is in motion;
4. ~~Requires that each enrolled child younger than five years of age is secured in a child passenger restraint system, as required under A.R.S. § 28-907, before the motor vehicle is set in motion and while the motor vehicle is in motion;~~  
Uses a child passenger restraint system, as required under A.R.S. § 28-907, for each enrolled child who is:
  - a. Under eight years of age, and
  - b. Not more than four feet nine inches tall;
5. ~~Requires that each enrolled child who is five years of age or older is secured with an individual adjustable lap belt or an individual integrated lap and shoulder belt, as required under A.R.S. § 28-909, before the motor vehicle is set in motion and while the motor vehicle is in motion;~~  
Requires that each enrolled child in subsection (E)(4) be secured before the motor vehicle is set in motion and while the motor vehicle is in motion;
6. Does not permit an enrolled child to open or close a door or window in the motor vehicle;
7. Sets the emergency parking brake and removes the ignition keys from the motor vehicle before exiting the motor vehicle;
8. Ensures that each enrolled child is loaded into or unloaded from the motor vehicle away from moving traffic at curbside or in a driveway, parking lot, or other location designated for this purpose; and
9. Does not use audio headphones or a telephone while the motor vehicle is in motion.

**F.** A certificate holder shall ensure that a staff member taking enrolled children off the premises:

1. Carries the following:

- a. A copy of the Emergency, Information, and Immunization Record card, including the attached immunization record, for each enrolled child accompanying the staff member; and
  - b. Drinking water in an amount sufficient to meet the needs of each individual going off the premises and sufficient cups or other drinking receptacles so that each individual can drink from a different cup or receptacle; and
2. Accounts for each enrolled child while the enrolled child is off the premises.

## **ARTICLE 5. PHYSICAL ENVIRONMENT STANDARDS**

### **R9-3-504. Fire Safety, Gas Safety, and Emergency Standards**

- A. A certificate holder shall ensure that:
  1. The house number of the child care group home's residence is painted or posted on the premises so that it is visible from the street;
  2. A smoke detector is installed in each indoor area of the child care group home approved for providing child care services and in each hallway of the child care group home's residence;
  3. Each smoke detector required under subsection (A)(2):
    - a. Is maintained in an operable condition; and
    - b. Is either battery operated or, if hard-wired into the electrical system of the child care group home's residence, has a back-up battery;
  4. The child care group home's residence has at least two portable fire extinguishers:
    - a. One of which is labeled as rated at least 1A-10-BC by the Underwriters Laboratories ~~and is mounted on the kitchen wall and maintained in the kitchen~~ is easily accessible, and
    - b. One of which is labeled as rated at least 2A-10-BC by the Underwriters Laboratories and is maintained in a location accessible to staff members in an area of the child care group home approved for providing child care services;
  5. Each electrical outlet in an area of the child care group home approved for providing child care services is covered with a safety plug cover or insert when not in use;
  6. An appliance, light, or other device with a frayed or spliced electrical cord is not used at the child care group home;
  7. An electrical cord, including an extension cord, is not run under a rug or carpeting, over a nail, or from one room to another at the child care group home;

8. Each electrical, cable, or telephone outlet at the child care group home is covered with a face plate;
  9. A wood-burning stove, the interior of a fireplace, or a chiminea is inaccessible to enrolled children when in use;
  10. An unvented space heater or open-flame space heater is not used in the child care group home's residence during hours of operation;
  11. An electric portable heater is not used in the child care group home's residence during hours of operation unless the electric portable heater:
    - a. Has:
      - i. Either a non-porous casing or a grill with a mesh small enough to prevent cloth or a child's finger from entering the casing,
      - ii. A tilt switch that shuts off power to the electric portable heater if the electric portable heater tips over,
      - iii. An automatic shutoff control to prevent overheating, and
      - iv. A thermostat control; and
    - b. Is plugged directly into a wall outlet;
  12. A candle or incense is not burned in the child care group home's residence during hours of operation; and
  13. Smoking is not permitted in the residence during hours of operation or in the presence or sight of enrolled children.
- B.** A certificate holder shall ensure that a staff member:
1. Tests the battery for each smoke detector required under subsection (A)(2) each month,
  2. Makes a record of each test performed,
  3. Replaces a smoke detector battery that is no longer charged, and
  4. Maintains the record of the test on the premises for 12 months after the date of the test.
- C.** A certificate holder shall:
1. Replace a disposable fire extinguisher when its indicator reaches the red zone; and
  2. Ensure that each rechargeable fire extinguisher in the child care group home's residence:
    - a. Is serviced at least once every 12 months, and
    - b. Has a tag attached to the fire extinguisher that specifies the date of the last servicing and the identification of the person who serviced the fire extinguisher.
- D.** If there are gas pipes that run from a gas meter to an appliance or location on the premises:
1. Before an applicant for a child care group home is issued a certificate by the Department, the applicant shall obtain a gas inspection report by a licensed plumber or individual

authorized by the local jurisdiction that verifies there are no gas leaks in the gas pipes that run from the gas meter to any appliance or location on the premises; and

2. A certificate holder shall ensure that:
  - a. Each unused natural gas outlet at the child care group home has its valves removed by and is capped at the wall or floor by a licensed plumber or individual authorized by the local jurisdiction;
  - b. A licensed plumber or individual authorized by the local jurisdiction conducts a gas inspection that verifies there are no gas leaks in the gas pipes that run from the gas meter to any appliance or location on the premises at least once every 12 months after the date of the certificate; and
  - c. A copy of a current gas inspection report, including documentation of any repairs or corrections required by the gas inspection report, is maintained on the premises.

**E.** A certificate holder shall:

1. Prepare a fire and emergency plan, consisting of:
  - a. The child care group home's address and telephone number;
  - b. A list of emergency telephone numbers, including 9-1-1 and a poison control center;
  - c. A document or documents that include the contact telephone number for a parent of each enrolled child; and
  - d. An evacuation plan for the child care group home, including a floor plan of the child care group home's residence on which lines have been drawn showing the evacuation path from each area of the child care group home approved for providing child care services;
2. Maintain the fire and emergency plan in a location accessible to staff members; and
3. Post a copy of the floor plan showing the evacuation paths from the residence in each indoor area of the child care group home approved for providing child care services.

**F.** A certificate holder shall ensure that:

1. ~~An unannounced fire and emergency evacuation drill is conducted at least once each month;~~  
An unannounced fire and emergency evacuation drill are:
  - a. At least once each month; and
  - b. Each fire drill and emergency evacuation drill at a different time of day than the fire and emergency evacuation drill conducted in the previous month;

2. During the fire and emergency evacuation drill, each staff member and enrolled child at the child care group home is evacuated from the child care group home according to the evacuation plan;
- ~~3. Each fire and emergency evacuation drill is conducted at a different time of day than the previous fire and emergency evacuation drill;~~
- ~~4.3.~~ A record is made of each fire and emergency evacuation drill, including:
  - a. The date of the fire and emergency evacuation drill, and
  - b. The time of the fire and emergency evacuation drill; and
- ~~5.4.~~ The record of the fire and emergency evacuation drill is maintained on the premises for 12 months after the date of the fire and emergency evacuation drill.

**R9-3-506. General Cleaning and Sanitation Standards**

A certificate holder shall ensure that:

1. All areas of the child care group home approved for providing child care services and the furnishings, equipment, supplies, materials, utensils, and toys in those areas are kept clean and free of insects and vermin;
2. All equipment, materials, and toys used by or accessible to enrolled children are cleaned and disinfected as often as necessary to maintain them in a clean and disinfected condition and, for items used by infants or one- or two-year-old children, at least once every 24 hours;
3. All plumbing fixtures at the child care group home are maintained in operating condition;
4. The plumbing at the child care group home supplies sufficient water pressure to meet the child care group home's toileting and cleaning needs;
5. Each bathroom used by an enrolled child at the child care group home has the following within the reach of enrolled children:
  - a. Mounted toilet tissue,
  - b. Soap contained in a dispenser, and
  - c. Singly dispensed paper towels;
6. A staff member washes the staff member's hands with soap and running water after toileting;
7. An enrolled child, other than an enrolled child with special needs who cannot wash the enrolled child's own hands, washes the enrolled child's hands with soap and running water after toileting;
8. After an enrolled child with special needs who cannot wash the enrolled child's own hands uses the toilet, a staff member washes the enrolled child's hands with a washcloth,

cloth, or paper towel, or disposable wipes, using each washcloth, cloth, or paper towel, or disposable wipe on only one enrolled child and only one time before it is laundered or discarded;

9. Each toilet bowl and sink in a child care group home available for use by enrolled children is cleaned and disinfected daily or, if necessary, more often;
10. A bathtub is cleaned and disinfected before being used to bathe an enrolled child and, if used to bathe more than one enrolled child in one day, between each use;
11. Food waste at the child care group home is stored in a covered waterproof container that is clean and lined with a plastic bag; and
12. Food waste and other refuse is removed from the residence daily or, if necessary, more often.

**R9-3-507. Diaper-Changing Standards**

- A. A certificate holder shall ensure that a staff member changes diapers only on a nonabsorbent, sanitizable diaper changing surface that:
  1. Is kept clear of items not required for diaper changing;
  2. Is in an area of the child care group home approved for providing child care services, but not in a kitchen or eating area; and
  3. Provides access to running water that is not a kitchen sink and dispensed soap within 15 feet.
- B. A certificate holder shall ensure that:
  1. A staff member:
    - a. Cleans, sanitizes, and dries a diaper-changing surface using a single-use paper towel before and after each diaper change;
    - b. Washes the staff member's hands with soap and running water before and after each diaper change;
    - c. Wears single-use non-porous gloves during each diaper change;
    - d. Washes an enrolled child's hands with soap and running water or with a washcloth or disposable wipe after the enrolled child's diaper is changed and uses each washcloth or disposable wipe on only one child and only one time before it is laundered or discarded; and
    - e. Documents the daily diaper changes for each enrolled child in a dated diaper-changing log after changing the enrolled child's diaper;
  2. The diaper-changing log is maintained on the premises for 12 months after the date of the last diaper change recorded in the diaper-changing log;

3. Soiled cloth diapers or plastic pants from an enrolled child are:
  - a. If soiled with feces, emptied into a flush toilet without rinsing the cloth diapers or plastic pants;
  - b. Placed in a plastic bag labeled with an identifier that is specific to the enrolled child;
  - c. Stored in a waterproof container that is tightly covered and lined with a plastic bag; and
  - d. Sent home with the enrolled child's parent; and
4. Soiled disposable diapers and disposable training pants are:
  - a. Stored in a waterproof container that is tightly covered and lined with a plastic bag; and
  - b. Removed from the diaper-changing area and discarded in an outside waste receptacle once daily or, if necessary, more often.

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### **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

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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.

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

- A. The director shall:
1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
  2. Perform all duties necessary to carry out the functions and responsibilities of the department.
  3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
  4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
  5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
  6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
  7. Prepare sanitary and public health rules.
  8. Perform other duties prescribed by law.
- B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.
- C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.
- D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.
- E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly

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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

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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,

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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

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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.

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- (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.

### **36-897. Definitions**

In this article, unless the context otherwise requires:

- 1. "Child care group home" means a residential facility in which child care is regularly provided for compensation for periods of less than twenty-four hours per day for not less than five children but no more than ten children through the age of twelve years.
- 2. "Department" means the department of health services.
- 3. "Provider" means the certificate holder or a person the certificate holder designates in writing who, pursuant to applicable statutes and rules, is to be responsible for direct daily supervision, operation and maintenance of the child care group home.
- 4. "Substantial compliance" means that the nature or number of violations revealed by any type of inspection or investigation of an applicant for certification as a child care group home or a certified child care group home does not pose a direct risk to the life, health or safety of children.

### **36-897.01. Certification; application; fees; rules; fingerprinting; renewal; exemption from rule making**

- A. A child care group home shall be certified by the department. An application for a certificate shall be made on a written or electronic form prescribed by the department and shall contain all information required by the department.
- B. If a child care group home is within one-fourth mile of agriculture land, the application shall include the names and addresses of the owners and lessees of any agricultural land within one-fourth mile of the facility. Within ten days after receipt of an application for a certificate, the department shall notify the owners and lessees of agricultural land as listed on the application. The department shall deny a certificate that affects agricultural land regulated pursuant to section 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the department may issue a certificate to the child care group home to be located within the affected buffer zone. The agreement may include any stipulations regarding the child care group home, including conditions for future expansion of the facility and changes in the operational status of the facility that will result in a breach of the agreement. This subsection applies to the renewal of a certificate for a child care group home located in the same location if the child care group home certificate was not previously issued under this subsection.
- C. The director, by rule, may establish and collect fees for child care group homes and a late filing fee. Beginning January 1, 2010, ninety per cent 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 per cent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.
- D. Pursuant to available funding the department shall collect annual fees.
- E. Beginning January 1, 2010, subject to the availability of monies, the department may establish a discount program

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- for certification fees paid by child care group homes, including a public health discount program.
- F. The department shall issue an initial certificate if the department determines that the applicant and the applicant's child care group home are in substantial compliance with the requirements of this article and department rules and the facility agrees to carry out a plan acceptable to the director to eliminate any deficiencies.
  - G. A certificate is valid unless it is revoked or suspended or the licensee does not pay the licensure fee and may be renewed by submitting the certification fee as prescribed by the department pursuant to subsection C of this section.
  - H. In order to ensure that the equipment and services of a child care group home and the good character of an applicant are conducive to the welfare of children, the department by rule shall establish the criteria for granting, denying, suspending and revoking a certificate.
  - I. The director shall adopt rules and prescribe forms as may be necessary for the proper administration and enforcement of this article.
  - J. The certificate shall be conspicuously posted in the child care group home for viewing by parents and the public.
  - K. Current department inspection reports shall be kept at the child care group home and shall be made available to parents on request.
  - L. A certificate is not transferable and is valid only for the location occupied at the time it is issued.
  - M. An application for an initial certificate shall include:
    - 1. The form that is required pursuant to section 36-897.03, subsection B and that is completed by the applicant.
    - 2. A copy of a valid fingerprint clearance card issued to the applicant pursuant to section 41-1758.07.
  - N. The department of health services shall notify the department of public safety if the department of health services receives credible evidence that a person who possesses a valid fingerprint clearance card either:
    - 1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B.
    - 2. Falsified information on any form required by section 36-897.03.
  - O. Certificate holders may pay fees by installment payments based on procedures established by the department.
  - P. The department shall review its actual costs to administer this article at least once every two years. If the department determines that its administrative costs are lower than the fees it has collected pursuant to this section, it shall adjust fees.
  - Q. If the department lowers fees, the department may refund or credit fees to licensees.
  - R. Fee reductions are exempt from the rule making requirements of title 41, chapter 6.

### **36-897.02. Standards of care; monitoring**

- A. The department by rule shall establish standards of care for child care group homes. These rules shall include minimum programmatic, personnel, supervision of children, training, physical environment and financial stability standards.
- B. At least two adults shall be present in the child care group home when six to ten children are cared for in the home.
- C. For purposes of certification of the child care group home, the provider's own children shall not be counted.
- D. The total number of children present in a child care group home at any given time for whom compensation is received shall not exceed ten.
- E. The total number of children present in a child care group home at any given time, including children related to the provider, shall not exceed fifteen.
- F. The department shall monitor the operation of a child care group home at least two times each year to ensure that the child care group home is meeting department standards of care.

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### **36-897.03. Child care group homes; child care personnel; fingerprints; definition**

- A. Child care personnel, including volunteers, shall submit the form prescribed in subsection B of this section to the employer and shall have valid fingerprint clearance cards issued pursuant to section 41-1758.07 or shall apply for a fingerprint clearance card within seven working days of employment or beginning volunteer work.
- B. Applicants, certificate holders and child care personnel shall attest on forms that are provided by the department that:
  - 1. They are not awaiting trial on or have never been convicted of or admitted in open court or pursuant to a plea agreement committing any of the offenses listed in section 41-1758.07, subsection B or C in this state or similar offenses in another state or jurisdiction.
  - 2. They are not parents or guardians of a child adjudicated to be a dependent child as defined in section 8-201.
  - 3. They have not been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state or had a license to operate a child care facility or a certificate to operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.
- C. The provider shall make documented, good faith efforts to contact previous employers of child care personnel to obtain information or recommendations that may be relevant to an individual's fitness to work in a certified child care group home.
- D. The director may adopt rules prescribing the exclusion from child care group homes of individuals whose presence may be detrimental to the welfare of children.
- E. The forms required by subsection B of this section are confidential.
- F. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in section 41-1758.07, subsection B or subsection B, paragraph 2 or 3 of this section is prohibited from being employed in any capacity in a child care group home.
- G. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in section 41-1758.07, subsection C shall not work in a child care group home without direct visual supervision unless the person has applied for and received the required fingerprint clearance card pursuant to section 41-1758 and is registered as child care personnel. A person who is subject to this subsection shall not be employed in any capacity in a child care group home if that person is denied the required fingerprint clearance card.
- H. The employer shall notify the department of public safety if the employer receives credible evidence that any child care personnel either:
  - 1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B.
  - 2. Falsified information on the form required by subsection B of this section.
- I. For the purposes of this section, "child care personnel" means all employees of and persons who are eighteen years of age or older and who reside in a child care group home that is certified by the department.

### **36-897.04. Exemptions**

- A. This article does not apply to the care given to children by or in:
  - 1. The homes of their own parents.
  - 2. A religious institution conducting a nursery in conjunction with its religious services.
  - 3. A unit of the public school system.
  - 4. A regularly organized private school engaged in an educational program which may be attended in substitution for public school pursuant to section 15-802.

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5. Any facility that provides training only in specific subjects, including dancing, drama, music, self-defense or religion.
  6. Any facility that provides only recreational or instructional activity to school age children who may come to and go from that facility at their own volition.
- B. If regularly organized private schools exempt under subsection A, paragraph 4 of this section provide child care beyond public school hours or for children who are not regularly enrolled in kindergarten programs or grades one through twelve, that portion of the school providing this care shall be considered a child care group home and is subject to this article.

### **36-897.05. Inspection of child care group homes**

- A. The department or designated local health departments or its agents may at any time visit, during hours of operation, and inspect a child care group home in order to determine whether it is certified and is being conducted in compliance with applicable law, this article and rules adopted pursuant to this article.
- B. The department shall visit each child care group home as often as necessary to assure continued compliance with this article and the rules adopted pursuant to this article. At least one unannounced visit shall be made annually.

### **36-897.06. Civil penalty; collection**

- A. The director may impose a civil penalty on a person who violates this article or rules adopted pursuant to this article in an amount of not more than one hundred dollars for each violation. Each day that a violation occurs constitutes a separate violation. The director may issue a notice that includes the proposed amount of the civil penalty assessment. A person may appeal the assessment by requesting an administrative hearing. If a person requests a hearing to appeal an assessment, the director shall not take further action to enforce and collect the assessment until the hearing process is complete. The director shall impose a civil penalty only for those days on which the violation has been documented by the department.
- B. In determining the civil penalty pursuant to subsection A, the department shall consider the following:
1. Repeated violations of statutes or rules.
  2. Patterns of noncompliance.
  3. Types of violations.
  4. Severity of violations.
  5. Potential for and occurrences of actual harm.
  6. Threats to health and safety.
  7. Number of children affected by the violations.
  8. Number of violations.
  9. Size of the facility.
  10. Length of time during which violations have been occurring.
- C. If a civil penalty imposed pursuant to subsection A of this section is not paid, the attorney general or a county attorney shall file an action to collect the civil penalty in a justice court or the superior court in the county in which the violation occurred.
- D. Civil penalties collected pursuant to subsection A of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.
- E. The department shall develop an instrument that documents compliance and noncompliance of child care group

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homes according to the criteria prescribed in its rules governing child care group home certification. Blank copies of the instrument, which shall be in standardized form, shall be made available to the public.

### **36-897.07. Training program**

The director shall establish a training program to provide training for child care group homes and users of child care group home services, technical assistance materials for child care group homes and information to enhance consumer awareness.

### **36-897.08. Intermediate sanctions; notification of compliance; hearing**

- A. If the director has reasonable cause to believe that a child care group home is in violation of this article or a rule adopted pursuant to this article and that the health or safety of the children is endangered, on written notice to the child care group home the director may impose one or more of the following intermediate sanctions until the child care group home is in substantial compliance:
1. Immediately restrict admissions to the child care group home.
  2. Terminate specific services that the child care group home may offer.
  3. Reduce the child care group home's capacity.
- B. A child care group home sanctioned pursuant to this section shall notify the department in writing when it is in substantial compliance. On receipt of notification the department shall conduct an inspection. If the department determines that the child care group home is in substantial compliance the director shall immediately rescind the sanctions. If the department determines that the child care group home is not in substantial compliance the sanctions remain in effect. The child care group home may then notify the department of substantial compliance not sooner than fourteen days after the date of that inspection. If the department determines on the return inspection that the child care group home is still not in substantial compliance the sanctions remain in effect. Thereafter, a child care group home may notify the department of substantial compliance not sooner than thirty days after the date of the last inspection. A child care group home shall make all notifications of substantial compliance by certified mail. The department shall conduct all inspections required pursuant to this subsection within fourteen days after receipt of notification of substantial compliance. If the department does not conduct an inspection within this time period, the sanctions have no further effect.
- C. On written request by a person who has been sanctioned pursuant to this section the director or the director's designee shall conduct a hearing to review the sanctions. A request for a hearing shall be made by certified mail within ten days after receipt of notice of the sanctions. The office of administrative hearings shall conduct an administrative hearing within seven business days after the notice of appeal has been filed with the office of administrative hearings.
- D. A hearing conducted pursuant to this section shall comply with the requirements of title 41, chapter 6, article 10.

### **36-897.09. Operating without a certificate; notice; hearing; violation; classification**

- A. If the department has reasonable cause to believe that a person is operating a child care group home without a certificate, it shall notify that person to cease operation within ten days of receiving the notice. The department shall give notice either by certified mail or by personal service. The notice shall state that the person may make a written request for a hearing before the director or the director's designee pursuant to title 41, chapter 6, article 10.
- B. If a person fails to cease operation, the department may request that the county attorney of the county in which the home is located enforce this article. The department may also notify the attorney general who shall immediately

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seek a restraining order and an injunction against the home.

- C. A person who continues to operate a child care group home without certification ten days after receiving notice pursuant to this section is guilty of a class 1 misdemeanor.

### **36-897.10. Pending action or sale; effect on licensure**

- A. The department shall not act on an application for certification of a currently certified child care group home while any enforcement or court action related to child care group home certification is pending against that group home's current certificate holder.
- B. The director may continue to pursue any court, administrative or enforcement action against the certificate holder even if the group home is in the process of being sold or transferred to a new owner.
- C. The department shall not approve a change in group home ownership unless it determines that there has been a transfer of legal and equitable interests, control and authority in the group home so that persons other than the transferring certificate holder, that certificate holder's agent or other parties exercising authority or supervision over the group home's daily operations or staff are responsible for and have control over the group home.

### **36-897.11. Injunctions; definition**

- A. If the department believes that a child care group home is operating under conditions that may cause serious harm to children, the department shall notify the attorney general or the county attorney of the county in which the child care group home is located who shall immediately seek a restraining order and injunction against the home.
- B. For the purposes of this section, "serious harm" means a substantial physical injury.

### **36-897.12. Inspection of records**

- A. Records maintained by the department for child care group homes are available to the public for review and copying.
- B. Personally identifiable information that relates to a child, parent or guardian is confidential. The department shall disclose this information only as follows:
  - 1. Pursuant to a court order.
  - 2. Pursuant to a written consent signed by the parent or guardian.
  - 3. To a law enforcement officer who requires it for official purposes.
  - 4. To an official of a governmental agency who requires it for official purposes.
- C. The department shall enter into the child care group home's case file, contiguous to the form containing the reported violations, those documents that verify correction of reported violations.

### **36-897.13. Use of sunscreen in child care group homes**

A school-age child who attends a child care group home in this state may possess and use a topical sunscreen product without a note or prescription from a licensed health care professional.

**D-4**

**DEPARTMENT OF HEALTH SERVICES (R20-0904)**

Title 9, Chapter 24, Articles 2 and 3, Arizona Medically Underserved Area Health Services

**Amend:** R9-3-201, R9-3-202, R9-3-203, Table 2.1, R9-3-301, R9-3-302

**Repeal:** R9-3-205



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

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**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 (R20-0904)**  
Title 9, Chapter 24, Articles 2 and 3, Arizona Medically Underserved Area Health Services

**Amend:** R9-3-201, R9-3-202, R9-3-203, Table 2.1, R9-3-301, R9-3-302

**Repeal:** R9-3-205

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### **Summary:**

This Notice of Final Expedited Rulemaking (NFER) from the Department of Health Services (Department) seeks to make changes to rules in Title 9, Chapter 24, Articles 2 and 3 relating to Arizona Medically Underserved Area Health Services. Specifically, in its 2019 Five Year Review Report (5YRR) for these rules, the Department stated that the rules could be more clear and understandable if the Department simplified/clarified some requirements, updated antiquated language and outdated definitions and references, and made minor technical and grammatical changes. The Council approved the 5YRR for these rules on January 14, 2020.

In addition to making the changes identified in the 5YRR for these rules, the Department also seeks to clarify confusing requirements related to the primary care index and primary care boundaries determination and update obsolete criterion used for designating primary care areas, the value ranges within each criterion, and the points attached to each value within a criterion.

The Department received an exemption from the rulemaking moratorium in Executive Order 2020-02 to complete this expedited rulemaking on May 15, 2020.

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

Yes. This NFER seeks to implement a course of action proposed in a 5YRR pursuant to A.R.S. § 41-1027(A)(7).

2. **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.

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

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

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

The Department did not receive any public or stakeholder comments in conducting this expedited rulemaking.

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

No. The Department states that it made only minor, technical changes between the Notice of Proposed Expedited Rulemaking and the NFER. Upon review, Council staff agrees. These changes do not result in rules that are "substantially different" pursuant to A.R.S. § 41-1025.

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

Not applicable. The Department states that there is no corresponding federal law.

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

The Department states that the Article 2 rules establish requirements for determining whether a primary care area may be designated as an Arizona medically underserved area and the Article 3 rules specify functions for a coordinating medical provider. The Department believes the rules are exempt from the general permit requirement pursuant to A.R.S. § 41-1037(A)(3).

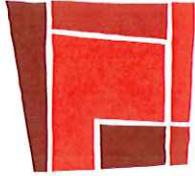
Upon review of the rules, Council staff agrees with the Department that it is exempt from the general permit requirement pursuant to A.R.S. § 41-1037(A)(3) because “[t]he issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements.”

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

Not applicable. The Department states that it did not review or rely on a study in conducting this expedited rulemaking.

**9. Conclusion**

This NFER seeks to implement a course of action proposed in an approved 5YRR for these rules, in addition to making other clarifying changes to improve the rules as described above and in the NFER. The rule changes would make these rules more clear, concise, understandable, and effective. If the Council votes to approve this expedited rulemaking, the rule changes would be immediately effective upon the Department filing its Certificate of Approval and NFER with the Secretary of State. Council staff recommends approval of this expedited rulemaking.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

July 20, 2020

**VIA EMAIL: [grrc@azdoa.gov](mailto: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. 24, Expedited Rulemaking

Dear Ms. Sornsin:

1. The close of record date: July 8, 2020
2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):  
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. The rulemaking implements, without material change, a course of action that was proposed in a five-year review report approved by the Council on January 14, 2020, pursuant to section A.R.S. § 41-1056. Changes to the rules include updating outdated definitions and statutory references and making the rules consistent with statutes. Thus, the Department believes the rulemaking complies with criteria for expedited rulemaking under A.R.S. § 41-1027(A) (7).
3. 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. 24 relates to a five-year-review report approved by the Council on January 14, 2020.

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.

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

The Department's point of contact for questions about the rulemaking documents is Teresa Koehler at [Teresa.Koehler@azdhs.gov](mailto:Teresa.Koehler@azdhs.gov).

Sincerely,



Robert Lane  
Director's Designee

RL:tk

Enclosures

Douglas A. Ducey | Governor    Cara M. Christ, MD, MS | Director

**NOTICE OF FINAL EXPEDITED RULEMAKING**  
**TITLE 9. HEALTH SERVICES**  
**CHAPTER 24. DEPARTMENT OF HEALTH SERVICES – ARIZONA MEDICALLY**  
**UNDERSERVED AREA HEALTH SERVICES**

**PREAMBLE**

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action**
- |            |        |
|------------|--------|
| R9-3-201.  | Amend  |
| R9-3-202.  | Amend  |
| R9-3-203.  | Amend  |
| Table 2.1. | Amend  |
| R9-3-205.  | Repeal |
| R9-3-301.  | Amend  |
| R9-3-302.  | Amend  |
- 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. §§ 36-132(A)
- Implementing statutes: A.R.S. §§ 36-2352, 36-2353, and 36-2354
- 3. The effective date of the rules:**
- The rules are effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.
- 4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed expedited rulemaking:**
- Notice of Rulemaking Docket Opening: 26 A.A.R. 1180, June 12, 2020
- Notice of Proposed Expedited Rulemaking: 26 A.A.R. 1274, June 26, 2020
- 5. The agency’s contact person who can answer questions about the expedited rulemaking:**
- Name: Patricia Tarango, Bureau Chief
- Address: Arizona Department of Health Services  
Division of Public Health Services, Public Health Prevention  
Bureau of Women’s and Children’s Health  
150 N. 18th Ave., Suite 320  
Phoenix, AZ 85007-3248
- Telephone: (602) 542-1436
- Fax: (602) 364-1496

E-mail: [Patricia.Tarango@azdhs.gov](mailto:Patricia.Tarango@azdhs.gov)

or

Name: Robert Lane, Chief

Address: Arizona Department of Health Services  
Office of Administrative Counsel and Rules  
150 N. 18th Ave., Suite 200  
Phoenix, AZ 85007

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: [Robert.Lane@azdhs.gov](mailto: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 expedited rulemaking:**

On January 14, 2020, the Governor's Regulatory Review Council approved the five-year-review report (Report) for 9 A.A.C. 24. The Department, in its 2019 Arizona Medically Underserved Area Health Service Report identified that the rules are effective; however, the rules could be clearer and more understandable by simplifying-clarifying some requirements; updating antiquated language and outdated definitions and references; and making minor technical and grammatical changes. On May 15, 2020, the Department received an exception from the rulemaking moratorium, established by Executive Order 2020-02, to amend the rules through expedited rulemaking to clarify confusing requirements related to the primary care index and primary care boundaries determination and update obsolete criterion used for designating primary care areas, the value ranges within each criterion, and the points attached to each value within a criterion. The Department also made other changes identified in the Report. The changes identified will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of a regulated person. Amending the rules as identified in the Report meets the criteria for expedited rulemaking and implements a course of action proposed in a five-year-review report. This rulemaking achieves the purpose prescribed in A.R.S. § 41-1027(A)(7) to implement a course of action proposed in a five-year-review report. The Department believes amending these rules will eliminate confusion and reduce regulatory burden. The proposed amendments will conform to rulemaking format/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 expedited rulemaking.

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

This final expedited rulemaking does not diminish a previous grant of authority of a political subdivision of this state.

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

The Department is excluded from providing an economic, small business, and consumer impact statement pursuant to A.R.S. § 41-1055(D)(2).

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

Between the proposed expedited rulemaking and the final expedited rulemaking, the Department corrected typos in R9-24-201(32), changing (B)(12) to (B)(8), and changed Table 1.1 designation to Table 2.1.

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

The Department did not receive public or stakeholder comments about the expedited rulemaking.

**12. Any agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rules 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 specifically to the Department or this specific expedited 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:**

The Article 2 rules establish requirements for determining whether a primary care area may be designated as an Arizona medically underserved area and the Article 3 rules specifies functions for a coordinating medical provider. The Department believes the rules are exempt from the general permit requirement pursuant to A.R.S. 41-1037(A)(3).

**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 are no federal rules applicable to the subject of the rule.

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

No such analysis was submitted.

**13.** **Incorporations by reference and their location in the rules:**

Not applicable

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

The rule was not previously made as an emergency rule.

**15.** **The full text of the rule follows:**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 24. DEPARTMENT OF HEALTH SERVICES**

**ARIZONA MEDICALLY UNDERSERVED AREA HEALTH SERVICES**

**ARTICLE 2. ARIZONA MEDICALLY UNDERSERVED AREAS**

R9-24-201. Definitions

R9-24-202. Arizona Medically Underserved Area Designation

R9-24-203. Primary Care Index

~~Table 1.~~Table 2.1. Primary Care Index Scoring

R9-24-204. Primary Care Area Boundaries Determination

R9-24-205. ~~Time frames~~ Repealed

**ARTICLE 3. COORDINATING MEDICAL PROVIDERS**

R9-24-301. Definitions

R9-24-302. CPM Functions

## ARTICLE 2. ARIZONA MEDICALLY UNDERSERVED AREAS

### R9-24-201. Definitions

In addition to the definitions in A.R.S. § 36-2351, the following definitions apply in this Article, unless otherwise specified:

1. “Act, event, or default” means an occurrence or the failure of something to occur.
2. “Agency” has the same meaning as in A.R.S. § 41-1001.
3. “Ambulatory care sensitive conditions” means the illnesses listed in the first table of Appendix B (entitled “Ambulatory Care Sensitive Conditions”) to “Using Administrative Data to Monitor Access, Identify Disparities, and Assess Performance of the Safety Net,” in *Tools for Monitoring the Health Care Safety Net*, AHRQ Publication No. 03-0027, September 2003, Agency for Healthcare Research and Quality, Rockville, MD, and available on the web site of the Agency for Healthcare Research and Quality, U.S. Department of Health and Human Services, at <http://www.ahrq.gov/data/safetynet/billappb.htm>.
4. “Arizona Medical Board” means the agency established by A.R.S. § 32-1402 to regulate physicians licensed under A.R.S. Title 32, Chapter 13.
5. “Arizona medically underserved area” means:
  - a. A primary care area or part of a primary care area with the designation described in R9-24-202(1), or
  - b. A primary care area with the designation described in R9-24-202(2).
6. “Arizona Regulatory Board of Physician Assistants” means the agency established by A.R.S. § 32-2502 to regulate physician assistants.
7. “Arizona State Board of Nursing” means the agency established by A.R.S. § 32-1602 to regulate nurses and nursing assistants.
8. “Birth life expectancy” means the average life span at the time of birth according to the most recent U.S. life expectancy data in the National Vital Statistics Reports of the National Vital Statistics System, available on the web site of the National Center for Health Statistics, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, at <http://www.cdc.gov/nchs/fastats/lifexpec.htm>.
9. “Board of Osteopathic Examiners in Medicine and Surgery” means the agency established by A.R.S. § 32-1801 to regulate physicians licensed under A.R.S. Title 32, Chapter 17.
10. “Boundary change” means a re-determination of the geographic limits of a primary care area.

11. ~~“Census block” means a geographic unit that is:~~
- ~~a. The smallest unit of census geography established by the U.S. Census Bureau, and~~
  - ~~b. One of approximately 8 million similar units covering the entire nation.~~
12. ~~“Day” means calendar day:~~
- ~~a. Excluding the day of the act, event, or default that triggers the running of a time frame;~~
  - ~~b. Excluding the last day of a time frame if it is a Saturday, Sunday, or legal holiday; and~~
  - ~~c. If the last day of a time frame is excluded under subsection (12)(b), including the next day that is not a Saturday, Sunday, or legal holiday.~~
13. ~~“Family unit” means:~~
- ~~a. Two or more individuals related by birth, marriage, or adoption who live at the same residence; or~~
  - ~~b. One individual who does not live at the same residence with anyone related by birth, marriage, or adoption.~~
14. ~~“First health care contact” means the initial telephone call or visit to a health care provider as defined in 45 CFR 160.103 for an individual’s health issue.~~
15. ~~“Full time” means providing primary care services for at least 40 hours between a Sunday at 12:00 midnight and the next Sunday at 12:00 midnight.~~
16. ~~“Health organization” means:~~
- ~~a. A person or entity that provides medical services;~~
  - ~~b. A third party payor defined in A.R.S. § 36-125.07(C); or~~
  - ~~c. A trade or professional association described in 501(c)(3), (4), (5), or (6) of the Internal Revenue Code, 26 U.S.C. 501(c), that is exempt from federal income taxes.~~
17. ~~“Indian reservation” has the same meaning as in A.R.S. § 11-801.~~
18. ~~“Legal holiday” means a state service holiday listed in A.A.C. R2-5-402.~~
19. ~~“Local planning personnel” means individuals who develop programs related to the delivery of and access to medical services for places or areas:~~
- ~~a. Under the jurisdiction of an Arizona city or county, or~~
  - ~~b. In an Arizona Indian reservation or less than 50 miles outside the boundaries of an Indian reservation.~~

20. ~~“Low weight birth” means the live birth of an infant weighing less than 2500 grams or 5 pounds, 8 ounces.~~
21. ~~“Medical services” has the same meaning as in A.R.S. § 36-401.~~
22. ~~“Mobility limitation” means an individual’s physical or mental condition that:~~
- a. ~~Has lasted for at least six months,~~
  - b. ~~Impairs the individual’s ability to go outside the individual’s residence alone, and~~
  - c. ~~Is not a temporary health problem such as a broken bone that is expected to heal normally.~~
23. ~~“Motor vehicle” has the same meaning as in A.R.S. § 28-101.~~
24. ~~“Nonresidential” means not primarily used for living and sleeping.~~
25. ~~“Person” has the same meaning as in A.R.S. § 41-1001.~~
26. ~~“Physician assistant” has the same meaning as in A.R.S. § 32-2501.~~
27. ~~“Political subdivision” means a county, city, town, district, association, or authority created by state law.~~
28. ~~“Population” means the number of residents of a place or an area, according to:~~
- a. ~~The most recent decennial census prepared by the U.S. Census Bureau and available at <http://www.census.gov>; or~~
  - b. ~~The most recent Population Estimates for Arizona’s Counties, Incorporated Places and Balance of County prepared by the Department of Economic Security Arizona Office of Economic Opportunity and available at <http://www.workforce.az.gov/?PAGED=67&SUBID=137>.~~
29. ~~“Poverty threshold” means calendar year income relative to family unit size that:~~
- a. ~~Determines an individual’s poverty status,~~
  - b. ~~Is defined annually by the U.S. Census Bureau, and~~
  - c. ~~Is available for the most recently completed calendar year at <http://www.census.gov/hhes/poverty/threshld.html>.~~
30. ~~“Primary care area” means a geographic region determined by the Department under R9-24-204.~~
31. ~~“Primary care HPSA” means primary care health professional shortage area designated by the U.S. Department of Health and Human Services under 42 U.S.C. 254e, 42 CFR 5.1 through 5.4, and 42 CFR Part 5, Appendix A.~~
32. ~~“Primary care index” means the document in which the Department designates primary care areas as medically underserved according to R9-24-203 and Table 1.~~

33. ~~“Primary care provider” means a physician, physician assistant, or registered nurse practitioner who:~~
- a. ~~Except for emergencies, is an individual’s first health care contact; and~~
  - b. ~~Provides primary care services in general or family practice, general internal medicine, pediatrics, or obstetrics and gynecology.~~
34. ~~“Primary care services” means health care provided by a primary care provider, including:~~
- a. ~~Illness and injury prevention;~~
  - b. ~~Health promotion and education;~~
  - c. ~~Identification of individuals at special risk for illness;~~
  - d. ~~Early detection of illness;~~
  - e. ~~Treatment of illness and injury, and~~
  - f. ~~Referral to specialists.~~
35. ~~“Primary care services utilization pattern” means a distribution of the use of primary care services resulting from the factors listed in R9-24-204(A)(3)(a).~~
36. ~~“Registered nurse practitioner” has the same meaning as in A.R.S. § 32-1601.~~
37. ~~“Residence” means a structure or part of a structure where an individual lives and sleeps.~~
38. ~~“Resident” means an individual who lives and sleeps in a place or an area more than one-half of the time.~~
39. ~~“Residential” means primarily used for living and sleeping.~~
40. ~~“Self care limitation” means an individual’s physical or mental condition that:~~
- a. ~~Has lasted for at least six months;~~
  - b. ~~Impairs the individual’s ability to perform activities such as dressing, bathing, or moving around inside the individual’s residence; and~~
  - c. ~~Is not a temporary health problem such as a broken bone that is expected to heal normally.~~
41. ~~“Specialist” means an individual who:~~
- a. ~~Is regulated under:~~
    - i. ~~A.R.S. Title 32, Chapters 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 25, 28, 29, 33, 34, 35, 39, or 41;~~
    - ii. ~~A.R.S. Title 36, Chapter 6, Article 7; or~~
    - iii. ~~A.R.S. Title 36, Chapter 17; and~~

- b. ~~Meets the education, knowledge, and skill requirements generally recognized in the profession related to a specific service or procedure, patient category, body part or system, or type of disease.~~
- 42. ~~“Street route” means a course of travel by road.~~
- 43. ~~“Temporary” means lasting for a limited time.~~
- 44. ~~“Topography” means the surface configuration of a place or region, including elevations and positions of the physical features.~~
- 45. ~~“Travel pattern” means a prevalent flow of motor vehicles resulting from:~~
  - a. ~~The configuration of streets, and~~
  - b. ~~The location of residential and nonresidential areas.~~
- 46. ~~“Value” means a number within a value range.~~
- 47. ~~“Value range” means, for a criterion listed in R9-24-203(B) and Table 1, a measurement:~~
  - a. ~~Consisting of a scale between upper and lower limits, except for the supplementary criteria score under R9-24-203(B)(12); and~~
  - b. ~~To which Table 1 assigns points or 0 points.~~
- 48. ~~“Work disability” means an individual’s physical or mental condition that:~~
  - a. ~~Has lasted for at least six months;~~
  - b. ~~Limits the individual’s choice of jobs or prevents the individual from working for more than 34 hours per week, and~~
  - e. ~~Is not a temporary health problem such as a broken bone that is expected to heal normally.~~

In addition to the definitions in A.R.S. § 36-2351, the following definitions apply in this Article, unless otherwise specified:

1. “Agency” has the same meaning as in A.R.S. § 41-1001.
2. “Arizona Medical Board” means the agency established by A.R.S. § 32-1402 to regulate physicians licensed under A.R.S. Title 32, Chapter 13.
3. “Arizona medically underserved area” means:
  - a. A primary care area with the designation described in R9-24-202(1), or
  - b. A primary care area with the designation described in R9-24-202(2).
4. “Board of Osteopathic Examiners in Medicine and Surgery” means the agency established by A.R.S. § 32-1801 to regulate physicians licensed under A.R.S. Title 32, Chapter 17.
5. “Census tract” means a small, relatively permanent statistical subdivision of a county established by the U.S. Bureau of Census.

6. “Communities of color” means individuals who self identify their race/ethnicity as anything other than Non-Hispanic White.
7. “Disability” means physical, mental, or sensory impairment as reported to the American Community Survey that may include hearing difficulty, vision difficulty, cognitive difficulty, ambulatory difficulty, self-care difficulty, and independent living difficulty.
8. “Federal poverty level” means a set of money income thresholds that vary by family size and composition used by the U.S. Census Bureau to determine who is in poverty.
9. “First health care contact” means the initial telephone call or visit to a health care provider as defined in 45 CFR 160.103 for an individual’s health issue.
10. “Full-time” means providing primary care services for at least 40 hours between a Sunday at 12:00 midnight and the next Sunday at 12:00 midnight.
11. “Health organization” means:
  - a. A person or entity that provides medical services;
  - b. A third party payor defined in A.R.S. § 36-125.07(C); or
  - c. A trade or professional association described in 501(c)(3), (4), (5), or (6) of the Internal Revenue Code, 26 U.S.C. 501(c), that is exempt from federal income taxes.
12. “Indian reservation” has the same meaning as in A.R.S. § 11-801.
13. “Local planning personnel” means an individual who develop programs related to the delivery of and access to medical services for places or areas:
  - a. Under the jurisdiction of an Arizona city or county, or
  - b. In an Arizona Indian reservation or less than 50 miles outside the boundaries of an Indian reservation.
14. “Low birthweight” means any neonate weighing less than 2,500 grams at birth or less than 5 pounds 8 ounces.
15. “Medical services” has the same meaning as in A.R.S. § 36-401.
16. “Nonresidential” means not primarily used for living and sleeping.
17. “Person” has the same meaning as in A.R.S. § 41-1001.
18. “Political subdivision” means a county, city, town, district, association, or authority created by state law.
19. “Population” means the number of residents of a place or an area, according to the most recent American Community Survey prepared by the U.S. Census Bureau.
20. “Primary care area” means a geographic region determined by the Department under R9-24-204.

21. “Primary care HPSA” means primary care health professional shortage area designated by the U.S. Department of Health and Human Services under 42 U.S.C. 254e, 42 CFR 5.1 through 5.4, and 42 CFR Part 5, Appendix A.
22. “Primary care index” means the document in which the Department designates primary care areas as medically underserved according to R9-24-203 and Table 2.1.
23. “Primary care physician” means an Arizona licensed practitioner who:
  - a. Except for emergencies, is an individual’s first health care contact; and
  - b. Provides primary care services in general or family practice, general internal medicine, pediatrics, or obstetrics and gynecology.
24. “Primary care services” means health care provided by a primary care physician, including:
  - a. Illness and injury prevention,
  - b. Health promotion and education,
  - c. Identification of individuals at special risk for illness,
  - d. Early detection of illness,
  - e. Treatment of illness and injury, and
  - f. Referral to specialists.
25. “Primary care services utilization pattern” means a distribution of the use of primary care services resulting from the factors listed in R9-24-204(A)(3)(a).
26. “Resident” means an individual who lives and sleeps in a place or an area more than one-half of the time.
27. “Residential” means primarily used for living and sleeping.
28. “Specialist” means an individual who:
  - a. Is regulated under:
    - i. A.R.S. Title 32, Chapters 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 25, 28, 29, 33, 34, 35, 39, or 41;
    - ii. A.R.S. Title 36, Chapter 6, Article 7; or
    - iii. A.R.S. Title 36, Chapter 17; and
  - b. Meets the education, knowledge, and skill requirements generally recognized in the profession related to a specific service or procedure, patient category, body part or system, or type of disease.
29. “Topography” means the surface configuration of a place or region, including elevations and positions of the physical features.
30. “Travel pattern” means a prevalent flow of vehicles resulting from:

- a. The configuration of streets, and
- b. The location of residential and nonresidential areas.
- 31. “Value” means a number within a value range.
- 32. “Value range” means, for a criterion listed in R9-24-203(B) and Table 2.1, a measurement:
  - a. Consisting of a scale between upper and lower limits, except for the supplementary criteria score under R9-24-203(B)(8); and
  - b. To which Table 2.1 assigns points or 0 points.

**R9-24-202. Arizona Medically Underserved Area Designation**

The Department shall designate as Arizona medically underserved areas:

- 1. The primary care areas ~~or parts of primary care areas~~ designated as primary care HPSAs by the U.S. Department of Health and Human Services, and
- 2. The primary care areas designated as medically underserved by the Department under R9-24-203 and ~~Table 1~~ Table 2.1.

**R9-24-203. Primary Care Index**

~~A.~~ Every 12 months, the Department shall prepare, according to this Section, a primary care index for designating primary care areas determined under R9-24-204 as Arizona medically underserved areas.

- ~~1.~~ For each primary care area determined under R9-24-204, the Department shall calculate the value for each criterion in subsection (B).
  - ~~a.~~ After calculating the value for each criterion in subsection (B), the Department shall assign points to each value according to Table 1.
  - ~~b.~~ A primary care area’s score is the sum of the points received by the primary care area for each criterion in subsection (B).
- ~~2.~~ The Department shall designate as Arizona medically underserved:
  - ~~a.~~ The primary care areas that, according to subsection (B) and Table 1 score within the top 25 percent on the primary care index or that obtain more than 55 points, whichever results in the designation of more Arizona medically underserved areas; and
  - ~~b.~~ The primary care areas or parts of primary care areas with the designation described in R9-24-202(1).

~~B.~~ For each primary care area determined by the Department under R9-24-204, the primary care index shall include a score for each of the following:

1. ~~Population to primary care provider ratio, determined by dividing the population of the primary care area by the number of primary care providers in the primary care area:~~
  - a. ~~Using primary care provider data from the Arizona Medical Board, the Board of Osteopathic Examiners in Medicine and Surgery, the Arizona State Board of Nursing, and the Arizona Regulatory Board of Physician Assistants;~~
  - b. ~~Counting a full-time physician as 1.0, a full-time physician assistant as 0.8, and a full-time registered nurse practitioner as 0.8; and~~
  - e. ~~If the Department determines that a physician, physician assistant, or registered nurse practitioner practices less than full-time in the primary care area, lowering the number obtained under subsection (B)(1)(b) as follows:~~
    - i. ~~Creating a fraction with a numerator that represents the number of hours per week the physician, physician assistant, or registered nurse practitioner practices in the primary care area and with a denominator of 40;~~
    - ii. ~~Multiplying 1.0 or 0.8, whichever is appropriate, by the fraction obtained under subsection (B)(1)(c)(i);~~
    - iii. ~~Subtracting the result obtained under subsection (B)(1)(c)(ii) from 1.0 or 0.8, whichever is appropriate; and~~
    - iv. ~~Subtracting the result obtained under subsection (B)(1)(c)(iii) from the number obtained under subsection (B)(1)(b);~~
2. ~~Travel distance to the nearest primary care provider, determined by:~~
  - a. ~~Estimating the distance in miles:~~
    - i. ~~From the center of the most densely populated area in the primary care area determined from the most recent Population Estimates for Arizona's Counties, Incorporated Places and Balance of County identified in R9-24-201(28)(b) or, for the year in which the most recent decennial census is published, from the most recent decennial census prepared by the U.S. Census Bureau; and~~
    - ii. ~~To the nearest primary care provider determined from the data described in subsection (B)(1)(a); and~~
  - b. ~~Using the most direct street route;~~
3. ~~Composite transportation score, determined by:~~
  - a. ~~Compiling data on the following six indicators from the most recent decennial census prepared by the U.S. Census Bureau:~~

- i. ~~Percentage of population with calendar year income less than 100 percent of the poverty threshold;~~
    - ii. ~~Percentage of population older than age 65;~~
    - iii. ~~Percentage of population younger than age 14;~~
    - iv. ~~Percentage of population with a work disability, mobility limitation, or self-care limitation;~~
    - v. ~~Percentage of population without a motor vehicle; and~~
    - vi. ~~The motor vehicle to population ratio;~~
  - b. ~~Calculating the statewide average value for each of the six indicators in subsection (B)(3)(a);~~
  - c. ~~Dividing the value of each indicator for each primary care area by the statewide average value for that indicator;~~
  - d. ~~Multiplying the figure calculated under subsection (B)(3)(c) for each indicator by 100; and~~
  - e. ~~Averaging the six indicator values obtained under subsection (B)(3)(d) for each primary care area;~~
4. ~~Percentage of population with calendar year income less than 200% of the poverty threshold, determined from data in the most recent decennial census prepared by the U.S. Census Bureau;~~
  5. ~~Percentage of population with annual income between 100% and 200% of the poverty threshold, determined from data in the most recent decennial census prepared by the U.S. Census Bureau;~~
  6. ~~Percentage of uninsured births, determined from Department birth records reporting payment source as “self-pay” or “unknown;”~~
  7. ~~Ambulatory care sensitive condition hospital admissions:~~
    - a. ~~Based on the number of hospital admissions for ambulatory care sensitive conditions per 1000 individuals living in the primary care area who are under age 65; and~~
    - b. ~~Determined from hospital inpatient and emergency department services data provided by the Department;~~
  8. ~~Percentage of low weight births, determined from data provided by the Department;~~
  9. ~~From data provided by the Department, the sum of the percentage of births for which the mothers reported:~~
    - a. ~~No prenatal care;~~

- b. Prenatal care that began in the second or third trimester, and
  - e. Four or fewer prenatal care visits;
10. Percentage of deaths at ages younger than the birth life expectancy, determined from the most recent U.S. life expectancy data and data provided by the Department;
11. Number of infant deaths per 1000 live births, determined from data provided by the Department;
12. Supplementary criteria score, based on the presence or absence in a primary care area of the following:
- a. Percentage of minority population greater than the statewide average for all counties, determined from data in the most recent Population Estimates for Arizona's Counties, Incorporated Places and Balance of County identified in R9-24 201(28)(b) and from data in the most recent decennial census;
  - b. Percentage of elderly population greater than the statewide average for all counties, determined from data in the most recent Population Estimates for Arizona's Counties, Incorporated Places and Balance of County identified in R9-24 201(28)(b) and from data in the most recent decennial census; and
  - e. Average annual unemployment rate greater than the average annual statewide rate, from data in the most recent Arizona Unemployment Statistics Program Special Unemployment Report, prepared by the Arizona Department of Economic Security; Research Administration, in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics, and available at <http://www.workforce.az.gov>; and
13. Sole provider or no provider score:
- a. Based on whether a primary care area has only 1.0 or less than 1.0 primary care provider;
  - b. Counting a full time physician as 1.0, a full time physician assistant as 0.8, and a full time registered nurse practitioner as 0.8; and
  - e. If the Department determines that a physician, physician assistant, or registered nurse practitioner practices less than full time in the primary care area, lowering the number obtained under subsection (B)(13)(b) as follows:
    - i. Creating a fraction with a numerator that represents the number of hours per week the physician, physician assistant, or registered nurse practitioner practices in the primary care area and with a denominator of 40;

- ii. ~~Multiplying 1.0 or 0.8, whichever is appropriate, by the fraction obtained under subsection (B)(13)(c)(i);~~
- iii. ~~Subtracting the result obtained under subsection (B)(13)(c)(ii) from 1.0 or 0.8, whichever is appropriate; and~~
- iv. ~~Subtracting the result obtained under subsection (B)(13)(c)(iii) from the number obtained under subsection (B)(13)(b).~~

~~C. Every 12 months, according to subsections (A) and (B) and Table 1, the Department shall:~~

- 1. ~~Withdraw an Arizona medically underserved area designation;~~
- 2. ~~Continue an Arizona medically underserved area designation, or~~
- 3. ~~Designate a new Arizona medically underserved area.~~

~~D. A list of current Arizona medically underserved areas is available in the Department's annual Arizona Medically Underserved Areas (AzMUA) Report at <http://www.azdhs.gov/hsd/>.~~

A. Every 24 months, the Department shall prepare, according to this Section, a primary care index for designating primary care areas determined under R9-24-204 as Arizona medically underserved areas.

- 1. For each primary care area determined under R9-24-204, the Department shall calculate the value for each criterion in subsection (B):
  - a. After calculating the value for each criterion in subsection (B), the Department shall assign points to each value according to Table 2.1.
  - b. A primary care area's score is the sum of the points received by the primary care area for each criterion in subsection (B).
- 2. The Department shall designate as Arizona medically underserved:
  - a. The primary care areas that, according to subsection (B) and Table 2.1, score within the top 25 percent on the primary care index or that obtain more than 30 points, whichever results in the designation of more Arizona medically underserved areas; and
  - b. The primary care areas with the designation described in R9-24-202(1).

B. For each primary care area determined by the Department under R9-24-204, the primary care index shall include a score for each of the following:

- 1. Population-to-primary care physician ratio, determined by dividing the population of the primary care area by the number of primary care physicians in the primary care area:
  - a. Using primary care physician data from the Arizona Medical Board and the Board of Osteopathic Examiners in Medicine and Surgery,

- b. The Department shall determine an equivalency for a full-time physician where 40 hours equals 1 and 20 hours equal 0.5.
  - 2. Travel distance to the nearest primary care physician, determined by:
    - a. Estimating the distance in miles:
      - i. From the center of the most densely populated area in the primary care area determined from the most recent American Community Survey prepared by the U.S. Census Bureau; and
      - ii. To the nearest primary care physician determined from the data described in subsection (B)(1)(a); and
    - b. Using the most direct street route;
  - 3. Percentage of population with calendar year income less than 200% of the Federal poverty level, determined from data in the most recent American Community Survey prepared by the U.S. Census Bureau;
  - 4. Percentage of population who do not have health insurance as determined by the most recent American Community Survey prepared by the U.S. Census Bureau;
  - 5. Low birthweight rate percent of births;
  - 6. Late or no prenatal care percent of births;
  - 7. Infant mortality rate per 1,000 live births;
  - 8. Supplementary criteria score, based on a rate greater than the state wide average for:
    - a. Percentage of population age 65 and older;
    - b. Percentage of population age 14 and younger;
    - c. Percentage of population with a disability;
    - d. Percentage of communities of color; and
    - e. Percentage of population who speaks a language other than English.
- C.** Every 24 months, according to subsections (A) and (B) and Table 2.1, the Department shall:
  - 1. Withdraw an Arizona medically underserved area designation,
  - 2. Continue an Arizona medically underserved area designation, or
  - 3. Designate a new Arizona medically underserved area.
- D.** A list of current Arizona medically underserved areas is available in the Department’s biennial Arizona Medically Underserved Areas Report at <http://www.azdhs.gov/hsd/>.

**Table 1. Table 2.1. Primary Care Index Scoring**

CRITERIA	VALUE RANGE	POINTS
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Population to primary-care provider ratio	$\leq 2000:1$ 2001:1 to 2500:1 2501:1 to 3000:1 3001:1 to 3500:1 3501:1 to 4000:1 $> 4000:1$ or no provider	0 2 4 6 8 10
Travel distance to nearest primary care provider	$\leq 15.0$ miles 15.1-25.0 miles 25.1-35.0 miles 35.1-45.0 miles 45.1-55.0 miles $> 55.0$ miles	0 2 4 6 8 10
Composite transportation score	51st highest score and below 41st-50th highest scores 31st-40th highest scores 21st-30th highest scores 11th-20th highest scores 10 highest scores	0 2 4 6 8 10
Percentage of population with annual income less than 200% of poverty threshold	$\leq 15.0\%$ 15.1-25.0% 25.1-35.0% 35.1-45.0% 45.1-55.0% $\geq 55.0\%$	0 2 4 6 8 10
Percentage of population with annual income between 100% and 200% of poverty threshold	$\leq 10.0\%$ 10.1-15.0% 15.1-20.0% 20.1-25.0% 25.1-30.0% $\geq 30.0\%$	0 2 4 6 8 10
Percentage of uninsured births	$\leq 6.0\%$ 6.1-10.0% 10.1-14.0% 14.1-18.0% 18.1-22.0% $\geq 22.0\%$	0 2 4 6 8 10
Ambulatory care sensitive condition hospital admissions	$\leq 8.0$ 8.1-12.0 12.1-16.0 16.1-20.0 20.1-24.0 $\geq 24.0$	0 2 4 6 8 10
Percentage of low-weight births	$\leq 6.0\%$ 6.1-8.0% 8.1-10.0% 10.1-12.0% 12.1-14.0% $\geq 14.0\%$	0 2 4 6 8 10
Sum of the percentage of births with: a. No prenatal care; b. Prenatal care begun in	$\leq 15.0\%$ 15.1-25.0% 25.1-35.0% 35.1-45.0%	0 2 4 6

second or third trimester, and e. Prenatal care visits $\leq$ 4	45.1-55.0% $\geq$ 55.0%	8 10
Percentage of deaths at ages younger than birth life expectancy	$\leq$ 40.0% 40.1-50.0% 50.1-60.0% 60.1-70.0% 70.1-80.0% $\geq$ 80.0%	0 2 4 6 8 10
Number of infant deaths per 1000 live births	$\leq$ 4.0 4.1-6.0 6.1-8.0 8.1-10.0 10.1-12.0 $\geq$ 12.0	0 2 4 6 8 10
Supplementary criteria score	1 Criterion 2 Criteria 3 Criteria	2 4 6
Sole provider or no provider score	Primary care provider $\leq$ 1.0 Primary care providers $>$ 1.0	5 0
<b>Key to Symbols</b> $\leq$ represents "less than or equal to" $>$ represents "more than"		

<u>CRITERIA</u>	<u>VALUE RANGE</u>	<u>POINTS</u>
<u>Population-to-primary care physician ratio</u>	<u><math>\leq</math> 3000:1</u> <u>3001:1 to 3500:1</u> <u>3501:1 to 4000:1</u> <u>4001:1 to 5000:1</u> <u>5001:1 to 10,000:1</u> <u><math>&gt;</math>10,000:1 or no physician</u>	<u>0</u> <u>2</u> <u>4</u> <u>6</u> <u>8</u> <u>10</u>
<u>Travel distance to nearest primary care physician</u>	<u><math>\leq</math> 10.0 miles</u> <u>10.1-20.0 miles</u> <u>20.1-30.0 miles</u> <u>30.1-40.0 miles</u> <u>40.1-50.0 miles</u> <u><math>&gt;</math> 50.0 miles</u>	<u>0</u> <u>2</u> <u>4</u> <u>6</u> <u>8</u> <u>10</u>
<u>Percentage of population with annual income less than 200% of Federal poverty level</u>	<u><math>\leq</math> 20.0%</u> <u>20.1-32.0%</u> <u>32.1-39.0%</u>	<u>0</u> <u>2</u> <u>4</u>

	<u>39.1-51.0%</u>	<u>6</u>
	<u>&gt;51.0%</u>	<u>8</u>
<u>Percentage of population who do not have health insurance</u>	<u>≤ 6.2%</u>	<u>0</u>
	<u>6.3-9.6%</u>	<u>2</u>
	<u>9.7-12.2%</u>	<u>4</u>
	<u>12.3-17.2%</u>	<u>6</u>
	<u>&gt;17.2%</u>	<u>8</u>
<u>Low Birthweight Rate (percent of births)</u>	<u>≤ 6.2%</u>	<u>0</u>
	<u>6.3-6.9%</u>	<u>2</u>
	<u>7.0-7.5%</u>	<u>4</u>
	<u>7.6-8.2%</u>	<u>6</u>
	<u>&gt;8.2%</u>	<u>8</u>
<u>Late or No Prenatal Care Rate (percent of births)</u>	<u>≤ 4.6%</u>	<u>0</u>
	<u>4.7-6.2%</u>	<u>2</u>
	<u>6.3-8.7%</u>	<u>4</u>
	<u>8.3-12.4%</u>	<u>6</u>
	<u>&gt;12.4%</u>	<u>8</u>
<u>Infant Mortality Rate (per 1,000 live births)</u>	<u>≤ 3.5</u>	<u>0</u>
	<u>3.6-5.4</u>	<u>2</u>
	<u>5.5-7.0</u>	<u>4</u>
	<u>7.1-10.0</u>	<u>6</u>
	<u>&gt;10.0</u>	<u>8</u>
<p><u>In addition to the criteria specified in R9-24-203(B) and listed above, if a primary care area satisfies one or more of the following supplementary criteria, add one additional point to the primary care area score for each supplementary criteria satisfied.</u></p> <p><u>Supplementary criteria score, based on a rate greater than the state wide average for:</u></p> <ol style="list-style-type: none"> <li><u>1. Percentage of population age 65 and older;</u></li> <li><u>2. Percentage of population age 14 and younger;</u></li> <li><u>3. Percentage of population with a disability;</u></li> <li><u>4. Percentage of population who are communities of color; and</u></li> <li><u>5. Percentage of population who speaks a language other than English.</u></li> </ol>		
<p>Key to Symbols: ≤ represents “less than or equal to” and &gt; represents “more than”</p>		

**R9-24-204. Primary Care Area Boundaries Determination**

- A.** The Department shall determine the boundaries of primary care areas for the entire state. A primary care area's boundaries shall meet the following requirements:
1. The geographic area within the boundaries corresponds to or is larger than a ~~census block~~ census tract identified for the geographic area in the most recent ~~decennial census~~ American Community Survey prepared by the U.S. Census Bureau;
  2. The boundaries are consistent with the population's primary care services utilization patterns; and
  3. The primary care utilization patterns are determined by considering:
    - a. The geographic area's:
      - i. Topography,
      - ii. Social and cultural relationships of the people living within the geographic area,
      - iii. Political subdivision boundaries, and
      - iv. Travel patterns; and
    - b. Data about the type, amount, and location of primary care services used by the geographic area's population, obtained from local planning personnel, government officials, health organizations, primary care ~~providers~~ physicians, and residents of the geographic area.
- B.** In addition to the requirements for primary care area boundaries in subsection (A), the Department shall consider:
1. Indian reservation boundaries, and
  2. Primary care HPSA boundaries.
- ~~**C.** Without receiving a primary care area boundary change request under subsection (D), the Department may redetermine the boundaries of one or more primary care areas according to the requirements and considerations in subsections (A) and (B).~~
- ~~**D.** A primary care area's local planning personnel, government officials, health organizations, primary care providers, or residents may submit to the Department a primary care area boundary change request.~~
- ~~1. A person requesting a boundary change shall:
    - a. ~~Make the request in writing,~~
    - b. ~~Include documentation supporting the boundary change, and~~
    - c. ~~Submit the request by October 1 to be considered for inclusion in the next calendar year's Arizona medically underserved area designation process.~~~~

2. ~~The Department shall review a primary care area boundary change request according to the time frames in R9-24-205.~~

**R9-24-205. Time-frames Repeal**

- A.** ~~The overall time frame described in A.R.S. § 41-1072 for a primary care area boundary change request under R9-24-204(C) is 90 days.~~
1. ~~A person requesting a boundary change and the Department may agree in writing to extend the substantive review time frame and the overall time frame.~~
  2. ~~An extension of the substantive review time frame and the overall time frame may not exceed 25 percent of the overall time frame.~~
- B.** ~~The administrative completeness review time frame described in A.R.S. § 41-1072 for a primary care area boundary change request under R9-24-204(C) is 30 days and begins on the date the Department receives a boundary change request.~~
1. ~~Within the administrative completeness review time frame, the Department shall mail a notice of administrative completeness or a notice of deficiencies to the person requesting a boundary change.~~
    - a. ~~A notice of deficiencies shall list each deficiency and the information or documents needed to complete the boundary change request.~~
    - b. ~~A notice of deficiencies suspends the administrative completeness review time frame and the overall time frame from the date the Department mails the notice until the date the Department receives the missing information or documents.~~
    - c. ~~If the person requesting a boundary change does not submit to the Department all the information and documents listed in the notice of deficiencies within 60 days after the date the Department mails the notice of deficiencies, the Department considers the boundary change request withdrawn.~~
  2. ~~If the Department approves a boundary change request during the administrative completeness review time frame, the Department does not issue a separate written notice of administrative completeness.~~
- C.** ~~The substantive review time frame described in A.R.S. § 41-1072 for a primary care area boundary change request under R9-24-204(C) is 60 days and begins on the date the Department mails the notice of administrative completeness.~~
1. ~~Within the substantive review time frame, the Department shall mail written notification of approval or denial of the boundary change request to the person requesting a boundary change.~~
  2. ~~During the substantive review time frame:~~

- a. ~~The Department may make one comprehensive written request for additional information; and~~
  - b. ~~If the Department and the person requesting a boundary change agree in writing to allow one or more supplemental requests for information, the Department may make the number of supplemental requests for information agreed to.~~
  - 3. ~~A comprehensive written request for additional information or a supplemental request for information suspends the substantive review time frame and the overall time frame from the date the Department mails the request until the date the Department receives all the information and documents requested.~~
  - 4. ~~If the person requesting a boundary change does not submit to the Department all the information and documents listed in a comprehensive written request for additional information or a supplemental request for information within 60 days after the date the Department mails the request, the Department shall deny the boundary change request.~~
- D.** ~~The Department shall approve a primary care area boundary change request under R9-24-204(C) unless:~~
- 1. ~~The requested boundaries do not meet the requirements in R9-24-204(A);~~
  - 2. ~~The considerations required in R9-24-204(B) support the current boundaries and outweigh the information and documents submitted with the boundary change request, or~~
  - 3. ~~The person requesting the boundary change does not submit information and documents as stated in subsection (B)(1)(c) or subsection (C)(4).~~

### **ARTICLE 3. COORDINATING MEDICAL PROVIDERS**

**R9-24-301. Definitions**

In addition to the definitions in A.R.S. § 36-2351 and 9 A.A.C. 24, Article 2, the following definitions apply in this Article, unless otherwise specified:

- 1. “CMP” means coordinating medical provider.
- 2. ~~“Continuing medical education” means instruction that meets the requirements in:~~
  - a. ~~A.A.C. R4-16-102 for a physician licensed under A.R.S. Title 32, Chapter 13;~~
  - b. ~~A.A.C. R4-17-205 for a physician assistant licensed under A.R.S. Title 32, Chapter 25; and~~
  - c. ~~A.R.S. § 32-1825 and A.A.C. R4-22-109 for a physician licensed under A.R.S. Title 32, Chapter 17.~~
- 3. ~~“Continuing nursing education” means instruction that:~~

- ~~a.~~ Is required by A.A.C. R4-19-511 for authorization from the Arizona State Board of Nursing for a registered nurse practitioner to prescribe and dispense drugs and devices;
  - ~~b.~~ Meets requirements for continuing education established by a nurse credentialing organization, such as the American Nurses Credentialing Center; or
  - ~~e.~~ Provides training related to the performance of a nurse's job duties.
- ~~2.~~ "Continuing education" means instruction that meets the requirements in:
- ~~a.~~ A.A.C. R4-17-205 for a physician assistant licensed under A.R.S. Title 32, Chapter 25; or
  - ~~b.~~ A.A.C. R4-19-511 for authorization from the Arizona State Board of Nursing for a registered nurse practitioner to prescribe and dispense drugs and devices.
- ~~4.3.~~ "Drug prescription services" means providing medication that requires an order by medical personnel authorized by law to order the medication.
- ~~5.~~ "Durable medical equipment" means an item that:
- ~~a.~~ Can withstand repeated use;
  - ~~b.~~ Is designed to serve a medical purpose; and
  - ~~e.~~ Generally is not useful to an individual in the absence of a medical condition, illness, or injury.
- ~~6.4.~~ "Governing authority" has the same meaning as in A.R.S. § 36-401.
- ~~7.5.~~ "Independent decision" means a registered nurse practitioner's action without a physician's order according to A.A.C. R4-19-508 and A.A.C. R4-19-511.
- ~~8.6.~~ "Medical direction" means guidance, advice, or consultation provided by a CMP to a registered nurse practitioner.
- ~~9.7.~~ "Medical personnel" means a medical clinic's physicians, physician assistants, registered nurse practitioners, and nurses.
- ~~10.~~ "Nurse" means an individual licensed as a graduate, professional, or registered nurse or as a practical nurse under A.R.S. Title 32, Chapter 15.
- ~~8.~~ "Physician assistant" has the same meaning as in A.R.S. § 32-2501.
- ~~10.9.~~ "Order" means a written directive.
- ~~11.10.~~ "Practice requirements" means the standards for physicians established in:
- ~~a.~~ A.R.S. Title 32, Chapter 13 and 4 A.A.C. 16; or
  - ~~b.~~ A.R.S. Title 32, Chapter 17 and 4 A.A.C. 22.
- ~~12.11.~~ "Referral source" means a person who sends an individual to a third person for medical services.

12. “Registered nurse practitioner” means an individual licensed under A.R.S. Title 32, Chapter 15.
13. “Social services” means assistance, other than medical services, provided to maintain or improve an individual’s physical, mental, and social participation capabilities.
14. “Supervision” has the same meaning as in A.R.S. § 32-2501.
15. “Support services” means drug prescription services, social services, and provision of durable medical equipment.
16. “Work schedule coverage” means a medical clinic’s system for ensuring that a sufficient number of medical personnel are present at the medical clinic.
17. “Written protocol” means an agreement that identifies and is signed by a CMP and a registered nurse practitioner or a physician assistant.

**R9-24-302. CMP Functions**

**A.** A CMP shall:

1. Participate in planning for the delivery of medical services and support services within the Arizona medically underserved area that includes ways to increase access to medical services and support services for the Arizona medically underserved area’s residents;
2. Develop written protocols that:
  - a. Describe the manner and frequency that a registered nurse practitioner or a physician assistant at a medical clinic will communicate with the CMP, in addition to the face-to-face meeting required in subsection (A)(5);
  - b. Specify the criteria used by a registered nurse practitioner at the medical clinic in making an independent decision to refer an individual to a physician; and
  - c. Specify procedures to be followed by a physician assistant at the medical clinic when the CMP’s supervision of the physician assistant is by a means other than physical presence;
3. Approve or disapprove the selection of registered nurse practitioners and physician assistants who will work at the medical clinic;
4. Provide:
  - a. Medical direction to the registered nurse practitioners at the medical clinic, and analysis
  - b. Supervision to the physician assistants at the medical clinic;
5. At least weekly, conduct a face-to-face meeting with each registered nurse practitioner and each physician assistant at the medical clinic to evaluate the medical services provided by the registered nurse practitioner or physician assistant;

6. For ~~continuing medical education or continuing nursing education~~ continuing education of a medical clinic's medical personnel:
    - a. Recommend specific areas of instruction, including instruction in referral sources; and
    - b. Develop a written plan for work schedule coverage to accommodate ~~continuing medical education or continuing nursing education~~ continuing education; and
  7. At least annually, meet with the medical clinic's governing authority to evaluate the medical clinic's program and the medical care provided by the medical clinic's medical personnel.
- B.** The requirements in subsection (A) do not replace the practice requirements applicable to a CMP.

## TITLE 9. HEALTH SERVICES

CHAPTER 24. DEPARTMENT OF HEALTH SERVICES  
ARIZONA MEDICALLY UNDERSERVED AREA HEALTH SERVICES

## ARTICLE 1. REPEALED

Section	
R9-24-101.	Repealed
R9-24-102.	Repealed
R9-24-103.	Reserved
R9-24-104.	Reserved
R9-24-105.	Reserved
R9-24-106.	Reserved
R9-24-107.	Reserved
R9-24-108.	Reserved
R9-24-109.	Reserved
R9-24-110.	Reserved
R9-24-111.	Repealed
R9-24-112.	Repealed
R9-24-113.	Repealed

ARTICLE 2. ARIZONA MEDICALLY UNDERSERVED  
AREAS

*Article 2 consisting of Sections R9-24-201 through R9-24-205 recodified from R9-24-121 through R9-24-130 (Supp. 95-2).*

Section	
R9-24-201.	Definitions
R9-24-202.	Arizona Medically Underserved Area Designation
R9-24-203.	Primary Care Index
Table 1.	Primary Care Index Scoring
R9-24-204.	Primary Care Area Boundaries Determination
R9-24-205.	Time-frames

## ARTICLE 3. COORDINATING MEDICAL PROVIDERS

*Article 3 consisting of Section R9-24-301 recodified from Sections R9-24-131 through R9-24-140 (Supp. 95-2).*

Section	
R9-24-301.	Definitions
R9-24-302.	CMP Functions

## ARTICLE 4. REPEALED

*Article 4, consisting of Sections R9-24-401 through R9-24-412 and Exhibits A, B, C, and D, repealed by final rulemaking at 7 A.A.R. 2849, effective August 9, 2001 (Supp. 01-2).*

*Article 4, consisting of Sections R9-24-401 through R9-24-412, adopted effective March 17, 1995 (Supp. 95-2).*

Section	
R9-24-401.	Repealed
R9-24-402.	Repealed
R9-24-403.	Repealed
R9-24-404.	Repealed
R9-24-405.	Repealed
Exhibit A.	Repealed
R9-24-406.	Repealed
R9-24-407.	Repealed
R9-24-408.	Repealed
Exhibit B.	Repealed
R9-24-409.	Repealed
R9-24-410.	Repealed
R9-24-411.	Repealed
Exhibit C.	Repealed
R9-24-412.	Repealed
Exhibit D.	Repealed

## ARTICLE 1. REPEALED

## R9-24-101. Repealed

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). Section repealed by final rulemaking at 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3).

## R9-24-102. Repealed

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). Section repealed by final rulemaking at 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3).

## R9-24-103. Reserved

## R9-24-104. Reserved

## R9-24-105. Reserved

## R9-24-106. Reserved

## R9-24-107. Reserved

## R9-24-108. Reserved

## R9-24-109. Reserved

## R9-24-110. Reserved

## R9-24-111. Repealed

**Historical Note**

Adopted effective July 27, 1978 (Supp. 78-4). Section repealed by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1).

## R9-24-112. Repealed

**Historical Note**

Adopted effective July 27, 1978 (Supp. 78-4). Section repealed by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1).

## R9-24-113. Repealed

**Historical Note**

Adopted effective July 27, 1978 (Supp. 78-4). Section repealed by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1).

ARTICLE 2. ARIZONA MEDICALLY UNDERSERVED  
AREAS

## R9-24-201. Definitions

In addition to the definitions in A.R.S. § 36-2351, the following definitions apply in this Article, unless otherwise specified:

1. "Act, event, or default" means an occurrence or the failure of something to occur.
2. "Agency" has the same meaning as in A.R.S. § 41-1001.
3. "Ambulatory care sensitive conditions" means the illnesses listed in the first table of Appendix B (entitled "Ambulatory Care Sensitive Conditions") to "Using Administrative Data to Monitor Access, Identify Disparities, and Assess Performance of the Safety Net," in *Tools for Monitoring the Health Care Safety Net*, AHRQ Publication No. 03-0027, September 2003, Agency for Healthcare Research and Quality, Rockville, MD, and available

- on the web site of the Agency for Healthcare Research and Quality, U.S. Department of Health and Human Services, at <http://www.ahrq.gov/data/safetynet/bil-lappb.htm>.
4. "Arizona Medical Board" means the agency established by A.R.S. § 32-1402 to regulate physicians licensed under A.R.S. Title 32, Chapter 13.
  5. "Arizona medically underserved area" means:
    - a. A primary care area or part of a primary care area with the designation described in R9-24-202(1), or
    - b. A primary care area with the designation described in R9-24-202(2).
  6. "Arizona Regulatory Board of Physician Assistants" means the agency established by A.R.S. § 32-2502 to regulate physician assistants.
  7. "Arizona State Board of Nursing" means the agency established by A.R.S. § 32-1602 to regulate nurses and nursing assistants.
  8. "Birth life expectancy" means the average life span at the time of birth according to the most recent U.S. life expectancy data in the National Vital Statistics Reports of the National Vital Statistics System, available on the web site of the National Center for Health Statistics, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, at <http://www.cdc.gov/nchs/fastats/lifexpec.htm>.
  9. "Board of Osteopathic Examiners in Medicine and Surgery" means the agency established by A.R.S. § 32-1801 to regulate physicians licensed under A.R.S. Title 32, Chapter 17.
  10. "Boundary change" means a re-determination of the geographic limits of a primary care area.
  11. "Census block" means a geographic unit that is:
    - a. The smallest unit of census geography established by the U.S. Census Bureau, and
    - b. One of approximately 8 million similar units covering the entire nation.
  12. "Day" means calendar day:
    - a. Excluding the day of the act, event, or default that triggers the running of a time-frame;
    - b. Excluding the last day of a time-frame if it is a Saturday, Sunday, or legal holiday; and
    - c. If the last day of a time-frame is excluded under subsection (12)(b), including the next day that is not a Saturday, Sunday, or legal holiday.
  13. "Family unit" means:
    - a. Two or more individuals related by birth, marriage, or adoption who live at the same residence; or
    - b. One individual who does not live at the same residence with anyone related by birth, marriage, or adoption.
  14. "First health care contact" means the initial telephone call or visit to a health care provider as defined in 45 CFR 160.103 for an individual's health issue.
  15. "Full-time" means providing primary care services for at least 40 hours between a Sunday at 12:00 midnight and the next Sunday at 12:00 midnight.
  16. "Health organization" means:
    - a. A person or entity that provides medical services;
    - b. A third party payor defined in A.R.S. § 36-125.07(C); or
    - c. A trade or professional association described in 501(c)(3), (4), (5), or (6) of the Internal Revenue Code, 26 U.S.C. 501(c), that is exempt from federal income taxes.
  17. "Indian reservation" has the same meaning as in A.R.S. § 11-801.
  18. "Legal holiday" means a state service holiday listed in A.A.C. R2-5-402.
  19. "Local planning personnel" means individuals who develop programs related to the delivery of and access to medical services for places or areas:
    - a. Under the jurisdiction of an Arizona city or county, or
    - b. In an Arizona Indian reservation or less than 50 miles outside the boundaries of an Indian reservation.
  20. "Low-weight birth" means the live birth of an infant weighing less than 2500 grams or 5 pounds, 8 ounces.
  21. "Medical services" has the same meaning as in A.R.S. § 36-401.
  22. "Mobility limitation" means an individual's physical or mental condition that:
    - a. Has lasted for at least six months,
    - b. Impairs the individual's ability to go outside the individual's residence alone, and
    - c. Is not a temporary health problem such as a broken bone that is expected to heal normally.
  23. "Motor vehicle" has the same meaning as in A.R.S. § 28-101.
  24. "Nonresidential" means not primarily used for living and sleeping.
  25. "Person" has the same meaning as in A.R.S. § 41-1001.
  26. "Physician assistant" has the same meaning as in A.R.S. § 32-2501.
  27. "Political subdivision" means a county, city, town, district, association, or authority created by state law.
  28. "Population" means the number of residents of a place or an area, according to:
    - a. The most recent decennial census prepared by the U.S. Census Bureau and available at <http://www.census.gov>; or
    - b. The most recent Population Estimates for Arizona's Counties, Incorporated Places and Balance of County prepared by the Department of Economic Security and available at <http://www.workforce.az.gov/?PAGED=67&SUBID=137>.
  29. "Poverty threshold" means calendar year income relative to family unit size that:
    - a. Determines an individual's poverty status,
    - b. Is defined annually by the U.S. Census Bureau, and
    - c. Is available for the most recently completed calendar year at <http://www.census.gov/hhes/poverty/threshld.html>.
  30. "Primary care area" means a geographic region determined by the Department under R9-24-204.
  31. "Primary care HPSA" means primary care health professional shortage area designated by the U.S. Department of Health and Human Services under 42 U.S.C. 254e, 42 CFR 5.1 through 5.4, and 42 CFR Part 5, Appendix A.
  32. "Primary care index" means the document in which the Department designates primary care areas as medically underserved according to R9-24-203 and Table 1.
  33. "Primary care provider" means a physician, physician assistant, or registered nurse practitioner who:
    - a. Except for emergencies, is an individual's first health care contact; and
    - b. Provides primary care services in general or family practice, general internal medicine, pediatrics, or obstetrics and gynecology.

34. "Primary care services" means health care provided by a primary care provider, including:
- Illness and injury prevention,
  - Health promotion and education,
  - Identification of individuals at special risk for illness,
  - Early detection of illness,
  - Treatment of illness and injury, and
  - Referral to specialists.
35. "Primary care services utilization pattern" means a distribution of the use of primary care services resulting from the factors listed in R9-24-204(A)(3)(a).
36. "Registered nurse practitioner" has the same meaning as in A.R.S. § 32-1601.
37. "Residence" means a structure or part of a structure where an individual lives and sleeps.
38. "Resident" means an individual who lives and sleeps in a place or an area more than one-half of the time.
39. "Residential" means primarily used for living and sleeping.
40. "Self-care limitation" means an individual's physical or mental condition that:
- Has lasted for at least six months;
  - Impairs the individual's ability to perform activities such as dressing, bathing, or moving around inside the individual's residence; and
  - Is not a temporary health problem such as a broken bone that is expected to heal normally.
41. "Specialist" means an individual who:
- Is regulated under:
    - A.R.S. Title 32, Chapters 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 25, 28, 29, 33, 34, 35, 39, or 41;
    - A.R.S. Title 36, Chapter 6, Article 7; or
    - A.R.S. Title 36, Chapter 17; and
  - Meets the education, knowledge, and skill requirements generally recognized in the profession related to a specific service or procedure, patient category, body part or system, or type of disease.
42. "Street route" means a course of travel by road.
43. "Temporary" means lasting for a limited time.
44. "Topography" means the surface configuration of a place or region, including elevations and positions of the physical features.
45. "Travel pattern" means a prevalent flow of motor vehicles resulting from:
- The configuration of streets, and
  - The location of residential and nonresidential areas.
46. "Value" means a number within a value range.
47. "Value range" means, for a criterion listed in R9-24-203(B) and Table 1, a measurement:
- Consisting of a scale between upper and lower limits, except for the supplementary criteria score under R9-24-203(B)(12); and
  - To which Table 1 assigns points or 0 points.
48. "Work disability" means an individual's physical or mental condition that:
- Has lasted for at least six months,
  - Limits the individual's choice of jobs or prevents the individual from working for more than 34 hours per week, and
  - Is not a temporary health problem such as a broken bone that is expected to heal normally.

#### Historical Note

Adopted effective July 27, 1978 (Supp. 78-4). R9-24-201 recodified from R9-24-121 (Supp. 95-2). Section

repealed; new Section adopted by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). Amended by final rulemaking at 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3).

#### R9-24-202. Arizona Medically Underserved Area Designation

The Department shall designate as Arizona medically underserved areas:

- The primary care areas or parts of primary care areas designated as primary care HPSAs by the U.S. Department of Health and Human Services, and
- The primary care areas designated as medically underserved by the Department under R9-24-203 and Table 1.

#### Historical Note

Adopted effective July 27, 1978 (Supp. 78-4). R9-24-202 recodified from R9-24-122 (Supp. 95-2). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). Amended by final rulemaking at 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3).

#### R9-24-203. Primary Care Index

A. Every 12 months, the Department shall prepare, according to this Section, a primary care index for designating primary care areas determined under R9-24-204 as Arizona medically underserved areas.

- For each primary care area determined under R9-24-204, the Department shall calculate the value for each criterion in subsection (B).
  - After calculating the value for each criterion in subsection (B), the Department shall assign points to each value according to Table 1.
  - A primary care area's score is the sum of the points received by the primary care area for each criterion in subsection (B).
- The Department shall designate as Arizona medically underserved:
  - The primary care areas that, according to subsection (B) and Table 1, score within the top 25 percent on the primary care index or that obtain more than 55 points, whichever results in the designation of more Arizona medically underserved areas; and
  - The primary care areas or parts of primary care areas with the designation described in R9-24-202(1).

B. For each primary care area determined by the Department under R9-24-204, the primary care index shall include a score for each of the following:

- Population-to-primary-care-provider ratio, determined by dividing the population of the primary care area by the number of primary care providers in the primary care area:
  - Using primary care provider data from the Arizona Medical Board, the Board of Osteopathic Examiners in Medicine and Surgery, the Arizona State Board of Nursing, and the Arizona Regulatory Board of Physician Assistants;
  - Counting a full-time physician as 1.0, a full-time physician assistant as 0.8, and a full-time registered nurse practitioner as 0.8; and
  - If the Department determines that a physician, physician assistant, or registered nurse practitioner practices less than full-time in the primary care area, lowering the number obtained under subsection (B)(1)(b) as follows:

- i. Creating a fraction with a numerator that represents the number of hours per week the physician, physician assistant, or registered nurse practitioner practices in the primary care area and with a denominator of 40;
  - ii. Multiplying 1.0 or 0.8, whichever is appropriate, by the fraction obtained under subsection (B)(1)(c)(i);
  - iii. Subtracting the result obtained under subsection (B)(1)(c)(ii) from 1.0 or 0.8, whichever is appropriate; and
  - iv. Subtracting the result obtained under subsection (B)(1)(c)(iii) from the number obtained under subsection (B)(1)(b);
2. Travel distance to the nearest primary care provider, determined by:
    - a. Estimating the distance in miles:
      - i. From the center of the most densely populated area in the primary care area determined from the most recent Population Estimates for Arizona's Counties, Incorporated Places and Balance of County identified in R9-24-201(28)(b) or, for the year in which the most recent decennial census is published, from the most recent decennial census prepared by the U.S. Census Bureau; and
      - ii. To the nearest primary care provider determined from the data described in subsection (B)(1)(a); and
    - b. Using the most direct street route;
  3. Composite transportation score, determined by:
    - a. Compiling data on the following six indicators from the most recent decennial census prepared by the U.S. Census Bureau:
      - i. Percentage of population with calendar year income less than 100 percent of the poverty threshold;
      - ii. Percentage of population older than age 65;
      - iii. Percentage of population younger than age 14;
      - iv. Percentage of population with a work disability, mobility limitation, or self-care limitation;
      - v. Percentage of population without a motor vehicle; and
      - vi. The motor-vehicle-to-population ratio;
    - b. Calculating the statewide average value for each of the six indicators in subsection (B)(3)(a);
    - c. Dividing the value of each indicator for each primary care area by the statewide average value for that indicator;
    - d. Multiplying the figure calculated under subsection (B)(3)(c) for each indicator by 100; and
    - e. Averaging the six indicator values obtained under subsection (B)(3)(d) for each primary care area;
  4. Percentage of population with calendar year income less than 200% of the poverty threshold, determined from data in the most recent decennial census prepared by the U.S. Census Bureau;
  5. Percentage of population with annual income between 100% and 200% of the poverty threshold, determined from data in the most recent decennial census prepared by the U.S. Census Bureau;
  6. Percentage of uninsured births, determined from Department birth records reporting payment source as "self-pay" or "unknown;"
  7. Ambulatory care sensitive condition hospital admissions:
    - a. Based on the number of hospital admissions for ambulatory care sensitive conditions per 1000 individuals living in the primary care area who are under age 65, and
    - b. Determined from hospital inpatient and emergency department services data provided by the Department;
  8. Percentage of low-weight births, determined from data provided by the Department;
  9. From data provided by the Department, the sum of the percentage of births for which the mothers reported:
    - a. No prenatal care,
    - b. Prenatal care that began in the second or third trimester, and
    - c. Four or fewer prenatal care visits;
  10. Percentage of deaths at ages younger than the birth life expectancy, determined from the most recent U.S. life expectancy data and data provided by the Department;
  11. Number of infant deaths per 1000 live births, determined from data provided by the Department;
  12. Supplementary criteria score, based on the presence or absence in a primary care area of the following:
    - a. Percentage of minority population greater than the statewide average for all counties, determined from data in the most recent Population Estimates for Arizona's Counties, Incorporated Places and Balance of County identified in R9-24-201(28)(b) and from data in the most recent decennial census;
    - b. Percentage of elderly population greater than the statewide average for all counties, determined from data in the most recent Population Estimates for Arizona's Counties, Incorporated Places and Balance of County identified in R9-24-201(28)(b) and from data in the most recent decennial census prepared by the U.S. Census Bureau; and
    - c. Average annual unemployment rate greater than the average annual statewide rate, from data in the most recent Arizona Unemployment Statistics Program Special Unemployment Report, prepared by the Arizona Department of Economic Security; Research Administration, in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics, and available at <http://www.workforce.az.gov>; and
  13. Sole provider or no provider score:
    - a. Based on whether a primary care area has only 1.0 or less than 1.0 primary care provider;
    - b. Counting a full-time physician as 1.0, a full-time physician assistant as 0.8, and a full-time registered nurse practitioner as 0.8; and
    - c. If the Department determines that a physician, physician assistant, or registered nurse practitioner practices less than full-time in the primary care area, lowering the number obtained under subsection (B)(13)(b) as follows:
      - i. Creating a fraction with a numerator that represents the number of hours per week the physician, physician assistant, or registered nurse practitioner practices in the primary care area and with a denominator of 40;
      - ii. Multiplying 1.0 or 0.8, whichever is appropriate, by the fraction obtained under subsection (B)(13)(c)(i);
      - iii. Subtracting the result obtained under subsection (B)(13)(c)(ii) from 1.0 or 0.8, whichever is appropriate; and

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- iv. Subtracting the result obtained under subsection (B)(13)(c)(iii) from the number obtained under subsection (B)(13)(b).
- C. Every 12 months, according to subsections (A) and (B) and Table 1, the Department shall:
  1. Withdraw an Arizona medically underserved area designation,
  2. Continue an Arizona medically underserved area designation, or
  3. Designate a new Arizona medically underserved area.
- D. A list of current Arizona medically underserved areas is available in the Department's annual Arizona Medically Underserved Areas (AzMUA) Report at <http://www.azdhs.gov/hsd/>.

**Historical Note**

Adopted effective July 27, 1978 (Supp. 78-4). R9-24-203 recodified from R9-24-123 (Supp. 95-2). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). Amended by final rulemaking at 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3).

**Table 1. Primary Care Index Scoring**

CRITERIA	VALUE RANGE	POINTS
Population-to-primary-care-provider ratio	≤ 2000:1	0
	2001:1 to 2500:1	2
	2501:1 to 3000:1	4
	3001:1 to 3500:1	6
	3501:1 to 4000:1	8
	> 4000:1 or no provider	10
Travel distance to nearest primary care provider	≤ 15.0 miles	0
	15.1-25.0 miles	2
	25.1-35.0 miles	4
	35.1-45.0 miles	6
	45.1-55.0 miles > 55.0 miles	8 10
Composite transportation score	51st highest score and below	0
	41st-50th highest scores	2
	31st-40th highest scores	4
	21st-30th highest scores	6
	11th-20th highest scores 10 highest scores	8 10
Percentage of population with annual income less than 200% of poverty threshold	≤ 15.0%	0
	15.1-25.0%	2
	25.1-35.0%	4
	35.1-45.0%	6
	45.1-55.0% >55.0%	8 10
Percentage of population with annual income between 100% and 200% of poverty threshold	≤ 10.0%	0
	10.1-15.0%	2
	15.1-20.0%	4
	20.1-25.0%	6
	25.1-30.0% > 30.0%	8 10
Percentage of uninsured births	≤ 6.0%	0
	6.1-10.0%	2
	10.1-14.0%	4
	14.1-18.0%	6
	18.1-22.0%	8
	>22.0%	10

Ambulatory care sensitive condition hospital admissions	≤ 8.0	0
	8.1-12.0	2
	12.1-16.0	4
	16.1-20.0	6
	20.1-24.0 > 24.0	8 10
Percentage of low-weight births	≤ 6.0%	0
	6.1-8.0%	2
	8.1-10.0%	4
	10.1-12.0%	6
	12.1-14.0% >14.0%	8 10
Sum of the percentage of births with: a. No prenatal care, b. Prenatal care begun in second or third trimester, and c. Prenatal care visits ≤ 4	≤ 15.0%	0
	15.1-25.0%	2
	25.1-35.0%	4
	35.1-45.0% 45.1-55.0% >55.0%	6 8 10
Percentage of deaths at ages younger than birth life expectancy	≤ 40.0%	0
	40.1-50.0%	2
	50.1-60.0%	4
	60.1-70.0%	6
	70.1-80.0% >80.0%	8 10
Number of infant deaths per 1000 live births	≤ 4.0	0
	4.1-6.0	2
	6.1-8.0	4
	8.1-10.0	6
	10.1-12.0 >12.0	8 10
Supplementary criteria score	1 Criterion	2
	2 Criteria	4
	3 Criteria	6
Sole provider or no provider score	Primary care provider ≤ 1.0	5
	Primary care providers > 1.0	0
Key to Symbols ≤ represents "less than or equal to" > represents "more than"		

**Historical Note**

New Table adopted by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). Amended by final rulemaking at 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3).

**R9-24-204. Primary Care Area Boundaries Determination**

- A. The Department shall determine the boundaries of primary care areas for the entire state. A primary care area's boundaries shall meet the following requirements:
  1. The geographic area within the boundaries corresponds to or is larger than a census block identified for the geographic area in the most recent decennial census;
  2. The boundaries are consistent with the population's primary care services utilization patterns; and
  3. The primary care utilization patterns are determined by considering:
    - a. The geographic area's:
      - i. Topography,
      - ii. Social and cultural relationships of the people living within the geographic area,
      - iii. Political subdivision boundaries, and
      - iv. Travel patterns; and
    - b. Data about the type, amount, and location of primary care services used by the geographic area's popula-

- tion, obtained from local planning personnel, government officials, health organizations, primary care providers, and residents of the geographic area.
- B.** In addition to the requirements for primary care area boundaries in subsection (A), the Department shall consider:
1. Indian reservation boundaries, and
  2. Primary care HPSA boundaries.
- C.** Without receiving a primary care area boundary change request under subsection (D), the Department may redetermine the boundaries of one or more primary care areas according to the requirements and considerations in subsections (A) and (B).
- D.** A primary care area's local planning personnel, government officials, health organizations, primary care providers, or residents may submit to the Department a primary care area boundary change request.
1. A person requesting a boundary change shall:
    - a. Make the request in writing,
    - b. Include documentation supporting the boundary change, and
    - c. Submit the request by October 1 to be considered for inclusion in the next calendar year's Arizona medically underserved area designation process.
  2. The Department shall review a primary care area boundary change request according to the time-frames in R9-24-205.

#### Historical Note

Adopted effective July 27, 1978 (Supp. 78-4). R9-24-204 recodified from R9-24-124 (Supp. 95-2). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). Amended by final rulemaking 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3).

#### R9-24-205. Time-frames

- A.** The overall time-frame described in A.R.S. § 41-1072 for a primary care area boundary change request under R9-24-204(C) is 90 days.
1. A person requesting a boundary change and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
  2. An extension of the substantive review time-frame and the overall time-frame may not exceed 25 percent of the overall time-frame.
- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072 for a primary care area boundary change request under R9-24-204(C) is 30 days and begins on the date the Department receives a boundary change request.
1. Within the administrative completeness review time-frame, the Department shall mail a notice of administrative completeness or a notice of deficiencies to the person requesting a boundary change.
    - a. A notice of deficiencies shall list each deficiency and the information or documents needed to complete the boundary change request.
    - b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date the Department mails the notice until the date the Department receives the missing information or documents.
    - c. If the person requesting a boundary change does not submit to the Department all the information and documents listed in the notice of deficiencies within 60 days after the date the Department mails the notice of deficiencies, the Department considers the boundary change request withdrawn.
  2. If the Department approves a boundary change request during the administrative completeness review time-frame, the Department does not issue a separate written notice of administrative completeness.
- C.** The substantive review time-frame described in A.R.S. § 41-1072 for a primary care area boundary change request under R9-24-204(C) is 60 days and begins on the date the Department mails the notice of administrative completeness.
1. Within the substantive review time-frame, the Department shall mail written notification of approval or denial of the boundary change request to the person requesting a boundary change.
  2. During the substantive review time-frame:
    - a. The Department may make one comprehensive written request for additional information; and
    - b. If the Department and the person requesting a boundary change agree in writing to allow one or more supplemental requests for information, the Department may make the number of supplemental requests for information agreed to.
  3. A comprehensive written request for additional information or a supplemental request for information suspends the substantive review time-frame and the overall time-frame from the date the Department mails the request until the date the Department receives all the information and documents requested.
  4. If the person requesting a boundary change does not submit to the Department all the information and documents listed in a comprehensive written request for additional information or a supplemental request for information within 60 days after the date the Department mails the request, the Department shall deny the boundary change request.
- D.** The Department shall approve a primary care area boundary change request under R9-24-204(C) unless:
1. The requested boundaries do not meet the requirements in R9-24-204(A),
  2. The considerations required in R9-24-204(B) support the current boundaries and outweigh the information and documents submitted with the boundary change request, or
  3. The person requesting the boundary change does not submit information and documents as stated in subsection (B)(1)(c) or subsection (C)(4).

#### Historical Note

Adopted effective July 27, 1978 (Supp. 78-4). R9-24-205 recodified from R9-24-125 (Supp. 95-2). Section repealed by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). New Section made by final rulemaking at 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3).

### ARTICLE 3. COORDINATING MEDICAL PROVIDERS

#### R9-24-301. Definitions

In addition to the definitions in A.R.S. § 36-2351 and 9 A.A.C. 24, Article 2, the following definitions apply in this Article, unless otherwise specified:

1. "CMP" means coordinating medical provider.
2. "Continuing medical education" means instruction that meets the requirements in:
  - a. A.A.C. R4-16-102 for a physician licensed under A.R.S. Title 32, Chapter 13;
  - b. A.A.C. R4-17-205 for a physician assistant licensed under A.R.S. Title 32, Chapter 25; and
  - c. A.R.S. § 32-1825 and A.A.C. R4-22-109 for a physician licensed under A.R.S. Title 32, Chapter 17.

3. "Continuing nursing education" means instruction that:
    - a. Is required by A.A.C. R4-19-511 for authorization from the Arizona State Board of Nursing for a registered nurse practitioner to prescribe and dispense drugs and devices;
    - b. Meets requirements for continuing education established by a nurse credentialing organization, such as the American Nurses Credentialing Center; or
    - c. Provides training related to the performance of a nurse's job duties.
  4. "Drug prescription services" means providing medication that requires an order by medical personnel authorized by law to order the medication.
  5. "Durable medical equipment" means an item that:
    - a. Can withstand repeated use;
    - b. Is designed to serve a medical purpose; and
    - c. Generally is not useful to an individual in the absence of a medical condition, illness, or injury.
  6. "Governing authority" has the same meaning as in A.R.S. § 36-401.
  7. "Independent decision" means a registered nurse practitioner's action without a physician's order according to A.A.C. R4-19-508 and A.A.C. R4-19-511.
  8. "Medical direction" means guidance, advice, or consultation provided by a CMP to a registered nurse practitioner.
  9. "Medical personnel" means a medical clinic's physicians, physician assistants, registered nurse practitioners, and nurses.
  10. "Nurse" means an individual licensed as a graduate, professional, or registered nurse or as a practical nurse under A.R.S. Title 32, Chapter 15.
  11. "Order" means a written directive.
  12. "Practice requirements" means the standards for physicians established in:
    - a. A.R.S. Title 32, Chapter 13 and 4 A.A.C. 16; or
    - b. A.R.S. Title 32, Chapter 17 and 4 A.A.C. 22.
  13. "Referral source" means a person who sends an individual to a third person for medical services.
  14. "Social services" means assistance, other than medical services, provided to maintain or improve an individual's physical, mental, and social participation capabilities.
  15. "Supervision" has the same meaning as in A.R.S. § 32-2501.
  16. "Support services" means drug prescription services, social services, and provision of durable medical equipment.
  17. "Work schedule coverage" means a medical clinic's system for ensuring that a sufficient number of medical personnel are present at the medical clinic.
  18. "Written protocol" means an agreement that identifies and is signed by a CMP and a registered nurse practitioner or a physician assistant.
2. Develop written protocols that:
    - a. Describe the manner and frequency that a registered nurse practitioner or a physician assistant at a medical clinic will communicate with the CMP, in addition to the face-to-face meeting required in subsection (A)(5);
    - b. Specify the criteria used by a registered nurse practitioner at the medical clinic in making an independent decision to refer an individual to a physician; and
    - c. Specify procedures to be followed by a physician assistant at the medical clinic when the CMP's supervision of the physician assistant is by a means other than physical presence;
  3. Approve or disapprove the selection of registered nurse practitioners and physician assistants who will work at the medical clinic;
  4. Provide:
    - a. Medical direction to the registered nurse practitioners at the medical clinic, and
    - b. Supervision to the physician assistants at the medical clinic;
  5. At least weekly, conduct a face-to-face meeting with each registered nurse practitioner and each physician assistant at the medical clinic to evaluate the medical services provided by the registered nurse practitioner or physician assistant;
  6. For continuing medical education or continuing nursing education of a medical clinic's medical personnel:
    - a. Recommend specific areas of instruction, including instruction in referral sources; and
    - b. Develop a written plan for work schedule coverage to accommodate continuing medical education or continuing nursing education; and
  7. At least annually, meet with the medical clinic's governing authority to evaluate the medical clinic's program and the medical care provided by the medical clinic's medical personnel.
- B.** The requirements in subsection (A) do not replace the practice requirements applicable to a CMP.

**Historical Note**

New Section renumbered from R9-24-301 and amended by final rulemaking at 7 A.A.R. 715, effective January 17, 2001 (Supp. 01-1). Amended by final rulemaking at 12 A.A.R. 3048, effective September 30, 2006 (Supp. 06-3).

**ARTICLE 4. REPEALED****R9-24-401. Repealed****Historical Note**

Adopted effective March 17, 1995 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 2849, effective August 9, 2001 (Supp. 01-2).

**R9-24-402. Repealed****Historical Note**

Adopted effective March 17, 1995 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 2849, effective August 9, 2001 (Supp. 01-2).

**R9-24-302. CMP Functions****A.** A CMP shall:

1. Participate in planning for the delivery of medical services and support services within the Arizona medically underserved area that includes ways to increase access to

**R9-24-403. Repealed****Historical Note**

Adopted effective March 17, 1995 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 2849, effective August 9, 2001 (Supp. 01-2).

**R9-24-404. Repealed****Historical Note**

Adopted effective March 17, 1995. Section repealed by final rulemaking at 7 A.A.R. 2849, effective August 9, 2001 (Supp. 01-2).

**R9-24-405. Repealed****Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 2849, effective August 9, 2001 (Supp. 01-2).

**Exhibit A. Repealed****Historical Note**

Adopted effective March 17, 1995 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 2849, effective August 9, 2001 (Supp. 01-2).

**R9-24-406. Repealed****Historical Note**

Adopted effective March 17, 1995 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 2849, effective August 9, 2001 (Supp. 01-2).

**R9-24-407. Repealed****Historical Note**

Adopted effective March 17, 1995 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 2849, effective August 9, 2001 (Supp. 01-2).

**R9-24-408. Repealed****Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 2849, effective August 9, 2001 (Supp. 01-2).

**Exhibit B. Repealed****Historical Note**

Adopted effective March 17, 1995 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 2849, effective August 9, 2001 (Supp. 01-2).

**R9-24-409. Repealed****Historical Note**

Adopted effective March 17, 1995 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 2849, effective August 9, 2001 (Supp. 01-2).

**R9-24-410. Repealed****Historical Note**

Adopted effective March 17, 1995 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 2849, effective August 9, 2001 (Supp. 01-2).

**R9-24-411. Repealed****Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 2849, effective August 9, 2001 (Supp. 01-2).

**Exhibit C. Repealed****Historical Note**

Adopted effective March 17, 1995 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 2849, effective August 9, 2001 (Supp. 01-2).

**R9-24-412. Repealed****Historical Note**

Section repealed by final rulemaking at 7 A.A.R. 2849, effective August 9, 2001 (Supp. 01-2).

**Exhibit D. Repealed****Historical Note**

Adopted effective March 17, 1995 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 2849, effective August 9, 2001 (Supp. 01-2).

# 9 A.A.C. 24

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

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

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

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

to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

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

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

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

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

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

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

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

I. The director, by rule, shall:

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

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

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

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from

unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.
- (b) Prepared at a cooking school that is conducted in an owner-occupied home.
- (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
- (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
- (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
- (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
- (g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
- (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.
- (i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of

agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

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

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

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

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

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

adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

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

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

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

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

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

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

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

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

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

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

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

Q. For the purposes of this section:

1. "Cottage food product":

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

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

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

### **36-2351. Definitions**

In this chapter, unless the context otherwise requires:

1. "Construction" means building, erection, fabrication or installation.
2. "Coordinating medical provider" means a physician or group of physicians, or any combination thereof, which has entered into an agreement with a county, incorporated city or town, health service district or the department to supervise the medical care offered at a medical clinic, as defined by this section.
3. "Department" means the department of health services.
4. "Health service district" means a health service district established pursuant to title 48, chapter 16, article 1.
5. "Hospital" means a health care institution licensed as a hospital pursuant to chapter 4, article 2 of this title.
6. "Medical clinic" means a facility, whether mobile or stationary, which provides ambulatory medical care in a medically-underserved area through the employment of physicians, professional nurses, physician assistants or other health care technical and paraprofessional personnel.
7. "Physician" means a physician licensed pursuant to title 32, chapter 13 or 17.

### **36-2352. Designation of medically-underserved areas**

A. The department shall designate areas of medical need in this state as medically-underserved if either:

1. The area is designated as a health professional shortage area as defined in 42 Code of Federal Regulations part 5.

2. The area is designated as medically underserved by the department of health services by using an index that measures the following indicators:
  - (a) The availability of services based on a population to primary care provider ratio.
  - (b) The area's geographic accessibility to health care services.
  - (c) The percentage of the area's population that is at or below a designated federal poverty level.
  - (d) The health needs of the area as determined by factors which may include the incidence of infant mortality, low weight births and inadequate prenatal care.
  - (e) Other factors indicative of medically underserved areas which may include unemployment and the presence of farm workers, minorities and the elderly.
- B. The department of health services shall submit a report to the president of the senate and the speaker of the house of representatives beginning October 1, 1996 and every two years thereafter that reevaluates the criteria, effectiveness and recommendations for changes, if necessary, to the index. The report shall also include a summary of the communities designated as medically underserved and a listing of the programs they were able to utilize based on the medically underserved designation.

**36-2353. Medically-underserved areas; selection of coordinating medical providers**

- A. For each area designated as medically-underserved, the department may assist counties, incorporated cities and towns or health service districts to recruit a coordinating medical provider. Selection of a coordinating medical provider shall be based upon such provider's proximity to the medically-underserved area and the ability and willingness of such provider to fulfill the requirements established pursuant to section 36-2354.
- B. If no coordinating medical provider is located in or near the medically-underserved area, the university of Arizona may agree to serve as the coordinating medical provider for the area.

**36-2354. Coordinating medical provider; duties**

A coordinating medical provider for a medically-underserved area shall perform certain functions as determined by the department in order to ensure the provision of adequate medical care by the medical clinic. These functions may include:

1. Diagnostic services through a communications system between the clinic and the coordinating medical provider.
2. Overall direction of medical care offered at the clinic or facility, including a periodic evaluation of the quality of such care.
3. Drug prescription services.
4. Communication services to facilitate patient treatment during emergency transit to the clinic or a hospital.

**D-5**

**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



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**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

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### **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.

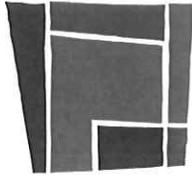
10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

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](mailto: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.

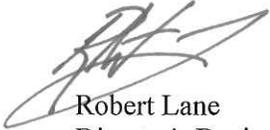
The following documents are enclosed:

- 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](mailto:Ruthann.Smejkal@azdhs.gov).

Sincerely,



Robert Lane  
Director's Designee

RL:rms

Enclosures

Douglas A. Ducey | Governor    Cara M. Christ, MD, MS | Director

**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  
Address: Arizona Department of Health Services  
Public Health Licensing Services  
4814 South 40th Street  
Phoenix, AZ 85040  
Telephone: (602) 255-4840  
Fax: (602) 437-0705

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

**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, 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.) Title 12, 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 shortfall 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
<p>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.</p>	<p>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.</p> <p>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.</p>
<p>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</p>	<p>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</p>

<p>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.”</p>	<p>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.</p>
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**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.	<del>Table of Application Fees and Annual Fees</del>
<u>Table 13.1.</u>	<u>Table of Fees</u>
R9-7-1307.	<del>Special License Fees</del> <u>Repealed</u>
Table 1.	<del>Small Entity Fees</del> <sup>+</sup> <u>Repealed</u>
<u>Table 13.2.</u>	<u>Small Entity Fees</u>

## 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~~ which that authorizes only the possession in storage, but no use of, the authorized materials. A license ~~which that~~ 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~~ 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**

<b>Category</b>	<b>Type</b>	<b>Annual Fee</b>
A1	<del>Broad academic Class A</del>	\$5,800
A2	<del>Broad academic Class B</del>	\$5,800
A3	<del>Broad academic Class C</del>	\$5,800
A4	Limited academic	\$1,000
<del>B1</del>	<del>Broad medical</del>	<del>\$11,000</del>
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**

<u>Category</u>	<u>Type</u>	<u>Application/Annual Fee</u>
<u>A1</u>	<u>Broad academic class A</u>	<u>\$10,000</u>
<u>A2</u>	<u>Broad academic class B</u>	<u>\$10,000</u>
<u>A3</u>	<u>Broad academic class C</u>	<u>\$10,000</u>
<u>A4</u>	<u>Limited academic</u>	<u>\$2,500</u>
<u>B1</u>	<u>Broad medical</u>	<u>\$20,000</u>
<u>B2</u>	<u>Medical materials class A</u>	<u>\$4,000</u>
<u>B3</u>	<u>Medical materials class B</u>	<u>\$4,000</u>
<u>B4</u>	<u>Medical materials class C</u>	<u>\$4,000</u>
<u>B5</u>	<u>Medical teletherapy</u>	<u>\$8,000</u>
<u>B6</u>	<u>General medical</u>	<u>\$500</u>
<u>C1</u>	<u>Broad industrial class A</u>	<u>\$20,000</u>
<u>C2</u>	<u>Broad industrial class B</u>	<u>\$20,000</u>
<u>C3</u>	<u>Broad industrial class C</u>	<u>\$6,000</u>
<u>C4</u>	<u>Limited industrial</u>	<u>\$1,500</u>

<u>C5</u>	<u>Portable gauge</u>	<u>\$2,000</u>
<u>C6</u>	<u>Fixed gauge class A</u>	<u>\$2,000</u>
<u>C7</u>	<u>Fixed gauge class B</u>	<u>\$2,000</u>
<u>C8</u>	<u>Leak detector</u>	<u>\$2,000</u>
<u>C9</u>	<u>Gas chromatograph</u>	<u>\$2,000</u>
<u>C10</u>	<u>General industrial</u>	<u>\$300</u>
<u>C11</u>	<u>Industrial radiography class A</u>	<u>\$10,000</u>
<u>C12</u>	<u>Industrial radiography class B</u>	<u>\$10,000</u>
<u>C13</u>	<u>Open field irradiator</u>	<u>\$10,000</u>
<u>C14</u>	<u>Shelf-shielded irradiator</u>	<u>\$5,000</u>
<u>C15</u>	<u>Well logging</u>	<u>\$5,000</u>
<u>C16</u>	<u>Research and development</u>	<u>\$5,000</u>
<u>C17</u>	<u>Laboratory</u>	<u>\$3,000</u>
<u>D1</u>	<u>Distribution</u>	<u>\$5,000</u>
<u>D2</u>	<u>Nuclear pharmacy</u>	<u>\$10,000</u>
<u>D3</u>	<u>Nuclear laundry</u>	<u>\$25,000</u>
<u>D4</u>	<u>General industrial gauging device</u>	<u>\$500</u>
<u>D5</u>	<u>General depleted uranium</u>	<u>\$200</u>
<u>D6</u>	<u>Veterinary medicine</u>	<u>\$2,000</u>
<u>D7</u>	<u>General veterinary medicine</u>	<u>\$500</u>
<u>D8</u>	<u>Health physics class A</u>	<u>\$5,000</u>
<u>D9</u>	<u>Health physics class B</u>	<u>\$3,000</u>
<u>D10</u>	<u>Secondary uranium recovery</u>	<u>\$8,000</u>
<u>D11</u>	<u>Low-level radioactive waste disposal facility</u>	<u>According to R9-7-1306(B)</u>
<u>D12</u>	<u>Waste processor class A</u>	<u>\$10,000</u>
<u>D13</u>	<u>Waste processor class B</u>	<u>\$8,000</u>
<u>D14</u>	<u>Additional storage and use site</u>	<u>30% of the applicable fee for each additional site</u>
<u>D15</u>	<u>Possession-only</u>	<u>50% of the applicable fee for the category under which storage will occur</u>
<u>D16</u>	<u>Reciprocal</u>	<u>According to R9-7-1306(C)</u>
<u>D17</u>	<u>Reserved</u>	
<u>D18</u>	<u>Unclassified radioactive material</u>	<u>Full Cost, according to R9-7-1306(D) or (E)</u>
<u>D19</u>	<u>NORM commercial disposal site</u>	<u>\$600,000</u>
<u>E1</u>	<u>X-ray machine class A (per tube)</u>	<u>\$200</u>
<u>E2</u>	<u>X-ray machine class B (per tube)</u>	<u>\$150</u>
<u>E3</u>	<u>X-ray machine class C (per tube)</u>	<u>\$100</u>
<u>E4</u>	<u>Industrial radiation machine (per device)</u>	<u>\$100</u>
<u>E5</u>	<u>Accelerator facility</u>	<u>\$2,500</u>
<u>E6</u>	<u>Other ionizing radiation machine</u>	<u>Full Cost, according to R9-7-1306(D) or (E)</u>

<u>F1</u>	<u>Tanning device (per device)</u>	<u>\$50</u>
<u>F2</u>	<u>Class A laser (1 to 10 laser devices)</u>	<u>\$300</u>
<u>F3</u>	<u>Class B laser (11 to 49 laser devices)</u>	<u>\$600</u>
<u>F4</u>	<u>Class C laser (50 or more laser devices)</u>	<u>\$1,000</u>
<u>F5</u>	<u>Laser light show or laser demonstration</u>	<u>\$500</u>
<u>F6</u>	<u>Medical laser (per laser device)</u>	<u>\$100</u>
<u>F7</u>	<u>Class II surgical device (per device)</u>	<u>\$100</u>
<u>F8</u>	<u>Cosmetic radiofrequency device (per device)</u>	<u>\$100</u>
<u>F9</u>	<u>Class A industrial (1 to 5 radiofrequency devices)</u>	<u>\$150</u>
<u>F10</u>	<u>Class B industrial (6 to 20 radiofrequency devices)</u>	<u>\$350</u>
<u>F11</u>	<u>Class C industrial (more than 20 radiofrequency devices)</u>	<u>\$600</u>
<u>F12</u>	<u>Medical radiofrequency (one or more device)</u>	<u>\$100</u>
<u>F13</u>	<u>Other non-ionizing radiation device</u>	<u>Full Cost, according to R9-7-1306(D) or (E)</u>

**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<sup>1</sup> Repealed**

~~Small Businesses Not Engaged in Manufacturing and Small Not-for-profit Organizations (Gross Annual Receipts, three-year average):~~

<del>&gt;\$6.5 million</del>	<del>Pay the fee listed in R9-7-1306</del>
<del>\$350,000 to \$6.5 million</del>	<del>\$2,200</del>
<del>&lt;\$350,000</del>	<del>\$500</del>

~~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**

<u>Licensee qualifying as a small entity under R9-7-1304(E)(1)</u>	
<u>Gross Annual Receipts</u>	<u>Fee</u>
<u>\$350,000 to \$6.5 million</u>	<u>\$2,200</u>
<u>&lt;\$350,000</u>	<u>\$500</u>
<u>Licensee qualifying as a small entity under R9-7-1304(E)(2)</u>	
<u>Number of Employees</u>	<u>Fee</u>
<u>35 to 500 employees</u>	<u>\$2,200</u>
<u>&lt;35 employees</u>	<u>\$500</u>
<u>Licensee qualifying as a small entity under R9-7-1304(E)(3)</u>	
<u>Number of Residents</u>	<u>Fee</u>
<u>20,000 to 50,000</u>	<u>\$2,200</u>

<u>&lt;20,000</u>	<u>\$500</u>
Licensee qualifying as a small entity under R9-7-1304(E)(4)	
<u>Number of Faculty, Staff, and Students</u>	<u>Fee</u>
<u>20,000 to 50,000</u>	<u>\$2,200</u>
<u>&lt;20,000</u>	<u>\$500</u>
Licensee qualifying as a small entity under R9-7-1304(E)(5)	
<u>Number of Faculty and Staff</u>	<u>Fee</u>
<u>35 to 500 employees</u>	<u>\$2,200</u>
<u>&lt;35 employees</u>	<u>\$500</u>



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.

Cara M. Christ, M.D., M.S.

July 13, 2020

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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,

A handwritten signature in cursive script, appearing to read "A. Alameddin".

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. 18<sup>th</sup> 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,

A handwritten signature in black ink, reading "Jennifer A. Carusetta". The signature is written in a cursive style with a large initial "J" and "C".

Jennifer A. Carusetta  
Executive Director  
Health System Alliance of Arizona

## 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



ARIZONA DEPARTMENT  
OF HEALTH SERVICES

**TITLE 9. HEALTH SERVICES**

**CHAPTER 7. DEPARTMENT OF HEALTH SERVICES**

**RADIATION CONTROL**

**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 HEALTH 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
<b>A. State and Local Government Agencies</b>			
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	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>B. Privately Owned Businesses</b>			
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
<b>C. Consumers</b>			
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.		
<b>Fee Revenue</b>			<b>\$1,688,619</b>	<b>(+ other revenue)</b>	<b>\$3,877,500</b>

<b>Additional revenue from: Reciprocal licenses</b>	<b>\$45,633</b>	<b>\$90,000</b>
<b>Licensing of additional sites</b>	<b>\$77,193</b>	<b>\$150,000</b>
<b>Full cost</b>	<b>\$1,000</b>	<b>\$1,000</b>
<b>Subtotal Current Revenue</b>	<b>\$1,812,445</b>	<b>Subtotal New Revenue \$4,118,500</b>
<b>Small-entity fee reduction (Avg):</b>	<b>\$112,500</b>	<b>Small-entity fee reduction (Projected): \$175,000</b>
<b>Total Current Revenue</b>	<b>\$1,699,945</b>	<b>Total Revenue \$3,943,500</b>
<b>A.R.S. 30-654(C) Specific Transfer Out</b>	<b>\$300,000</b>	<b>Transfer Out \$300,000</b>
<b>Remaining Current Revenue</b>	<b>\$1,399,945</b>	<b>Remaining New Revenue \$3,643,500</b>
<b>90% of Remaining (Program Revenue)</b>	<b>\$1,259,951</b>	<b>90% of Remaining \$3,279,150</b>
<b>Shortfall Amount (From Attachment B)</b>	<b>\$1,274,765</b>	<b>Program Revenue, including Grant Funding \$3,499,150</b>

Attachment B Fees in Chapter 7

	<b>SFT 2020 EXPENDITURES</b>	<b>NEW BUDGETED AMOUNT</b>	<b>DIFFERENCE</b>	<b>USES OF EXTRA FUNDING</b>	
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 Services	\$1,375	\$95,000	\$93,625	Computer system development and maintenance	
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	
<b>TOTAL</b>	<b>\$2,754,716</b>	<b>\$3,477,662</b>	<b>\$722,946</b>		<b>\$722,946</b>

**Shortfall**                      **\$1,274,765**

\* Amount of indirect funding that was assessed, regardless of whether transferred or not



Attachment C

	Arizona (Current)	Arizona (Proposed)	NRC	California <sup>1</sup>	Nevada	Texas	Colorado	New Mexico <sup>2</sup>	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 radioactive material (i.e. diagnostic, therapy, irradiator, etc.)

Attachment D

**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 facility)	\$0	\$100	-	-	\$230-400	-	-
Class B medical (3 to 9 non-cosmetic radiofrequency devices) (per facility)	\$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

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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

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- 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

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- 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.

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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).
- 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

**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.

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D1	Distribution	\$2,600	F14	Class C medical (10 to 19 non-cosmetic radiofrequency devices) (per device)	\$0
D2	Nuclear Pharmacy	\$4,600			
D3	Nuclear laundry	\$10,300	F15	Class D medical (20 or more non-cosmetic radiofrequency devices) (per device)	\$0
D4	General industrial (with fee)	\$300			
D5	General depleted uranium	\$200	F16	Other nonionizing radiation device or other device	Full Cost
D6	Veterinary medicine	\$1,000			
D7	General veterinary medicine	\$200			
D8	Health physics class A	\$3,200	Notes:	(1) An additional 30% of the annual base fee is added to the annual base fee for each additional site.	
D9	Health physics class B	\$1,000		(2) The fee is 50% of the annual base fee for the category under which the radioactive material will be stored.	
D10	Secondary uranium recovery	\$5,100		(3) See R9-7-1307.	
D11	Low-level radioactive waste disposal site	(3)	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.	
D12	Waste processor class A	\$4,600	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.	
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			

**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:

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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<sup>1</sup>**

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

<sup>1</sup>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, chiropractor or veterinarian or licensed in this state to practice medicine, surgery, osteopathic medicine, chiropractic or naturopathic medicine to obtain any other license to use a diagnostic x-ray machine, but these persons are governed by their own licensing acts.
- H. Persons who are licensed by the federal communications commission with respect to the activities for which they are licensed by that commission are exempt from this chapter.
- I. Rules adopted pursuant to this chapter may provide for recognition of other state or federal licenses as the department deems desirable, subject to such registration requirements as the department prescribes.
- J. Any licenses issued by the department shall state the nature, use and extent of use of the source of radiation. If at any time after a license is issued the licensee desires any change in the nature, use or extent, the licensee shall seek an amendment or a new license under this section.
- K. The department shall prescribe by rule requirements for financial security as a condition for licensure under this article. The department shall deposit all amounts posted, paid or forfeited as financial security in the radiation regulatory and perpetual care fund established by section 30-694.
- L. Persons applying for licensure shall provide notice to the city or town where the applicant proposes to operate as part of the application process.
- M. Any facility that provides diagnostic or screening mammography examinations by or under the direction of a person who is exempt from further licensure under subsection G of this section shall obtain certification by the department. The department shall prescribe by rule the requirements of certification in order to ensure the accuracy and safety of diagnostic and screening mammography.

### **30-686. 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 title 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.

**DEPARTMENT OF HEALTH SERVICES**

Title 9, Chapter 14, Article 1, Laboratory Standing Orders



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** September 1, 2020

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

**FROM:** Council Staff

**DATE:** August 5, 2020

**SUBJECT: DEPARTMENT OF HEALTH SERVICES**  
**Title 9, Chapter 14, Article 1 - Laboratory Standing Orders**

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### Summary

This Five-Year Review Report (5YRR) from the Department of Health Services relates to rules in Title 9, Chapter 14, Article 1 relating to Laboratory Standing Orders. Article 1 consists of two rules R9-14-101 and R9-14-102. R9-14-101 defines the terms used in Article 1 and R9-14-102 specifies the requirements of a laboratory standing order and clarifies the information a laboratory shall accept from a licensed practitioner who is requesting a test.

The Department substantially revised 9 A.A.C 14, Article 1 in an exempt rulemaking on November 24, 2015. This is the first 5YRR for Article 1 following the rulemaking.

### Proposed Action

The Department does not propose to take any action on the rules at this time. While the rules could be amended to address minor, non-substantive changes, the Department states that the matters identified are not substantial and the cost to amend the rules will be greater than the probable benefits.

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

Yes, the Department cites to both general and specific authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department anticipated that the Department would incur a minimal cost for technical resources, rule writer, and laboratory staff to review and amend Article 1 rules, while benefitting for having new rules that no longer require the Department to develop and maintain a list of direct access test. The Department expected that clinical laboratories would most likely not incur any cost from the new rules, and rather receive a significant benefit by being allowed to provide all laboratory tests offered by the clinical laboratory to individuals requesting a laboratory test without a physician referral. Also, the Department and clinical laboratories would receive a significant benefit for having updated definitions and requirements for laboratory standing orders.

The Department has determined that the economic impact of the rules remains minimal, as anticipated.

The stakeholders include: The Department, clinical laboratories, and individuals requesting a laboratory test from a clinical lab with a physician referral.

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 has determined that the ability for an individual to request any laboratory test without a physician referral outweighs minimal costs associated with the rule. Additionally, the Department has determined that the rule provides significant cost benefits to the Department and clinical laboratories.

The Department does not intend to make any revisions to the rules at this time.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department indicates that the rules are clear, concise, and understandable. However, the Department acknowledges that there is a typo in R9-14-101(3)(a).

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

The Department indicates the rules are mostly consistent with other rules and statutes except the definition in R9-14-101(1) could include the term "or Laboratory" to be

more consistent with A.R.S. § 36-451(4). In R9-14-101, the term “clinical laboratory” is used in definitions (2) and (7) and in R9-14-102, the term “laboratory” is used.

**7. Has the agency analyzed the rules’ effectiveness in achieving its objectives?**

The Department states the rules are effective in achieving its objectives.

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

The Department states 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?**

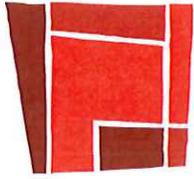
Not applicable. There is no corresponding federal law.

**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?**

Not applicable. The rules do not require a permit or license.

**11. Conclusion**

As mentioned above, the Department does not plan on taking action at this time. While these changes would qualify for an expedited rulemaking, the Department believes that the cost of making non-substantive changes would outweigh the probable benefits. Council staff recommends approval of this report.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

July 20, 2020

VIA EMAIL: [ggrc@azdoa.gov](mailto:ggrc@azdoa.gov)

Nicole Sornsin, Chair  
Arizona Department of Administration  
100 N. 15<sup>th</sup> Avenue, Suite 305  
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 14, Article 1 Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of the Department of Health Services for A.A.C. Title 9, Chapter 14, Article 1, which is due on November 31, 2020.

The Department did not review the following rules with the intention that those rules expire under A.R.S. 41-1056(J).

The Department did not review the following rules because the Council rescheduled the review of an article under A.R.S. 41-1056(H).

The Department of Health Services hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Teresa Koehler at 602-364-0813 or [Teresa.Koehler@azdhs.gov](mailto:Teresa.Koehler@azdhs.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "RL", written over a blue horizontal line.

Robert Lane  
Director's Designate

RL:tk

Enclosures

Douglas A. Ducey | Governor    Cara M. Christ, MD, MS | Director



**Arizona Department of Health Services**

**Five-Year-Review Report**

**Title 9. Health Services**

**Chapter 14. Department of Health Services – Laboratories**

**Article 1. Laboratory Standing Orders**

**November 2020**

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

Authorizing statutes: A.R.S. § 36-136(G)

Implementing statutes: A.R.S. § 36-468

Session Law authorizing the exemption: Laws 2015, Ch. 222

**2. The objective of each rule:**

<b>Rule</b>	<b>Objective</b>
R9-14-101	The objective of the rule is to define terms used in Article 1 to enable readers to understand clearly the requirements in the Article and to allow for consistent interpretation.
R9-14-102	The objective of the rule is to provide definitions related to laboratory standing orders and clarify information a laboratory shall accept from a licensed practitioner who is requesting a test.

**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.*

<b>Rule</b>	<b>Explanation</b>

**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.*

<b>Rule</b>	<b>Explanation</b>
R9-14-101	The rule is consistent with other rules and statutes. However, definition in R9-14-101(1), could be more consistent with A.R.S. § 36-451(4) if the term included “ <u>or Laboratory.</u> ” In R9-14-101, the term “clinical laboratory” is used in definitions (2) and (7) and in R9-14-102, the term “laboratory” is used.

**5. Are the rules enforced as written?**

Yes  No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes  No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R9-14-101	The rule is clear, concise, and understandable. However, in definition (3)(a), the reference to the Arizona Revised Statutes contains a typo (A.R.S.) and should be changed to "A.R.S."

7. **Has the agency received written criticisms of the rules within the last five years?** Yes  No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

8. **Economic, small business, and consumer impact comparison (summary):**

In this economic, small business, and consumer impact summary, the Department provides an estimate of costs and benefits of the rules, identifies persons directly affected, and provides a brief description of effects. In Laws 2015, Ch. 222, a new section 36-468 was added to require the Department to make rules that allow individuals to obtain any laboratory test from a clinical laboratory without a health care provider's request or written authorization if the laboratory offers the laboratory test. To comply with A.R.S. § 36-468, the Department amended Article 1 through exempt rulemaking and removed the direct care test list in R9-14-102 to allow individual to request "any" laboratory test that a clinical laboratory offers – without having a physician referral. Annual cost and benefit changes are designated as minimal when more that \$0 and less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or grater. A cost or benefit indicated as significant when meaningful or important and not readily subject to quantifications. The Department believes persons affected by the rulemaking to be the Department, clinical laboratories, and individuals requesting a laboratory test from a clinical laboratory without having a physician referral. The Department anticipated that the Department would incur a minimal cost for technical resources, rule writer, and laboratory staff to review and amend Article 1 rules. And the Department believed that the Department received a significant benefit for having new rules that no longer require the Department to develop and maintain a list of direct access tests. The Department expected that clinical laboratories will most likely not incur any cost from the new rules, and rather receive a significant benefit by being allowed to provide all laboratory tests offered by the clinical laboratory to individuals requesting a laboratory test without a physician referral. Also, the Department and clinical

laboratories may receive a significant benefit for having updated definitions and requirements for laboratory standing orders. The Department believes that individuals requesting a laboratory test from a clinical laboratory without having a physician referral will mostly likely receive a significant benefit for having rules that no longer restrict individuals who request a laboratory test that is not listed on a direct access test list and is offered by a clinical laboratory. Additionally, the Department anticipates that the benefit for having new rules for laboratory standing orders is greater than the cost to promulgate the rules.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No √

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

The Department substantially revised 9 A.A.C. 14, Article 1 in an exempt rulemaking filed with the Office of the Secretary of State on November 24, 2015. This is the first five-year-review for 9 A.A.C. 14, Article 1 effective November 24, 2015 at 21 A.A.R. 3237.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The rules provide definitions related to laboratory standing orders and clarify information a laboratory shall accept from a licensed practitioner who is requesting a test. The Department has determined that clinical laboratories and individuals requesting a laboratory test from a clinical laboratory without having a physician referral will mostly likely not incur any costs and instead receive a significant benefit. The Department has also determined that although the Department has incurred a minimal cost for drafting and promulgating the new rules; the benefit for having the new rules is greater and outweighs the cost to draft and promulgate the new rules. The Department believes that the new rules do not impose a burden or cost to regulated persons. For clinical laboratories and individuals who request a test from a clinical laboratory without having a physician referral, the rules do not add to paperwork or other compliance costs necessary to make regulated persons compliant with the rules. This rulemaking reduce the regulatory burden on individuals who want to obtain a laboratory test on a direct access basis, and will more likely than not, may increase revenues for clinical laboratories. The Department has determined that the rules impose the least burden and costs to regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No √

*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?*

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules provide definitions and requirements for laboratory standing orders pursuant to A.R.S. § 36-468 and do not require the issuance of regulatory permit, license, or agency authorization. The Department believes that under A.R.S. § 41-1037(A)(3) that a general permit is not applicable.

**14. Proposed course of action**

The Department believes that the matters identified in this five-year-review report are not substantial and the cost to amend the rules through expedited rulemaking will be greater than probable benefits. The Department proposes no course of action.

# **ATTACHMENT 1**

## **ARTICLE 1. LABORATORY STANDING ORDERS**

Section

R9-14-101. Definitions

R9-14-102. Laboratory Standing Orders

# ATTACHMENT 1

## ARTICLE 1. LABORATORY STANDING ORDERS

### R9-14-101. Definitions

In this Article, unless otherwise specified:

1. "Clinical laboratory" means the same as in A.R.S. § 36-451.
2. "Laboratory standing order" means a written directive by a licensed practitioner to a clinical laboratory to perform a test.
3. "Licensed practitioner" means:
  - a. A podiatrist licensed under A.R.S. Title 32, Chapter 7;
  - b. A doctor of chiropractic licensed under A.R.S. Title 32, Chapter 8;
  - c. A doctor of medicine licensed under A.R.S. Title 32, Chapter 13 or licensed in another state;
  - d. A doctor of naturopathic medicine licensed under A.R.S. Title 32, Chapter 14;
  - e. A doctor of osteopathic medicine licensed under A.R.S. Title 32, Chapter 17 or licensed in another state;
  - f. A homeopathic physician licensed under A.R.S. Title 32, Chapter 29;
  - g. A dentist licensed under A.R.S. Title 32, Chapter 11, Article 2;
  - h. A physician assistant who is licensed under Title 32, Chapter 25 and who has the supervising physician's delegation required in A.R.S. § 32-2531; or
  - i. A registered nurse practitioner licensed under A.R.S. Title 32, Chapter 15 and certified under A.A.C. R4-19-504.
4. "Patient" means an individual receiving services from a licensed practitioner.
5. "State" means the same as in A.R.S. § 36-841.
6. "Supervising physician" means the same as in A.R.S. § 32-2501.
7. "Test" means a clinical laboratory's examination or analysis of material from an individual's body.

### R9-14-102. Laboratory Standing Orders

A laboratory shall only perform a test based on a laboratory standing order if the laboratory standing order:

1. Specifies:
  - a. The licensed practitioner's name, type of license, and licensing state;
  - b. The patient's name;
  - c. The date of the laboratory standing order;

## ATTACHMENT 1

- d. One or more tests; and
  - e. The frequency of testing; and
2. Is dated no more than one year before the date of the test.

## ATTACHMENT 2

### 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

## ATTACHMENT 2

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

## ATTACHMENT 2

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

## ATTACHMENT 2

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

## ATTACHMENT 2

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

## ATTACHMENT 2

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:

## ATTACHMENT 2

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.

**36-468. Laboratory testing without health care provider's order; results; report; duty of care; liability; definition**

A. A person may obtain any laboratory test from a licensed clinical laboratory on a direct access basis without a health care provider's request or written authorization if the laboratory offers that laboratory test to the public on a direct access basis without a health care provider's request or written authorization.

B. If a laboratory test of a person is conducted by or under the supervision of a person other than a health care provider and not at the request or with the written authorization of a health care provider, any report of the test results shall be provided by the person conducting the test to the person who was the subject of the test. The report shall state in bold type that it is the responsibility of the person who was tested to arrange with the person's health care provider for consultation and interpretation of the test results.

C. A health care provider's duty of care to a patient does not include any responsibility to review or act on the laboratory test results of a patient if the health care provider did not request or authorize the laboratory test. A health care provider is not subject to liability or disciplinary actions for the failure to review or act on the results of a laboratory test of any patient if the health care provider did not request or authorize the laboratory test.

D. A clinical laboratory may not submit a claim for reimbursement from a third-party payor for any laboratory test conducted without a health care provider's request or written authorization.

E. This section does not require that a laboratory test be covered by a health insurance plan or product pursuant to title 20 or by any program administered by the Arizona health care cost containment system administration pursuant to chapter 29 of this title.

F. For the purposes of this section, "health care provider" means a person who is licensed pursuant to title 32 and who is authorized to order laboratory testing.

**DEPARTMENT OF HEALTH SERVICES**

Title 9, Chapter 7, Article 6, Use of X-rays in the Healing Art



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** September 1, 2020

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

**FROM:** Council Staff

**DATE:** August 13, 2020

**SUBJECT:** Department of Health Services  
Titles 9, Chapter 7, Article 6

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This Five-Year-Review Report from the Department of Health Services relates to rules in Title 6, Chapter 6 regarding radiation control. The rules cover the following Article:

- **Article 6** - Use of X-rays in the Healing Arts

In the last 5YRR of these rules the Department did not propose to make any changes, however two rules were amended in 2018 to clarify requirements.

### **Proposed Action**

The Department is proposing to amend several of the rules to improve their overall clarity, conciseness and understandability. As proposed in other recent 5YRR's, 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:**

The Department, pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, 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. Currently, the Department issues registrations for approximately 16,000 devices to over 5,000 registrants. These include 83 hospitals or other facilities offering inpatient care; 1,621 medical, osteopathic, or chiropractic office or clinics not offering inpatient care; 49 schools, colleges, universities, or other teaching facilities; and 3,252 dental, podiatry, or veterinarian offices or clinics. The Department believes that the economic impact of the rules has been 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 provide the minimum requirements to ensure the safe use of x-rays in the healing arts. The Department believes that the substantive content of the rules is the minimum necessary to protect the health and safety and the protection of public health and safety outweigh the probable costs of the rules. The Department indicates that even with minor issues that 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.

**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 written criticisms.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are overall clear, concise, and understandable with the exception of the following:

- R9-7-602 - Definitions
- R9-7-603 - Operational Standards, Shielding, and Darkroom Requirements
- R9-7-604 - General Procedures
- R9-7-605 - X-ray Machine Standards
- R9-7-606 - Fluoroscopic and Fluoroscopic Treatment Stimulator Systems
- R9-7-607 - Additional X-ray Machine Standards, Shielding Requirements, and Procedures
- R9-7-608 - Mobile Diagnostic Radiographic and Mobile Fluoroscopic Systems, Except Dental Panoramic
- R9-7-610 - Dental Intraoral Radiographic Systems

- R9-7-610.01 - Hand-held Intraoral Dental Radiographic Unit Requirements for Use
- R9-7-611- Therapeutic X-ray Systems of Less than 1 MeV
- R9-7-611.01 - Electronic Brachytherapy to Deliver Interstitial and Intracavitary Therapeutic Radiation Dosage
- R9-7-611.02 - Other Use of Electronically-Produced Radiation to Deliver Superficial Therapeutic Radiation Dosage
- R9-7-612 - Computed Tomography Systems
- R9-7-613 - Veterinary Medicine Radiographic Systems
- R9-7-614 - Mammography Systems
- R9-7-615 - Mammography Personnel
- Appendix A - Information Submitted to the Department According to R9-7-604(A)(3)(c)

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

Yes, the Department indicates the rules are overall consistent with other rules and statutes with the exception of the following:

- R9-7-603 - Operational Standards, Shielding, and Darkroom Requirements
- R9-7-604 - General Procedures
- R9-7-611.01 - Electronic Brachytherapy to Deliver Interstitial and Intracavitary Therapeutic Radiation Dosage
- R9-7-614 - Mammography Systems
- R9-7-615 - Mammography Personnel

**7. Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are overall effective.

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

Yes, the Department indicates the rules are enforced as written.

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

No, the Department indicates the rules are not more stringent than the corresponding federal law, 21 CFR 900.12.

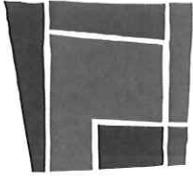
**10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require the issuance of a license or permit.

## **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 17, 2020

**VIA EMAIL:** [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsin, Esq., Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 7, Article 6, 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 6, Use of X-rays in the Healing Arts, 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](mailto:Ruthann.Smejkal@azdhs.gov) or 602-364-1230.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Lane', written over a light gray background.

Robert Lane  
Director's Designee

RL:rms

Enclosures

Douglas A. Ducey | Governor    Cara M. Christ, MD, MS | Director

150 North 18th Avenue, Suite 500, Phoenix, AZ 85007-3247    P | 602-542-1025    F | 602-542-1062    W | [azhealth.gov](http://azhealth.gov)

*Health and Wellness for all Arizonans*



**Arizona Department of Health Services**

**Five-Year-Review Report**

**Title 9. Health Services**

**Chapter 7. Department of Health Services**

**Radiation Control**

**Article 6. Use of X-rays in the Healing Arts**

**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, 30-673, and 32-2811

**2. The objective of each rule:**

<b>Rule</b>	<b>Objective</b>
R9-7-602	To define terms specific to the Article to enable general understanding of the terms.
R9-7-603	To establish requirements for registrants related to operating x-ray equipment, shielding, and film processing and darkroom requirements.
R9-7-604	To specify procedural requirements, including prohibited actions, common to all uses of x-ray equipment, and for recordkeeping.
R9-7-605	To specify standards for x-ray equipment, including leakage limits, beam quality, presence of multiple tubes, supports for a tube head, exposure reproducibility, and accuracy deviation.
R9-7-606	To specify useful beam limitations, protective barrier requirements, and operational standards for fluoroscopic systems and fluoroscopic treatment simulators.
R9-7-607	To establish additional requirements for useful beam limitation mechanisms, exposure control, structural shielding, and operational standards for x-ray equipment other than mobile fluoroscopic, dental panoramic, cephalometric, dental CT, or dental intraoral radiographic systems.
R9-7-608	To specify requirements for equipment, structural shielding, and operating procedures for mobile diagnostic radiographic and mobile fluoroscopic systems, other than dental panoramic, cephalometric, dental CT, or dental intraoral radiographic systems.
R9-7-610	To establish requirements for equipment, structural shielding, and operating procedures specific to dental intraoral radiographic systems.
R9-7-610.01	To establish requirements specific to hand-held intraoral dental radiographic units.
R9-7-611	To establish requirements for equipment, facility design, surveys, calibration, spot checks, and operating procedures specific to therapeutic x-ray systems of less than 1 MeV, other than electronic brachytherapy units.
R9-7-611.01	To establish requirements for monitoring equipment, facility design, control mechanisms, calibration, safety procedures, support by a Qualified Medical Physicist, and operating procedures specific to electronic brachytherapy units.
R9-7-611.02	To specify requirements for persons using devices that generate ionizing radiation that are not regulated under other any category of therapeutic radiation machine.

R9-7-612	To establish requirements for a facility in which a computed tomography system is used, as well as requirements for the equipment, operating procedures, quality control, and evaluation of performance to protect health and safety. To specify that subsections (E) and (F) in the rule do not apply to CT units designated for simulator use, veterinary use, dental use, podiatry use, and non-diagnostic use on humans.
R9-7-613	To specify requirements for equipment and operating procedures for radiographic systems used in veterinary medicine.
R9-7-614	To specify requirements for equipment and operating procedures for radiographic systems used for mammography to ensure health and safety.
R9-7-615	To establish requirements for personnel performing mammography and recordkeeping.
Appendix A	To specify the information required to be submitted to the Department by a person wanting to use a radiographic system to perform healing arts screening.

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.

4. **Are the rules consistent with other rules and statutes?** Yes    No X

*If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.*

Rule	Explanation
R9-7-603, R9-7-611.01, and R9-7-615	R9-7-603(B)(1), R9-7-611.01(H)(3) and (N), and R9-7-615(A)(1)(b)(i) refer to the Medical Radiologic Technology Board of Examiners as the certifying body for individuals, other than those exempt under A.R.S. § 32-2811, who may use ionizing radiation on a human being. Since Laws 2018, Ch. 234, made the Department responsible for regulation of radiologic technologists, the Department has issued these certifications, under A.R.S. §§ 32-2814 and 32-2816, and has made rules for this function in 9 A.A.C. 16, Article 6. Therefore, these rules are inconsistent with these statutes and rules. However, those affected are aware of the statutory change and adhere to a different set of rules in 9 A.A.C. 16, Article 6. Therefore, this inconsistency does not affect the effectiveness of the rules in this Article.
R9-7-604	Subsection (A)(3) is inconsistent with A.R.S. § 13-2505(E), which allows a licensed practitioner to order the use of ionizing radiation for other than diagnostic or therapeutic purposes. Because the Department follows the statute, those affected are aware of and follow the statute, and only six of the 5,600 registrants are affected by the statutory change, the inconsistency does not affect the effectiveness of the rule.
R9-7-614	Subsection (C) requires retention of films for a minimum of five years. Since these films would be part of a patient's medical record, the retention requirements of A.R.S. § 12-2297 would apply. Films for an adult patient would need to be retained for at least six years after the last date the patient "received medical or health care services from that provider," and for a child patient for the later of at least three years after the child's eighteenth birthday or at least six years after the last date the patient "received medical or health care services from

	that provider.” Since these retention requirements apply to all medical records, not just those related to mammograms, the regulated community is well aware of and complies with the statutory retention requirements. This inconsistency does not affect the effectiveness of the rules in this Article.
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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.
R9-7-602	The rule would be clearer if the rule stated that definitions in R9-7-102 also apply in this Article. Several defined terms, such as “added filter,” “assembler,” “changeable filter,” “cinefluorography,” “cooling curve,” “CT gantry,” “gonadal shield,” and “tube rating chart,” are not used in the Article and could be removed. Other terms, such as “beam axis,” “C-arm x-ray system,” “coefficient of variation,” “direct scattered radiation,” “mA,” “mAs,” and “visible area,” are used only once in the Article and could be described in place. The definitions of many terms are poor, some including parts of the defined terms as part of the definition, others including technical terms in the definition that are undefined, and still others using two or more sentences as part of the definition when simpler language could be used.
R9-7-603	The rule would be improved if subsection (B)(1) were formatted to clarify the three parts of the requirement: that the operator possesses a certificate; that the certificate is valid (i.e., current); and that the certificate is posted. Adding a requirement that the operator function within the operator’s scope of practice could also be helpful. Subsection (B)(3) would be clearer if it described what “demonstrate familiarity” means. Subsection (C) would be improved if subsection (C)(1) read “primary protective barriers and secondary protective barriers,” using defined terms, rather than “primary and secondary protective barriers”; subsection (C)(2) were reworded to be more concise; and shielding requirements currently in R9-7-607(C) were included in the rule with the exceptions noted. Subsection (C)(4) could also be clearer if radiographic systems, similar to dental units but used by podiatrists, were included in the exception. While the incorporation by reference in subsection (C)(2) is still current, the URL for the webpage should be updated. Since the vast majority of current systems are digital rather than requiring a darkroom, subsection (D) could be revised to indicate that the requirements are applicable only if a film-based system is used. Requirements for recordkeeping in subsection (D)(11) would be improved by changing to “for at least three years.”
R9-7-604	Subsection (A)(1) would be clearer if it specified that only an x-ray machine approved by the U.S. Food and Drug Administration (FDA) or having FDA approval for use under specified circumstances may be used on a human. The rule would be improved if subsection (A)(2) were clearer as to which room is meant. Subsection (A)(2)(d) would be clearer if it specified

	<p>where, how, or on what basis the Department would specify additional protective devices. Subsection (A)(3)(a) could be more understandable if it specified who/what doesn't meet the requirements. Subsection (A)(5) should be reworded to match the formatting in other subsections. Requirements for recordkeeping in subsection (A)(5)(c) would be improved by changing to "for at least three years." Subsection (B)(1) would be improved if the record were required to include a date and the rule specified for how long the record is required to be maintained.</p>
R9-7-605	<p>The rule would be more concise if the descriptions of the Department's processes for obtaining measurements to determine whether a registrant is compliant with requirements in subsections (A) and (B) were removed from rule, since these processes may change as technology evolves without affecting whether or not a registrant is in compliance. The rule would be more concise if subsections (C)(2) and (C)(4) and Table II were removed as unnecessary.</p>
R9-7-606	<p>The rule would be more concise if subsection (B)(4)(a) were removed as unnecessary. The rule would also be more concise if the descriptions of the Department's processes for determining compliance, specified in subsection (C)(3), were removed from rule, since these processes may change without affecting whether or not a registrant is complying with requirements. The rule would be clearer if notice were provided at the beginning of the rule that fluoroscopic treatment simulators are exempt from subsections (A) through (G), rather than the notice being at the end of the rule.</p>
R9-7-607	<p>The rule could be clearer if the title of the Section included radiographic systems, similar to dental units but used by podiatrists, in the exception. The rule would also be clearer if the rule used the defined term, general purpose radiographic x-ray system, in subsection (A)(2)(e), rather than a variation of the term. In subsection (B)(2), the rule would be clearer if "except for those used" were replaced with "except for an exposure switch used." Subsection (C)(2) would be clearer if the secondary barrier requirements were described or cited to. Requirements for recordkeeping in subsection (D)(6) would be improved by changing to "for at least three years."</p>
R9-7-608	<p>The rule could be clearer if the title of the Section included radiographic systems, similar to dental units but used by podiatrists, in the exception. The rule would also be clearer if subsection (A)(3) used the term "source-to-skin."</p>
R9-7-610	<p>The rule could be clearer if radiographic systems, similar to dental units but used by podiatrists, were included in the title and body of the rule. The rule would be clearer if the phrase "protective tube housing of diagnostic type" in subsection (A)(1) were defined or described. Subsections (A)(10) and (11) apply to systems using film and no longer serve their intended purposes. The note in subsection (B)(1) is unnecessary and could be removed.</p>
R9-7-610.01	<p>The rule would be clearer if subsection (B) were in active voice.</p>
R9-7-611	<p>Subsection (A)(10) would be clearer if the term "source-to-skin" rather than "source-to-patient" were used. The requirements in subsection (C) would be improved if the rule were changed to clarify whether "both new and existing" and "not previously surveyed" are mutually exclusive. Requirements for recordkeeping in subsection (E)(5) would be improved by changing to "for at least three years." The rule would also be more understandable if the exemption in subsection (G) were revised to make clearer that certain requirements in the rule, specified in R9-7-611.01, are applicable to electronic brachytherapy units and were made earlier in the rule.</p>
R9-7-611.01	<p>Subsection (F)(1) would be clearer if it were in active voice. The rule would be more concise if requirements in subsections (G)(6)(b) and (8) were combined or clarified. The rule would be clearer if the term "direct supervision" in subsections (H)(3)(c), (I)(1), and (K)(1) were defined or described. Subsections (I)(5), (K), and (O)(2) would be clearer if "recognized national professional association" and "national professional association" were better described or defined. Subsection (J)(3) would be clearer if it cited to subsections (J)(1) and</p>

	<p>(2), rather than stating “requirements of this subsection.” Requirements for recordkeeping in subsections (J)(8), (O)(3), (S)(3)(b) would be improved by changing to “for at least three years.” Subsection (M)(5) would be improved by changing “doctor’s degree” to “doctoral degree.” Subsections (N), (O)(1), and (O)(2) contain passive language that should be changed. Subsection (P)(1) would be clearer if the phrase “medical use” were better described. Both subsections (P)(1) and (2) are also obsolete and could be removed from the rule. Subsection (S)(3)(a) would be improved if the date of the event and a description were required in the rule.</p>
R9-7-611.02	<p>The rule would be improved if subsection (4) were made into a subsection (B), since the content of the subsection does not fit with the lead-in to the other subsections.</p>
R9-7-612	<p>The rule would be clearer if the definition of “CTDI” did not include the undefined term “tomographic plane,” which should be defined because the term is used multiple times in the rule. The definition of “CT” should be moved to R9-7-602, since the term is used in R9-7-602 as part of definitions. The defined term “CTN” is not used in the rule and could be removed, as could “elemental area,” which is only used in the definition of CTN. The defined term “dose profile” is only used in the definition of CTDI and could be described in the definition for that term. The term “multiple tomogram system” is only used once in the rules, in subsection (C)(3), so the term could be defined/described in place. In subsection (D)(2)(b), it is unclear what “indicated parameters” are, how they are indicated, and who indicates them; the rule should cite to subsection (E). In subsection (D)(2)(d), the “procedure for determining whether a CT has been performed according to instructions of a physician” appears to be a fifth element of the operating procedures and should have a separate subsection. Similarly, the “written or electronic log” in subsection (D)(2)(e) appears to be a separate document from the operating procedures document in subsection (D)(2) and could be in a separate subsection under subsection (D). In subsection (E)(5), it is unclear what is meant by “Alerts and Notification settings” and the purpose of the rule. Requirements for recordkeeping in subsections (E)(6) and (F)(2)(c) would be improved by changing to “for at least three years” and “for at least the next three years,” respectively. The rule would be clearer if the term “direct supervision” in subsection (F)(1) were defined or described. The rule could also be clearer by citing to what happens if the CT fails the evaluation and using the same term for the concept of reviewing how well the CT is functioning, rather than using “survey” in subsection (F)(2)(c) and “evaluation of a CT’s operation” in other locations.</p>
R9-7-613	<p>Subsection (B)(4) would be improved by clarifying that an individual would hold an animal only when necessary. Subsections (B)(5) and (6) refer to the use of film and would be improved by using the term “image receptor” to apply to both film-based and digital systems.</p>
R9-7-614	<p>Subsections (A)(2) and (3) and (B)(2)(a), (f), and (g) refer to the use of film. While film-based systems are not used in Arizona, and are only about 1% of the units in the entire country, they could be used. The rule, however, could be improved by specifying other requirements related to digital systems. The incorporation by reference in subsection (A)(5) should be updated to remove the mailing addresses and update the website. The rule would be clearer if the information about the incorporation by reference specified in subsection (B)(2) were updated, to include the date the CFR was last amended, rather than the date the CFR was last reviewed prior to the date the rule was last amended. Requirements for recordkeeping in subsection (B)(2)(k) and (C)(1) would be improved by changing to “for at least three years,” “for at least 10 years,” and “for at least five years.” The rule would be also clearer if subsections (A)(10) and (13) used the term “source-to-image-receptor distance.” Since a radiologic physicist is not defined in R9-7-615(A)(1)(c), the subsection (B)(1) would be clearer if changed to indicate that a radiologic physicist needs to meet the requirements in R9-7-615(A)(1)(c). Subsection (B)(2)(c) would be clearer if the term used were “radiologic physicist’s.”</p>
R9-7-615	<p>The rule would be clear if the information about the incorporation by reference specified in subsections (A)(1)(a), (b), and (c) were updated, to include the date the CFR was last</p>

	amended, rather than the date the CFR was last reviewed prior to the date the rule was last amended. Subsection (A)(1)(a)(iii) would also be clearer if requirements in 21 CFR 900.12 were cited, rather than using the term “requirements of the mammography quality standards act regulations,” and subsection (A)(1)(a)(iv) needs to be updated to match federal requirements. The rule would also be clearer if the term “direct supervision” in subsection (A)(1)(b)(ii) were defined or described. It is unclear from whom and how a radiologic physicist would obtain the “documentation of state approval” required in subsection (A)(1)(c)(ii), and the conjunction at the end of subsection (A)(1)(c)(vi) should be “and” rather than “or.” Requirements for recordkeeping in subsection (A)(2) would be improved by changing to “for at least three years.”
Appendix A	The Article would be improved if the information in the rule were included in R9-7-604.

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 but the 2009 rulemaking, so the economic impact of the Sections made/revised in the five other 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 16,000 devices to over 5,000 registrants under this Article. These include 83 hospitals or other facilities offering inpatient care; 1,621 medical, osteopathic, or chiropractic offices or clinics not offering inpatient care; 49 schools, colleges, universities, or other teaching facilities; and 3,252 dental, podiatry, or veterinarian offices or clinics.

Appendix A was last revised in a rulemaking in 2003. Only clarifying changes were made, so the economic impact of this change was estimated to be at most minimal. The Department believes the economic impact is as estimated.

In 2004, R9-7-609 was last revised. In the rulemaking, requirements related to chest photofluorographic systems were removed and chest photofluorography for the diagnosis of human disease was prohibited. This change was made at the request of a stakeholder during the 2003 rulemaking. According to the summary of comments made during the 2003 rulemaking in paragraph 11 of the Preamble of the NFR, the stakeholder stated that chest photofluorographic systems were no longer used and were unsafe. Although it was believed that the

stakeholder was correct and the change should be made, the revision was made in the subsequent 2004 rulemaking because making such a change would constitute a substantive change to the 2003 rulemaking. No significant economic impact was anticipated for any change made as part of the 2004 rulemaking. The Department believes the economic impact is as estimated.

The changes made during the 2009 rulemaking, in which R9-7-604 was last revised, were made to improve health and safety. This rule was revised as part of the rulemaking to prohibit an individual from routinely holding film or a patient during exposure to x-rays. Also prohibited was exposing an individual to fluoroscopy as a positioning method for general purpose radiological procedures. Changes were also made to require annual checks of protective equipment, such as aprons, gloves, and shields. As part of the 2009 rulemaking, requirements for maintaining records of maximum rating of technique factors, aluminum equivalent filtration of the useful beam, and tube rating charts and cooling curves were removed and clarifying changes were made to other record requirements. According to the EIS, the changes made would improve patient safety and impose at most minimal costs on medical businesses. The Department believes the economic impact is as estimated.

As part of the rulemaking that became effective on January 4, 2014, 10 rules (R9-7-602, R9-7-603, R9-7-605, R9-7-606, R9-7-607, R9-7-608, R9-7-610, R9-7-611, R9-7-612, and R9-7-614) were revised, and two new rules (R9-7-610.01 and R9-7-615) were adopted. According to the NFR, the rulemaking was done to address “recent safety issues related to Computed Tomography (CT) scans and emergent technical advances in equipment,” as well as to adopt requirements related to “digital developing techniques that lower the expected radiation dose to the public when used correctly.” Changes included adding definitions; clarifying requirements; adding requirements specific to CT, new technology used by dentists, and other new technology; clarifying safety requirements; moving requirements for mammography personnel from R9-7-614 into a new Section. The changes made as part of the rulemaking were estimated to cause “little or minimum impact” on registrants. The Department believes the economic impact is as estimated.

Two new Sections were adopted in a rulemaking effective on May 3, 2014, with one further revised in 2018. The rule made in the 2014 rulemaking and not revised is R9-7-611.02, which established requirements for devices designed to electrically generate a source of ionizing radiation that are not regulated under other registration categories specified in R9-7-1302(E). Currently, there are no devices registered under this category. According to the NFR for this rulemaking, the requirements were adopted to “address safety issues related to therapeutic doses of radiation significantly higher than those experienced from diagnostic x-ray exposure.” The rulemaking was anticipated to cause “little or minimal economic impact.” The Department believes the economic impact is as estimated.

In 2018, changes were made to R9-7-611.01 and R9-7-613 through expedited rulemaking. For R9-7-611.01, these changes included correcting a typographical error in the spelling of “intracavitary” and making clarifying formatting changes in subsection (L). In R9-7-613, an obsolete phase-in date was removed. These changes were expected to provide a benefit, but no costs, to regulated entities. 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 had no plans to amend the rules in Article 6. However, two rules in Article 6 were revised as part of a rulemaking in 2018 to clarify requirements. No other changes were made to these rules.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department believes that the rules provide the minimum requirements to ensure the safe use of x-rays in the healing arts. The rules contain requirements for qualifications of applicants and operators; for equipment, including spot checks of equipment performance, requirements for surveys to detect radiation levels, and minimum quality control tests; for facilities, including facility and shielding requirements and safety systems; and 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 900.12

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules in Article 6 provide standards and limits for the safe use of x-rays in the healing arts but do not include the issuance of a license or permit.

14. **Proposed course of action**

*If possible, please identify a month and year by which the agency plans to complete the course of action.*

The minor items and possible changes described in paragraph 6 are not substantive. As discussed with the Council on the occasion of another 5YRR, it does not make sense in most cases, and is certainly not effective or efficient,

to try to revise the Articles in Chapter 7 piecemeal. The Department plans to evaluate the entire Chapter, after finishing reviews of all the Articles in the Chapter, to determine whether a rulemaking is necessary and, if so, to establish a time-frame to complete the rulemaking. According to the Department's current schedule, the last five-year report for the Chapter is due in December 2021. Based on the reviews of those Articles that have been completed, the Chapter may need to be extensively revised.

## **ARTICLE 6. USE OF X-RAYS IN THE HEALING ARTS**

### Section

- R9-7-602. Definitions
- R9-7-603. Operational Standards, Shielding, and Darkroom Requirements
- R9-7-604. General Procedures
- R9-7-605. X-ray Machine Standards

### Table I

#### Table II - Filtration Required vs. Operating Voltage

- R9-7-606. Fluoroscopic and Fluoroscopic Treatment Simulator Systems
- R9-7-607. Additional X-ray Machine Standards, Shielding Requirements, and Procedures, Except Mobile Fluoroscopic, Dental Panoramic, Cephalometric, Dental CT, or Dental Intraoral Radiographic Systems
- R9-7-608. Mobile Diagnostic Radiographic and Mobile Fluoroscopic Systems, Except Dental Panoramic, Cephalometric, Dental CT, or Dental Intraoral Radiographic Systems
- R9-7-609. Chest Photofluorographic Systems
- R9-7-610. Dental Intraoral Radiographic Systems
- R9-7-610.01. Hand-held Intraoral Dental Radiographic Unit Requirements For Use
- R9-7-611. Therapeutic X-ray Systems of Less Than 1 MeV
- R9-7-611.01. Electronic Brachytherapy to Deliver Interstitial and Intracavitary Therapeutic Radiation Dosage
- R9-7-611.02. Other Use of Electronically-Produced Radiation to Deliver Superficial Therapeutic Radiation Dosage
- R9-7-612. Computed Tomography Systems
- R9-7-613. Veterinary Medicine Radiographic Systems
- R9-7-614. Mammography Systems
- R9-7-615. Mammography Personnel
- Appendix A. Information Submitted to the Department According to R9-7-604(A)(3)(c)

## ARTICLE 6. USE OF X-RAYS IN THE HEALING ARTS

### R9-7-602. Definitions

The following definitions apply in this Article, unless the context otherwise requires:

“Accessible surface” means the external surface of the enclosure or housing provided by the manufacturer.

“Added filter” means the filter added to the inherent filtration.

“Aluminum equivalent” means the thickness of aluminum (type 1100 alloy) that affords equivalent attenuation, under specified conditions, as the material in question. (The nominal chemical composition of type 1100 aluminum alloy is 99.00 percent minimum aluminum, 0.12 percent copper).

“Annual” means annually within two months of the anniversary due date as determined by the original installation date, inspection date, survey date, or a reset date created by conducting a full survey before the anniversary date has arrived.

“Assembler” means any person engaged in the business of assembling, replacing, or installing one or more components into an xray system or subsystem.

“Attenuation block” means a block or stack, having dimensions 20 cm by 20 cm by 3.8 cm (7.9 inches by 7.9 inches by 1.5 inches) of type 1100 aluminum alloy or other materials that afford equivalent attenuation.

“Automatic exposure control” means a device that automatically controls one or more technique factors in order to obtain, at a preselected location or locations, a required quantity of radiation.

“Barrier” (See “Protective barrier”)

“Beam axis” means a line from the source through the center of the x-ray field.

“Beam-limiting device” means a device that provides a means to restrict the dimensions of the x-ray field.

“C-arm x-ray system” means an x-ray system that has the image receptor and x-ray tube housing assembly connected by a common mechanical support system to maintain a desired spatial relationship. This system is designed to allow a change in the projection of the beam through the patient without a change in the position of the patient.

“Changeable filter” means any filter, exclusive of inherent filtration, which can be removed from the useful beam by an electronic, mechanical, or physical process.

“Cinefluorography” means fluorography that uses a movie camera to record fluorograph images on film for later playback.

“Coefficient of variation” means the ratio of the standard deviation to the mean value of a

population of observations.

“Collimator” means an adjustable device, generally made of lead, that is fixed to an x-ray tube housing to intercept or collimate the useful beam and, if not made of lead, has a lead equivalency of not less than that of the tube housing assembly.

“Compression device” means a device used to bring object structures closer to the image plane of a radiograph and make a part of the human body a more uniform thickness so the optical density of the radiograph will be more uniform.

“Computed tomography” means the production of a tomogram by the acquisition and computer processing of x-ray transmission data. For purposes of these rules this term has the same meaning as “CT.”

“Contact therapy system” means that the x-ray tube port is put in contact with or within 5 centimeters (2 inches) of the surface being treated.

“Control panel” means that part of the x-ray machine where switches, knobs, push-buttons, or other hardware necessary for manually setting the technique factors are located.

“Cooling curve” means the graphical relationship between heat units stored and cooling time.

“CT gantry” means the tube housing assemblies, beam-limiting devices, detectors, and the supporting structure, frame, and cover which hold or enclose these components.

“Dead-man switch” means a switch constructed so that a circuit-closing contact can be maintained only by continuous pressure on the switch by the operator.

“Diagnostic source assembly” means the tube housing assembly with a beam-limiting device attached.

“Diagnostic x-ray system” means an x-ray system designed for irradiation of any part of a human or animal body for the purpose of diagnosis or visualization.

“Direct scattered radiation” means scattered radiation that has been deviated in direction only by materials irradiated by the useful beam (see “Scattered radiation”).

“Electronic brachytherapy” means a method of radiation therapy where an electrically generated source of ionizing radiation is placed in or near the tumor or target tissue to deliver therapeutic radiation dosage.

“Entrance exposure rate” means the roentgens per unit time at the point where the center of the useful beam enters the patient.

“Equipment” (See “X-ray equipment”)

“Filter” means material placed in the useful beam to absorb undesirable radiation.

“Fluoroscopic imaging assembly” means a subsystem in which x-ray photons produce a fluoroscopic image. It includes the image receptor or receptors such as the image intensifier and

spot-film device, electrical interlocks, if any, and structural material that provides a linkage between the image receptor and diagnostic source assembly.

“Fluoroscopic system” means a radiographic x-ray system used to directly visualize internal structure, the motion of internal structures, and fluids in real time, or near real-time, to aid in the treatment or diagnosis of disease, or the performance of other medical procedures.

“Focal spot” means the region of the anode target in an x-ray tube where electrons from the cathode interact to produce x-rays.

“General purpose radiographic x-ray system” means any radiographic x-ray system that, by design, is not limited to radiographic examination of a specific anatomical region.

“Gonadal shield” means a protective barrier for the testes or ovaries.

“Grid” means a device used to improve the image detail in a radiograph by reducing the intensity of x-ray scatter radiation exiting the film side of the patient.

“Half-value layer” or “HVL” means the thickness of a specified material that attenuates the beam of radiation to an exposure rate that is one-half of its original value. In this definition, the contribution of any scattered radiation, other than that which is present initially in the beam, is excluded.

“Healing arts radiography” means the application of x-radiation to human patients for diagnostic or therapeutic purposes by a licensed practitioner or a person certified in accordance with R9-7-603(B)(1), at the direction of a licensed practitioner. Healing arts radiography includes:

- Positioning the x-ray beam with respect to the patient,
- Anatomical positioning of the patient,
- Selecting exposure factors, or
- Initiating the exposure.

“Healing arts screening” means the application of radiation from an x-ray machine to a human for the detection or evaluation of health indications when the tests are not specifically and individually ordered by a licensed practitioner.

“Image intensifier” means an electronic device, installed in an x-ray system housing, which instantaneously converts an x-ray pattern into a corresponding light image of higher intensity.

“Image receptor” means any device, such as a fluorescent screen or radiographic film, which transforms incident x-ray photons either into a visible image or into another form which can be made into a visible image by further transformation.

“Inherent filtration” means the filtration of the useful beam by permanently installed components of the tube housing assembly.

“Kilovolts peak” or “kVp” (See “Peak tube potential”)

“Lateral fluoroscope” means the x-ray tube and image receptor combination in a biplane system dedicated to the lateral projection. It consists of the lateral x-ray tube housing assembly and the lateral image receptor that are fixed in position relative to the table with the x-ray beam axis parallel to the plane of the table.

“Lead equivalent” means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

“Leakage radiation” means all radiation emanating from the tube housing except the useful beam and radiation produced when the exposure switch or timer is not activated.

“Leakage technique factors” means the technique factors associated with the diagnostic source assembly that are used in measuring leakage radiation. Included are:

For capacitor energy storage equipment, the maximum-rated peak tube potential and the maximum-rated number of exposures in an hour for operation at the maximum-rated peak tube potential with the quantity of charge per exposure being 10 millicoulombs (mAs) or the minimum obtainable from the unit, whichever is larger;

For field emission equipment rated for pulsed operation, the maximum-rated peak tube potential and maximum-rated number of x-ray pulses in an hour for operation at the maximum-rated peak tube potential; and

For all other source assemblies, the maximum-rated peak tube potential and maximum-rated continuous tube current for the maximum-rated peak tube potential.

“mA” means milliamperere.

“Mammographic x-ray system” means an x-ray system that is specifically engineered to image human breasts.

“mAs” means milliamperere second.

“Mobile equipment” (See “X-ray equipment”)

“Peak tube potential” means the maximum value of the potential difference across the x-ray tube during an exposure.

“Phantom” means a volume of material that behaves in a manner similar to tissue with respect to the attenuation and scattering of radiation. (i.e. “Breast phantom” means an artificial test object that simulates the average composition of, and various structures in the breast.)

“Phototimer” (See “Automatic exposure control”)

“Portable equipment” (See “X-ray equipment”)

“Primary protective barrier” (See “Protective barrier”)

“Protective apron” means an apron made of radiation, absorbing material used to reduce radiation exposure.

“Protective barrier” means a barrier of radiation-absorbing material used to reduce radiation exposure.

“Primary protective barrier” means the material, excluding filters, placed in the useful beam.

“Secondary protective barrier” means the material which attenuates stray radiation.

“Protective glove” means a glove made of radiation- absorbing material used to reduce radiation exposure.

“Radiologic physicist” means an individual who:

Is certified by the American Board of Radiology, American Board of Medical Physics, or the American Board of Health Physics;

Possesses documentation of state approval;

Holds a master’s degree or higher in a physical science; and

Meets the training and certification requirements in R9-7-615(A)(1)(c).

“Scattered radiation” means radiation that, during passage through matter, has been deviated in direction. (See “Direct scattered radiation”)

“Screen” or “intensifying screen” means a device that converts the energy of the x-ray beam into visible light that interacts with the radiographic film, forming a latent image, or contains photostimulable phosphor plates that upon exposure, emit visible or nonvisible light to create an image.

“Secondary protective barrier” (See “Protective barrier”)

“Shutter” (See “Collimator”)

“Source” means the focal spot of the x-ray tube.

“Source-to-image receptor distance” or “SID” means the distance from the source to the center of the input surface of the image receptor.

“Spot check” means an abbreviated calibration procedure which is performed to assure that a previous calibration continues to be valid. Also, a spot film may be taken to improve visualization by arresting motion and to document medical observations. Note that in some cases, a film may not be created.

“Stationary equipment” (See “X-ray equipment”)

“Stray radiation” means the sum of leakage and scattered radiation.

“System” (See “X-ray system”)

“Technique chart” means a tabulation of technique factors.

“Technique factors” means the following conditions of operation:

For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs;

For field emission equipment rated for pulsed operation, peak tube potential in kV, and number of x-ray pulses;

For CT x-ray systems designed for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and number of x-ray pulses per scan, or the product of tube current, x-ray pulse width, and number of x-ray pulses in mAs;

For CT x-ray systems not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds, or the product of tube current, exposure time in mAs, when the scan time and exposure time are equivalent; and

For all other equipment, peak tube potential in kV, and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs.

“Treatment simulator” means a diagnostic x-ray system that duplicates a medical particle accelerator or other teletherapy in terms of its geometrical, mechanical, and optical qualities; the main function of which, is to display radiation treatment fields so that the target volume may be accurately included in the area of irradiation without delivering excess radiation to surrounding normal tissue.

“Tube” means x-ray tube unless otherwise specified.

“Tube housing assembly” means the tube housing with the tube installed. It includes high-voltage or filament transformers and other elements contained within the tube housing.

“Tube rating chart” means the set of curves that specify the rated limits of operation of the tube in terms of the technique factors.

“Useful beam” means the radiation emanating from the tube housing port or the radiation head and passing through the aperture of the beam-limiting device when the exposure controls are in a mode that causes the system to produce radiation.

“Visible area” means that portion of the input surface on the image receptor over which incident x-ray photons are producing a visible image.

“X-ray equipment” means an x-ray system, subsystem, or component described further by the following terms:

“Hand-held” means x-ray equipment designed to be held by an operator while being used.

“Mobile” means x-ray equipment mounted on a permanent base with wheels or casters for moving while completely assembled.

“Portable” means x-ray equipment designed to be hand-carried, but used with a cord or delayed timer system that allows the operator to be six feet or more away from the useful

beam.

“Stationary” means x-ray equipment installed in a fixed location.

“Transportable mobile” means x-ray equipment installed in a vehicle or trailer.

“X-ray system” means an assemblage of components for the controlled production of x-rays. It includes, at minimum, an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components that function with the system are considered integral parts of the system.

“X-ray tube” means any electron tube that is designed for the conversion of electrical energy into x-ray energy. For purposes of the rules contained in 9 A.A.C. 7, this term is synonymous with “tube.”

**R9-7-603. Operational Standards, Shielding, and Darkroom Requirements**

- A. A person shall not make, sell, lease, transfer, lend, or install x-ray equipment or the supplies used in connection with the equipment unless the supplies and equipment, when properly placed in operation and properly used, meets the requirements of 9 A.A.C. 7.
- B. A registrant shall direct the operation of x-ray machines under the registrant’s control and assure that all of the following provisions are met in the operation of x-ray machines:
  - 1. The registrant shall not permit any individual to engage in the practice of “Healing Arts Radiography” using equipment under the registrant’s control, unless the individual possesses, and displays in the primary employer’s facility, an official certificate issued by, or is exempt from, the Medical Radiologic Technology Board of Examiners that contains an original signature of its Director or designee. A copy of the certificate shall be posted at any secondary employment location with documentation that verifies that the employer has physically seen the official certificate and has annotated on the copy the location where the official certificate may be viewed by Department staff.
  - 2. The registrant shall maintain records documenting compliance with subsection (B)(1) for each individual practicing “Healing Arts Radiography” using equipment under the registrant’s control,
  - 3. The registrant shall provide safety rules to each individual operating xray equipment under the registrant’s control, including any restrictions in operating procedures necessary for the safe use of the equipment and require that the operator demonstrate familiarity with 9 A.A.C. 7.
- C. Shielding
  - 1. Each registrant shall provide each installation with primary and secondary protective

barriers that are necessary to assure compliance with 9 A.A.C. 7, Article 4.

2. A registrant shall ensure that attenuation provided by a protective barrier meets or exceeds the level of protection established in Report No. 147 Structural Shielding Design for Medical X-ray Imaging Facilities, November 19, 2004, by the National Council on Radiation Protection and Measurements, (NCRP), NCRP Publications, 7910 Woodmount Ave., Suite 400, Bethesda, MD 20814-3095. This report is incorporated by reference and available under R9-7-101. The incorporated material contains no future editions or amendments. Copies of the report are available from NCRP Publications: online at <http://www.ncrppublications.org>; toll free at (800) 229-2652 (Ext. 25); or e-mail at [NCRPpubs@NCRPonline.org](mailto:NCRPpubs@NCRPonline.org). Each registrant shall use this incorporated material to provide sufficient shielding to prevent a public exposure that exceeds the limits in R9-7-416.
3. A registrant shall:
  - a. Mount each lead barrier so that the barrier will not sag or cold flow because of its own weight and protect the barrier from damage;
  - b. Use barriers designed so that joints between different ends of protective material do not impair the overall protection of the barriers;
  - c. Use barriers designed so that joints at the floor and ceiling do not impair the overall protection of the barriers;
  - d. Use windows, window frames, doors, and door frames that have the same lead equivalence required in the adjacent walls; and
  - e. Cover holes in protective barriers so that overall attenuation is not impaired.
4. A registrant shall also meet the structural shielding requirements in R9-7-607(C), if the x-ray system in question is not a mobile fluoroscopic unit, dental panoramic, cephalometric, dental CT, or intraoral radiographic system.

**D. Film Processing and Darkroom Requirements.** A registrant shall:

1. Ensure that the darkroom is light-tight and use proper safe-lighting such that any film type in use exposed in a cassette to x-ray radiation sufficient to produce an optical density from 1 to 2 when processed shall not suffer an increase in density greater than 0.1 (0.05 for mammography) when exposed in the darkroom for two minutes with all safe-lights illuminated. (A processor with a daylight loader satisfies this requirement.);
2. Ensure that film is stored in a cool, dry place and is protected from radiation exposure; and that film located in open packages is stored in a light-tight container;
3. Ensure that film cassettes and intensifying screens are inspected annually, cleaned, and

- replaced as necessary;
4. Ensure that film cassettes contain film and intensifying screens that have the same sensitivity;
  5. Ensure that automatic film processors develop film in accordance with time-temperature relationships recommended by the film manufacturer;
  6. Ensure that manually developed film is developed in accordance with the time-temperature relationships recommended by the manufacturer, and that a timer, thermometer, and a time-temperature chart are available and used in the darkroom;
  7. Ensure that film processing solutions are prepared and maintained in accordance with the directions of the manufacturer;
  8. Ensure that outdated film is not used for diagnostic radiographs;
  9. Follow manufacturer's recommendations for cleaning or inspection of computed radiography (CR) cassettes, but not less than annually;
  10. Follow manufacturer's recommendations for preventive maintenance on digital radiography panels or cassettes, but not less than annually; and
  11. Maintain documentation that demonstrates that requirements of this subsection are being met for three years for Department review from the date of inspection.

**R9-7-604. General Procedures**

- A. Each registrant shall ensure the following procedural requirements are met in the operation of x-ray equipment:
1. An x-ray machine which does not meet the provisions of this Chapter shall not be operated for diagnostic or therapeutic purposes, unless specifically exempted by the Department.
  2. Except for patients who cannot be moved out of the room, only the individuals required for the radiological procedure or in training may be present in the room during radiographic exposure, and all the following requirements apply:
    - a. All individuals shall be positioned such that no part of the body, including the extremities not protected by 0.5 mm lead equivalent, will be struck by the useful beam.
    - b. Staff and ancillary personnel shall be protected from the direct scatter radiation by protective aprons or whole body protective barriers of not less than 0.25 mm lead equivalent.
    - c. Individuals, other than the patient to be examined, who cannot be removed from

the room during mobile or portable radiography shall be protected from the direct scatter radiation by whole body protective barriers of 0.25 millimeters lead equivalent or shall be so positioned that the nearest portion of the body is at least 2 meters (6.5 feet) from both the tube head and the nearest edge of the image receptor.

- d. If a portion of the body of any staff or ancillary personnel is potentially subjected to stray radiation that could result in that individual receiving 10 percent of the maximum permissible dose as defined in Article 4 of this Chapter, the registrant shall provide additional protective devices as specified by the Department.
3. An individual shall not be exposed to the useful beam except for a healing arts purpose authorized by a licensed practitioner of the healing arts. The following acts are prohibited:
    - a. Exposure of an individual without meeting the required healing art requirements and without a valid directive from a licensed practitioner;
    - b. Exposure of an individual for training, demonstration, or other non-healing arts purpose;
    - c. Exposure of an individual for the purpose of healing arts screening, except as authorized by the Department after submitting to the Department the information listed in Appendix A of this Article. (If any information submitted to the Department changes, the registrant shall immediately notify the Department of the changes.);
    - d. Routinely holding film or a patient during an exposure to x-ray radiation; or
    - e. Exposure of an individual to fluoroscopy as a positioning method for general purpose radiological procedures.
  4. All persons who are associated with the operation of an x-ray system are subject to the occupational exposure limits specified in Article 4. Exposure of a personnel monitoring device to deceptively indicate a dose delivered to an individual is prohibited.
  5. The registrant shall check radiation protective equipment for reliability and integrity defects on an annual basis, as follows:
    - a. Aprons, gloves, and shields shall be checked for holes, tears, and breaks.
    - b. If defects are found in the equipment, the registrant shall replace or remove it from service. Equipment removed from service shall not be put back into service until it is repaired.
    - c. A record of the annual reliability and integrity check and any equipment

replacement shall be maintained for three years.

- B.** The registrant shall maintain the following records for each x-ray machine:
1. Survey, calibration, maintenance, and modification records regarding the x-ray machine or room, which include the name of the person who performed the service; and
  2. Correspondence with the Department regarding the x-ray machine facility.

**R9-7-605. X-ray Machine Standards**

- A.** A registrant shall prevent leakage radiation from the diagnostic source assembly measured at a distance of 1 meter in any direction from the source assembly from exceeding 25.8  $\mu\text{C}/\text{kg}$  (100 milliroentgens) in one hour when the x-ray tube is operated at its leakage technique factors. The Department shall determine compliance by obtaining measurements averaged over an area of 100 square centimeters (15.5 square inches) with no linear dimension greater than 20 centimeters (7.9 inches).
- B.** The registrant shall prevent radiation emitted by a component other than the diagnostic source assembly from exceeding 516 nC/kg (2 milliroentgens) in one hour at 5 centimeters from any accessible surface of the component when it is operated in an assembled x-ray system under any conditions for which it was designed. The Department shall determine compliance by obtaining measurements averaged over an area of 100 square centimeters (15.5 square inches) with no linear dimension greater than 20 centimeters (7.9 inches).
- C.** Beam quality.
1. The registrant shall prevent the useful beam half-value layer (HVL) for diagnostic x-ray given x-ray tube potential from falling below the values shown in Table I. If it is necessary to determine the HVL at an x-ray tube potential that is not listed in Table I, the registrant shall use linear interpolation or extrapolation to make the determination.

<b>Table I</b>				
Design operating range (kilovolts peak)	Measured potential (kilovolts peak)	HVL (millimeters of aluminum) Dental Intraoral Units manufactured after December 1, 1980	Medical X-ray Units manufactured before June 10, 2006 and Dental Intraoral Units manufactured on or before December 1, 1980	Medical X-ray Units manufactured on or after June 10, 2006
Below 51	30	1.5	0.3	0.3
	40	1.5	0.4	0.4

	50	1.5	0.5	0.5
51 to 70	51	1.5	1.2	1.3
	60	1.5	1.3	1.5
	70	1.5	1.5	1.8
Above 70	71	2.1	2.1	2.5
	80	2.3	2.3	2.9
	90	2.5	2.5	3.2
	100	2.7	2.7	3.6
	110	3.0	3.0	3.9
	120	3.2	3.2	4.3
	130	3.5	3.5	4.7
	140	3.8	3.8	5.0
	150	4.1	4.1	5.4

2. If the registrant demonstrates that the aluminum equivalent of the total filtration in the primary beam is not less than that shown in Table II, the registrant is considered to have met the criteria in subsection (C)(1).

<b>Table II - Filtration Required vs. Operating Voltage</b>	
<i>Operating Voltage (kVp)</i>	<i>Total Filtration (inherent plus added) (millimeters aluminum equivalent)</i>
Below 51	0.5 millimeters
51 - 70	1.5 millimeters
Above 70	2.5 millimeters

3. The registrant shall use beryllium window tubes that have a minimum of 0.5 millimeters aluminum equivalent filtration permanently mounted in the useful beam.
4. For capacitor energy storage equipment, the Department shall determine compliance with the maximum quantity of charge per exposure.
5. When determining the minimum aluminum equivalent filtration, the registrant shall

include the filtration contributed by all materials that are always present between the focal spot of the tube and the patient (for example, a tabletop when the tube is mounted “under the table” and inherent filtration of the tube).

- D.** Multiple tubes. If two or more radiographic tubes are controlled by one exposure switch, the operator shall clearly indicate which tube or tubes have been selected before initiation of the exposure, activating one light on the xray control panel and a second light at or near the tube housing assembly, each indicating the tube or tubes that have been selected.
- E.** Mechanical support of tube head. The registrant shall adjust the tube housing assembly supports so that the tube housing assembly will remain stable during an exposure, unless the tube housing movement is a designed function of the x-ray system.
- F.** Exposure reproducibility. The coefficient of variation shall not exceed 0.10 when all technique factors are held constant. This requirement is satisfied if the value of the average exposure (E) is greater than or equal to five times the difference between the maximum exposure (E<sub>max</sub>) and minimum exposure (E<sub>min</sub>) when four exposures are made at identical technique factors, [ $E \geq 5(E_{\max} - E_{\min})$ ].
- G.** Accuracy deviation. A registrant shall not use an x-ray machine if the measured technique factors for kVp and time duration are not within the limits specified by the manufacturer. In the absence of the manufacturer’s specifications, a registrant shall not use an x-ray machine if the measured kVp is not within 10 percent of the indicated kVp value and the measured time duration is not within 20 percent of the indicated time.

**R9-7-606. Fluoroscopic and Fluoroscopic Treatment Simulator Systems**

- A.** Useful beam limitation. A registrant shall:
  - 1. Provide beam-limiting devices that restrict the entire cross section of the useful beam to less than the area of the primary barrier at any Source-to-Image Receptor Distance (SID);
  - 2. Ensure that the x-ray field size produced by fluoroscopic systems without image intensification does not extend beyond the visible area of the image receptor at any SID;
  - 3. Ensure that the x-ray field size produced by fluoroscopic systems with image intensification and automatic shutter control does not exceed the diameter of the image receptor at any SID;
  - 4. Ensure that the x-ray field size produced by fluoroscopic systems with image intensification and manual shutter control does not exceed the diameter of the image receptor with the fluoroscopic imaging assembly positioned at the maximum usable distance above the table top; and

5. Ensure that the xray field size produced by fluoroscopic systems with image intensification and manual shutter control, where the fluoroscopic tube is above the table top, does not exceed the diameter of the image receptor with the shutters open to the fullest extent, and at the maximum SID which the fluoroscopic tube is capable of producing radiation.

**B.** Fluoroscopic primary protective barrier. A registrant shall:

1. Provide the fluoroscopic imaging assembly with a primary protective barrier that always intercepts the entire cross section of the useful beam at any SID.
2. Ensure that the fluoroscopic tube is not capable of producing radiation unless the primary protective barrier is in a position to intercept the entire cross section of the useful beam.
3. Ensure that fluoroscopic radiation production automatically terminates if the primary protective barrier is removed from the useful beam.
4. Ensure that the fluoroscopic primary protective barrier meets the following requirements for attenuation of the useful beam:
  - a. For equipment installed before November 15, 1967, the required lead equivalent of the barrier is not less than 1.5 millimeters for fluoroscopes that produce less than 100 kVp, 1.8 millimeters for fluoroscopes that produce at least 100 kVp but less than 125 kVp, and 2.0 millimeters for fluoroscopes that produce 125 or more kVp. (For conventional fluoroscopes, these requirements may be assumed to have been met if the exposure rate measured at the viewing surface of the fluorescent screen does not exceed 12.9 microcoulombs per kilogram (50 milliroentgens) per hour with the screen in the primary beam of the fluoroscope without a patient, under normal operating conditions.) For equipment installed or reinstalled, the required lead equivalent of the barrier is 2.0 millimeters for fluoroscopes that produce less than 125 kVp or 2.7 millimeters for fluoroscopes that produce 125 or more kVp.
  - b. For fluoroscopic systems that use image intensification, the exposure rate, due to transmission through the primary protective barrier, does not exceed 516 nC/kg (2 milliroentgens) per hour at 10 centimeters (4 inches) from any accessible surface of the fluoroscopic imaging assembly, beyond the plane of the image receptor for each 258  $\mu\text{C}/\text{kg}$  (1 roentgen) per minute of entrance exposure rate.
  - c. Compliance with subsections (B)(4)(a) and (b) is determined with the image receptor positioned 35.5 centimeters (14 inches) from the panel or table top, at normal operating technical factors and with the attenuation block in the useful

beam for systems with image intensification.

C. Entrance exposure rate limits. A registrant shall ensure that:

1. The exposure rate, measured at the point where the center of the useful beam enters the patient does not exceed 2.6 mC/kg (10 roentgens) per minute at any combination of tube potential and current, except during recording of fluoroscopic images or if provided with optional high-level control.
2. If provided with optional high-level control, the equipment is not operable at any combination of tube potential and current that will result in an exposure rate in excess of 2.6 mC/kg (10 roentgens) per minute at the point where the center of the useful beam enters the patient, unless the high-level control is activated, in which case an exposure rate in excess of 5.2 mC/kg (20 roentgens) per minute is prohibited.
  - a. Special means of activation of high-level controls, such as additional pressure applied continuously by the operator, are required to avoid accidental use.
  - b. A continuous signal audible to the fluoroscopist is required to indicate that the high-level control is being employed.
3. The Department shall determine compliance with subsections (C)(1) and (2) as follows:
  - a. Remove grids and compression devices from the useful beam during the measurement;
  - b. If the source is below the table, measure the exposure rate 1 centimeter above the table top or cradle; and
  - c. If the source is above the table, measure the exposure rate 30 centimeters (11.8 inches) above the table top with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement;
  - d. For fluoroscopy involving a mobile C-arm x-ray system, measure the exposure rate 30 centimeters (11.8 inches) from the input surface of the fluoroscopic imaging assembly;
  - e. For fluoroscopy involving a C-arm x-ray system, measure the exposure rate 30 centimeters (11.8 inches) from the input surface of the fluoroscope imaging assembly, with the x-ray source positioned at any available SID, provided that the end of the beam-limiting device or spacer is not closer than 30 centimeters (11.8 inches) from the input surface of the fluoroscopic image assembly; and
  - f. For a lateral fluoroscope, measure the exposure rate 15 centimeters (5.9 inches) from the centerline of the x-ray table and in the direction of the x-ray source with the end of the beam-limiting device or spacer positioned as closely as possible to

the point of measurement. If the tabletop is movable, it shall be positioned as closely as possible to the lateral x-ray source, with the end of the beam-limiting device or spacer no closer than 15 centimeters (5.9 inches) to the centerline of the x-ray table.

- D.** The registrant shall ensure that the source-to-skin distance is not less than:
1. 38 centimeters (15 inches) on stationary fluoroscopes installed after January 2, 1996;
  2. 35.5 centimeters (14 inches) on stationary fluoroscopes which are in operation before January 2, 1996;
  3. 30 centimeters (11.8 inches) on all mobile fluoroscopes; and
  4. 20 centimeters (8 inches) for image-intensified fluoroscopes used for a specific surgical application. The registrant shall follow any precautionary measures in the users operating manual.
- E.** Each fluoroscopic system installation is subject to all of the following requirements for the control of stray radiation. A registrant shall:
1. Provide a shielding device of at least 0.25 millimeter lead equivalent for covering the Bucky-slot during fluoroscopy;
  2. Except for fluoroscopy performed using portable or mobile C-arm x-ray systems or during surgical procedures or cardiac catheterization, provide protective drapes, or hinged or sliding panels of at least 0.25 millimeters lead equivalent, between the patient and fluoroscopist to intercept scattered radiation that would otherwise reach the fluoroscopist and others near the machine, but not substitute drapes and panels for a protective apron; and
  3. Ensure that protective aprons of at least 0.25 millimeter lead equivalent are worn in the fluoroscopy room by each person, except the patient, whose body is likely to be exposed to 50  $\mu\text{Sv/hr}$  (5 mR/hr) or more.
- F.** Exposure control. A registrant shall:
1. Ensure that activation of the fluoroscopic tube is controlled by a “dead-man” switch;
  2. Provide a manual reset cumulative timing device, which is activated only during production of radiation in the fluoroscopic mode, to indicate elapsed time by an audible signal or terminate production of radiation;
  3. Provide a device for exposure control in the “spot film” mode that terminates exposure either automatically, or after a preset time interval, preset number of pulses, preset product of current and time, or preset exposure; and
  4. Ensure that the x-ray tube potential and current are continuously indicated.

- G.** A registrant shall provide systems used for mobile fluoroscopy with image intensification.
- H.** Fluoroscopic treatment simulators. Simulators are exempt from subsections (A) through (G). A registrant shall:
  - 1. Use a beam limiting device that restricts the beam to the area of clinical interest.
  - 2. Include and label devices for settings or physical factors, such as kVp, mA, or exposure time on the control panel;
  - 3. Ensure that the fluoroscopic exposure switch or switches are of the “deadman” type;
  - 4. Ensure that each person whose presence is necessary is in the simulator room during exposure and protected with a lead apron of at least 0.5 millimeter lead equivalent or a portable shield. Any person who places their hands in the useful x-ray beam shall wear leaded gloves; and
  - 5. Ensure that the operator stands behind a barrier and is able to observe the patient during simulator exposures.

**R9-7-607. Additional X-ray Machine Standards, Shielding Requirements, and Procedures, Except Mobile Fluoroscopic, Dental Panoramic, Cephalometric, Dental CT, or Dental Intraoral Radiographic Systems**

- A.** Useful beam limitation. A registrant shall:
  - 1. Provide a means to restrict the useful beam to the area of clinical interest for any combination of SID and image receptor size employed.
  - 2. Ensure that beam-limiting devices meet the following requirements:
    - a. Devices that project a circular radiation field restrict the diameter of the useful beam, not to exceed the diagonal dimension of the image receptor by greater than 2 percent of the SID;
    - b. Devices that project a rectangular or square radiation field restrict the useful beam to the longitudinal and transverse dimensions of the image receptor to within 2 percent of the SID;
    - c. Beam limiting devices that do not incorporate light beams to define the projected radiation field are clearly labeled, indicating the SID and image receptor size at which each device complies with the applicable requirements of subsection (A)(2)(a) or (b);
    - d. Adjustable beam-limiting devices installed after July 31, 1971, incorporate light beams to define the projected dimensions of the useful beam and provide an average illumination of not less than 100 lux (9 foot-candles) at 1 meter (3.3 feet)

or at the maximum SID, whichever is less. The average illumination shall be based upon measurements made in the approximate center of each quadrant of the light field; and

e. All beam-limiting devices installed, on general purpose fixed and mobile radiographic systems, provide stepless means of continuous adjustment of the projected radiation field size.

3. Provide a means to align the center of the radiation field to the center of the image receptor to within 2 percent of the SID.

**B. Radiation exposure control. A registrant shall:**

1. Provide a means to terminate the exposure at a preset time interval, preset product of current and time, preset number of pulses, or a preset exposure to the image receptor. The registrant shall ensure that it is not possible to make an exposure when the exposure control device is set to a “zero” or “off” position if either position is provided.

2. Ensure that the exposure switch is a “dead-man” switch, and except for those used with “spot-film” devices in fluoroscopy, is arranged so that it cannot be conveniently operated outside a shielded area.

3. Provide x-ray systems with automatic exposure control, which indicates at the control panel when this mode is selected, and a visual and audible signal, which indicates termination of the exposure.

4. Use a control panel that includes:

a. A device (usually a milliamp meter) that will give a positive indication during radiation production; and

b. Control setting indicators or meters that indicate the appropriate technical factors: kVp, mAs, mA, or exposure time, and any special mode selected for the exposure.

**C. Structural shielding. A registrant shall:**

1. Ensure that all wall, floor and ceiling areas struck by the useful beam have primary protective barriers. Primary protective barriers in walls shall extend from the finished floor to a minimum height of 2.13 meters (7 feet);

2. Ensure that secondary protective barriers are provided in all wall, floor, and ceiling areas that do not have primary protective barriers or where the primary protective barrier requirements are lower than the secondary barrier requirements;

3. Ensure that the operator’s station is behind a protective barrier sufficient to ensure compliance with R9-7-408, R9-7-414, and R9-7-416, and the operator is able to

communicate with the patient from the operator's station.

4. Provide a window of transparent material equal in attenuation to that required by the adjacent barrier, or a mirror system, that is large enough and placed so that the operator can see the patient during exposure without having to leave the protected area.

**D.** Operating procedures. A registrant shall:

1. Use mechanical supporting or restraining devices, if a patient must be held in position for radiography. If the patient must be held by an individual, the registrant shall ensure that the individual is protected with appropriate shielding devices, such as protective gloves and apron, and is positioned so that no part of the body of the individual holding the patient is struck by the useful beam;
2. Ensure that only individuals required for the radiographic procedure are in the radiographic room during exposure, and, except for the patient, all these individuals are equipped with protective devices;
3. Restrict the useful beam to the clinical area of interest;
4. Provide a chart in the vicinity of the diagnostic x-ray system's control panel that specifies, for all routine examinations performed with the system, the following information:
  - a. Patient's anatomical size and technique factors;
  - b. Type and size of the film or film screen combination;
  - c. Type and focal distance of the grid, if any;
  - d. X-ray source-to-image receptor distance; and
  - e. Type and location of gonad shielding.
5. Provide documentation of the following items:
  - a. The patient's identity;
  - b. The x-ray examination, as recorded in a radiographic log;
  - c. The date the examination is performed;
  - d. The number of projections (if applicable), or on-time, or dose factors depending upon the unit; and
  - e. A method of identifying the individual who performed the examination.
6. The registrant shall maintain in chronological order, the documentation required in subsection (D)(5) in written or readily available electronic form. The documentation shall be maintained for three years from the date the examination is performed.

**R9-7-608. Mobile Diagnostic Radiographic and Mobile Fluoroscopic Systems, Except Dental**

## **Panoramic, Cephalometric, Dental CT, or Dental Intraoral Radiographic Systems**

### **A. Equipment**

1. All requirements of R9-7-607(A) and (B) apply.
2. For mobile radiographic units the registrant shall provide a “dead-man” switch, together with an electrical cord of sufficient length so that the operator can stand out of the useful beam and at least 1.82 meters (6 feet) from the patient during all x-ray exposures.
3. A registrant shall ensure that a cone, spacer frame, or inherent provision is made so that the equipment is not operated at source-skin distances of less than 20.3 centimeters (8 inches).

### **B. Structural shielding.** If a mobile unit is used routinely in one location, it is considered a fixed installation subject to the shielding requirements in R9-7-603(C), and R9-7-607(C).

### **C. Operating procedures**

1. All provisions of R9-7-607(D) apply.
2. An individual who operates a mobile x-ray system shall comply with R9-7-419(B).

## **R9-7-609. Chest Photofluorographic Systems**

Use of chest photofluorographic systems for diagnosis of human disease is prohibited.

## **R9-7-610. Dental Intraoral Radiographic Systems**

### **A. Equipment.** A registrant shall:

1. Use a protective tube housing of diagnostic type;
2. Use diaphragms or cones for restricting the useful beam and to provide the same degree of protection as the housing. The diameter of the useful beam at the end of the cone or spacer frame shall not be more than 7.6 centimeters (3 inches) for intraoral radiography;
3. Ensure that a cone or spacer frame provides a source-to-skin distance of not less than 17.8 centimeters (7 inches) with apparatus operating above 50 kVp or 10 centimeters (4 inches) with apparatus operating at 50 kVp or below for intraoral radiography;
4. Provide a timer to terminate the exposure at a preset time interval, a preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor;
5. Ensure that it is not possible to make an exposure if the timer is set to the “zero” or “off” position;
6. Ensure that the tube head remains stationary if placed in the exposure position;
7. Ensure that the exposure initiating device is a “dead-man” switch;

8. Use a control panel that includes:
  - a. A means to provide visual or audible indication, detectable at or from the operator's position, during x-ray production or exposure termination; and
  - b. Indication of technique factors for kVp, mA, exposure time, and any special mode that may be selected for the exposure;
9. Use technique factors, where deviation of measured values from indicated values for kVp and exposure time do not exceed the limits specified by the manufacturer. In the absence of the manufacturer's specifications, the deviation shall not exceed plus or minus 10 percent of the indicated value for kVp and plus or minus 20 percent for exposure time duration;
10. For a digital system that uses an electronic sensor, use digital radiography techniques that permit reducing x-ray beam on-time to 25 percent of the exposure time required for "D" speed film or lower, reducing radiation to the patient by the same rate; and
11. For a computed radiography (imaging plate (IP) made of photostimulable phosphor) system that uses an imaging plate, use radiography techniques that permit reducing x-ray beam on-time to 50 percent of the exposure time required for "D" speed film or lower, reducing radiation to the patient by the same rate.

**B.** Structural shielding. The registrant shall:

1. Provide dental installations with primary and secondary barriers to ensure compliance with the personnel exposure requirements in Article 4 of this Chapter; (Note: In many cases, structural materials of ordinary walls suffice as a protective barrier without addition of special shielding material.)
2. Install primary protective barriers between rooms or areas if dental xray units are used in adjacent rooms or areas;
3. Provide each installation with a protective barrier for the operator or arrange the installation so that the operator can stand at least 1.82 meters (6 feet) from the patient and well away from the useful beam;
4. Arrange the operator's position to allow visual contact with the patient during exposure; and
5. Comply with fixed installation requirements, if a mobile unit is used routinely in one location.

**C.** Operating procedures

1. A dentist or other persons shall not hold patients or films during exposure. Only persons required for the radiographic procedure are allowed in the radiographic room during

exposures.

2. An operator shall stand at least 1.82 meters (6 feet) from the patient or behind a protective barrier during each exposure.
3. An operator shall ensure that only the patient is in the useful beam.
4. The licensed practitioner or other person shall not hold the tube housing or the cone during the exposure.
5. A registrant shall not perform dental fluoroscopy without an image intensifier.

**R9-7-610.01. Hand-held Intraoral Dental Radiographic Unit Requirements For Use**

**A.** Registrants are subject to the following requirements for Intraoral dental radiographic units designed to be operated as a hand-held unit:

1. For all uses:
  - a. Operators of hand-held intraoral dental radiographic units shall be specifically trained to operate such equipment.
  - b. A hand-held intraoral dental radiographic unit shall be held without any motion during a patient examination. A tube stand may be utilized to immobilize a hand-held intraoral dental radiographic unit during patient examination.
  - c. The operator shall ensure there are no bystanders within a radius of at least six feet from the patient being examined with a hand-held intraoral radiographic unit.
2. Additional requirements for operatories in permanent facilities:
  - a. Hand-held intraoral dental radiographic units shall be used for patient examinations in dental operatories that meet the structural shielding requirements specified by the Department or by a qualified health or medical physicist.
  - b. Hand-held intraoral dental radiographic units shall not be used for patient examinations in hallways and waiting rooms.

**B.** Hand-held units may only be used in a manner as specified on the registration issued by the Department.

**R9-7-611. Therapeutic X-ray Systems of Less Than 1 MeV**

**A.** Equipment requirements.

1. Leakage radiation. When the x-ray tube is operated at its maximum rated tube current for the maximum kVp, the leakage air kerma rate shall not exceed the value specified at the distance specified for that classification of therapeutic radiation machine. For each therapeutic radiation machine, the registrant shall determine, or obtain from the

manufacturer, the leakage radiation existing at the positions specified:

- a. 5-50 kVp Systems. The leakage air kerma rate measured at any position 5 centimeters from the tube housing assembly shall not exceed 1 mGy (100 mrad) in any one hour.
  - b. Greater than 50 kVp and less than 1MeV Systems. The leakage air kerma rate measured at a distance of 1 meter from the target in any direction shall not exceed 1 centigray (1 rad) in any 1 hour. This air kerma rate measurement may be averaged over areas no larger than 100 square centimeters (100 cm<sup>2</sup>). In addition, the air kerma rate at a distance of 5 centimeters from the surface of the tube housing assembly shall not exceed 30 centigray (30 rad) per hour.
2. Permanent beam limiting devices. A registrant shall ensure that fixed diaphragms or cones used for limiting the useful beam provide the same or higher degree of attenuation as required for the tube housing assembly.
  3. Removable and adjustable beam-limiting devices. A registrant shall ensure that:
    - a. Removable and adjustable beam-limiting devices, for the portion of the useful beam to be blocked by these devices, transmit not more than 1 percent of the original x-ray beam at the maximum kilovoltage and maximum treatment filter; and
    - b. When adjustable beam limiting devices are used, the position and shape of the radiation field shall be indicated by a light beam.
  4. Filter system. A registrant shall ensure that the filter system is designed so that:
    - a. Filters cannot be accidentally displaced from the useful beam at any possible tube orientation;
    - b. For equipment installed after January 1, 2011, an interlock system prevents irradiation if the proper filter is not in place;
    - c. The air kerma rate escaping from the filter slot shall not exceed 1 centigray (1 rad) per hour at one (1) meter under any operating conditions; and
    - d. Each filter is marked regarding its material of construction and its thickness or wedge angle for wedge filters.
  5. X-ray tube immobilization. A registrant shall ensure that the tube housing assembly is capable of being immobilized during stationary treatments and the x-ray tube shall be so mounted that it cannot accidentally turn or slide with respect to the housing aperture.
  6. Focal spot marking. A registrant shall ensure that the tube housing assembly is marked so that it is possible to determine the location of the focal spot to within 5 millimeters, and

the marking is readily accessible for use during calibration procedures.

7. Therapy treatment timers. A registrant shall:
  - a. Provide a timer that has a display at the treatment control panel. The timer shall have a preset time selector and an elapsed time indicator;
  - b. Ensure that the timer is a cumulative timer that activates with the radiation, retains its reading after irradiation is interrupted or terminated, and requires the operator to reset the preset time selector after irradiation is terminated and before irradiation can be reinitiated;
  - c. Ensure that the timer terminates irradiation when a preselected time has elapsed;
  - d. Ensure that the timer permits accurate presetting and determination of exposure times as short as one second;
  - e. Ensure that the timer does not permit an exposure if set at zero; and
  - f. Ensure that the timer does not activate until the shutter is opened if irradiation is controlled by a shutter mechanism.
8. Control panel functions. In addition to the displays required in other provisions of this Section, a registrant shall ensure that a control panel has:
  - a. An indication of whether electrical power is available at the control panel and if activation of the x-ray tube is possible;
  - b. An indication of whether x-rays are being produced;
  - c. A means for indicating kVp and x-ray tube current;
  - d. A means for terminating an exposure at any time;
  - e. A locking device that will prevent unauthorized use of the x-ray system; and
  - f. For x-ray equipment installed after January 2, 1996, a positive display of specific filters in the beam.
9. Multiple tubes. If one control panel is used to energize more than one xray tube a registrant shall ensure that:
  - a. It is possible to activate only one xray tube during any time interval,
  - b. There is an indication at the control panel that identifies which x-ray tube is energized, and
  - c. There is an indication at the tube housing assembly when that tube is energized.
10. Source-to-patient distance. A registrant shall ensure that there is a means of determining the source-to-patient distance to within 1 centimeter.
11. Shutters. Unless it is possible to bring the x-ray output to the prescribed exposure parameters within five seconds, a registrant shall ensure that the entire useful beam is

automatically attenuated by a shutter with a lead equivalency not less than that of the tube housing assembly. In addition the registrant shall ensure that:

- a. After the unit is at operating parameters, the operator controls the shutter electrically from the control panel; and
- b. An indication of shutter position appears at the control panel.

12. Low filtration x-ray tubes. A registrant shall ensure that each x-ray system equipped with a beryllium or other low-filtration window is clearly labeled as low-filtration equipment on the tube housing assembly and at the control panel.

**B.** Facility design requirements. In addition to shielding necessary to meet the requirements of Article 4 of this Chapter, a registrant shall ensure that:

1. Warning lights. A treatment room to which access is possible through more than one entrance has a warning light, in a readily observable position near the outside of any access doors, which will indicate when the useful beam is “on.”
2. Voice communication. Two-way oral communication is possible between the patient and the operator at the control panel; or where excessive noise levels make oral communication impractical, another effective method of communication.
3. Viewing systems. Windows, mirrors, closed-circuit television, or an equivalent system, permits continuous observation of the patient during irradiation and is located so that the operator can observe the patient from the control panel. If the primary viewing system is by electronic means (for example, television), the registrant shall have an alternate viewing system for use in the event of electronic failure.
4. Systems above 150 kVp. For treatment rooms that contain an x-ray system capable of operating above 150 kVp a registrant shall ensure that:
  - a. All necessary shielding, except for any beam interceptor, is provided by fixed barriers;
  - b. The control panel is within a protective booth equipped with an interlocked door, or located outside the treatment rooms;
  - c. All doors of the treatment room are electrically connected to the control panel so that x-ray production cannot occur unless all doors are closed; and
  - d. Opening of any door to the treatment room during exposure results in automatic termination of x-ray production or reduction of radiation levels to an average of no more than 516 nC/kg (2 milliroentgens) per hour and a maximum of 2.6  $\mu$ C/kg (10 milliroentgens) per hour at a distance of 1 meter (3.3 feet) from the target in any direction, and restoration of the machine to full operation is possible

only from the control panel after the termination or reduction.

**C.** Surveys. A registrant shall ensure that:

1. All facilities, both new and existing, or not previously surveyed, are surveyed before being put into service for the treatment of patients by, or under the direction of, a person trained and experienced in the principles of radiation protection, and perform additional surveys of a facility after any change in the facility or a facility's equipment that might cause a significant increase in radiation hazard, before being put into service for the treatment of patients.
2. The person conducting the survey reports the survey findings in writing to the individual in charge of the facility and maintains a copy of the survey report for inspection by the Department.
3. The installation is operated in compliance with any limitations indicated by the protection survey required by subsection (C)(1).

**D.** Calibrations. A registrant shall ensure that:

1. The calibration of a therapeutic x-ray system includes, but is not limited to, the following determinations:
  - a. Verification that the x-ray system is operating in compliance with the design specifications;
  - b. The dose rate equivalent for each combination of field size, technique factors, filter, and treatment distance used;
  - c. The degree of congruence between the radiation field and the field indicated by the localizing device if a localizing device is used; and
  - d. An evaluation of the uniformity of the radiation field symmetry for the field sizes used and any dependence upon source housing assembly orientation;
2. The calibration of an x-ray system is performed at intervals not to exceed annually and after any change or replacement of components that could cause a change in the radiation output;
3. The calibration of the radiation output of the x-ray system is performed by, or under the direction of, a person trained and experienced in performing calibrations, who is physically present at the facility during calibration;
4. Calibration of the radiation output of an x-ray system is performed with a calibrated instrument. The registrant shall ensure that calibration of the instrument is directly traceable to the National Institute of Standards and Technology (NIST) and that the instrument has been calibrated within the preceding 24 months;

5. Records of calibration performed under subsection (D)(3) are maintained for at least three years after completion of the calibration and are made available for inspection by the Department; and
  6. A copy of the most recent calibration is available for use by the operator at the control panel.
- E.** Spot checks. A registrant shall ensure that spot checks are performed on therapeutic x-ray systems capable of operation at greater than 150 kVp. The registrant shall ensure that spot checks meet the following requirements:
1. The spot-check procedures are in writing and have been developed by a qualified expert;
  2. The measurements taken during the spot checks demonstrate the degree of consistency of the operating characteristics that can affect the radiation output of the x-ray system;
  3. The written spot-check procedure specifies the frequency of the tests or measurements, made at intervals not to exceed monthly;
  4. The spot-check procedure identifies conditions that require recalibration of the system in accordance with subsection (D)(1); and
  5. Records of spot-check measurements performed as required by subsection (E)(3) are maintained, available for inspection by the Department, for three years following the measurements.
- F.** Operating procedures. A registrant shall ensure that:
1. Therapeutic x-ray systems are not left unattended unless the system is secured according to subsection (A)(8)(e);
  2. If a patient must be held in position for radiation therapy, mechanical supporting or restraining devices are used;
  3. The tube housing assembly is not held by an individual during exposures; and
  4. At 150 kVp or more the patient is the only person in the treatment room during production of radiation. At less than 150 kVp an individual may be in the room with patient, provided the individual is protected by a barrier sufficient to meet the requirements of Article 4 of this Chapter.
- G.** Electronic Brachytherapy units are exempt from the requirements of this Section.

**R9-7-611.01. Electronic Brachytherapy to Deliver Interstitial and Intracavitary Therapeutic Radiation Dosage**

- A.** Electronic brachytherapy devices used to deliver interstitial and intracavitary therapeutic radiation dosage shall be subject to the requirements of this Section, and unless otherwise specified in this

Section shall be exempt from the requirements of R9-7-611.

1. An electronic brachytherapy device that does not meet the requirements of this Section shall not be used for irradiation of patients; and
  2. An electronic brachytherapy device shall only be utilized for human use applications specifically approved by the U.S. Food and Drug Administration (FDA), unless participating in a research study approved by the registrant's Institutional Review Board (IRB).
- B.** Each facility location authorized to use an electronic brachytherapy device in accordance with this Section shall possess appropriately calibrated portable monitoring equipment. At a minimum, such equipment shall include a portable survey instrument capable of measuring dose rates over the range 10  $\mu$ Sv (1 mrem) per hour to 10 mSv (1000 mrem) per hour. The survey instrument shall be capable of measuring as low as 10  $\mu$ Sv (1 mrem) per hour in the energy range of the electronic brachytherapy unit for which the survey instrument is to be used. Published correction factors utilized in conjunction with the instrument's readings may be used to achieve sensitivity. The survey instrument or instruments shall be operable and calibrated before first use, at intervals not to exceed 12 months, and after survey instrument repairs.
- C.** Facility Design Requirements for Electronic Brachytherapy Devices. In addition to shielding adequate to meet requirements of R9-7-603(C), the treatment room shall meet the following design requirements:
1. If applicable, provision shall be made to prevent simultaneous operation of more than one therapeutic radiation machine in a treatment room.
  2. Access to the treatment room shall be controlled by a door at each entrance.
  3. Each treatment room shall have provisions to permit continuous oral communication and visual observation of the patient from the treatment control panel during irradiation. The electronic brachytherapy device shall not be used for patient irradiation unless the patient can be observed.
  4. For electronic brachytherapy devices capable of operating below 150 kVp, radiation shielding for the staff in the treatment room may be available, either as a portable shield or as localized shielded material around the treatment site or both, in lieu of the requirements for room shielding. The shielding shall meet the requirements of R9-7-603(C).
  5. For electronic brachytherapy devices capable of operating at or greater than 150 kVp, the facility must meet the requirements of R9-7-611(B)(4).
- D.** Control Panel Functions. The control panel, in addition to the displays required by other

provisions in this Section, shall:

1. Provide an indication of whether electrical power is available at the control panel and if activation of the electronic brachytherapy source is possible;
  2. Provide an indication of whether x-rays are being produced;
  3. Provide a means for indicating electronic brachytherapy source potential and current;
  4. Provide the means for terminating an exposure at any time; and
  5. Include an access control (locking) device that will prevent unauthorized use of the electronic brachytherapy device.
- E.** Timer. A suitable irradiation control device (timer) shall be provided to terminate the irradiation after a pre-set time interval or integrated charge on a dosimeter-based monitor.
1. A timer shall be provided at the treatment control panel. The timer shall indicate the planned setting and the time elapsed or remaining;
  2. The timer shall not permit an exposure if set at zero;
  3. The timer shall be a cumulative device that activates with an indication of “BEAM-ON” that retains its reading after irradiation is interrupted or terminated. After irradiation is terminated and before irradiation can be reinitiated, it shall be necessary to reset the elapsed time indicator;
  4. The timer shall terminate irradiation when a pre-selected time has elapsed, if any dose monitoring system has not previously terminated irradiation.
  5. The timer shall permit setting of exposure times as short as 0.1 second; and
  6. The timer shall be accurate to within one percent of the selected value or 0.1 second, whichever is greater.
- F.** Qualified Medical Physicist Support.
1. The services of a Qualified Medical Physicist shall be required in facilities having electronic brachytherapy devices. The Qualified Medical Physicist shall be responsible for:
    - a. Evaluation of the output from the electronic brachytherapy source;
    - b. Generation of the necessary dosimetric information;
    - c. Supervision and review of treatment calculations prior to initial treatment of any treatment site;
    - d. Establishing the periodic and day-of-use quality assurance checks and reviewing the data from those checks as required in subsection (J);
    - e. Consultation with the authorized user in treatment planning, as needed; and
    - f. Performing calculations/assessments regarding patient treatments that may

constitute a medical event.

2. If the Qualified Medical Physicist is not a full-time employee of the registrant, then the operating procedures required by subsection (G) shall also specifically address how the Qualified Medical Physicist is to be contacted for problems or emergencies, as well as the specific actions, if any, to be taken until the Qualified Medical Physicist can be contacted.

**G. Operating Procedures.**

1. Only individuals approved by the authorized user, Radiation Safety Officer, or Qualified Medical Physicist shall be present in the treatment room during treatment;
2. Electronic brachytherapy devices shall not be made available for medical use unless the requirements of subsections (A), (H), and (I) have been met;
3. The electronic brachytherapy device shall be inoperable, either by hardware or password, when unattended by qualified staff or service personnel;
4. During operation, the electronic brachytherapy device operator shall monitor the position of all persons in the treatment room, and all persons entering the treatment room, to prevent entering persons from unshielded exposure from the treatment beam;
5. If a patient must be held in position during treatment, mechanical supporting or restraining devices shall be used;
6. Written procedures shall be developed, implemented, and maintained for responding to an abnormal situation. These procedures shall include:
  - a. Instructions for responding to equipment failures and the names of the individuals responsible for implementing corrective actions; and
  - b. The names and telephone numbers of the authorized users, the Qualified Medical Physicist, and the Radiation Safety Officer to be contacted if the device or console operates abnormally.
7. A copy of the current operating and emergency procedures shall be physically located at the electronic brachytherapy device control console;
8. Instructions shall be maintained with the electronic brachytherapy device control console to inform the operator of the names and telephone numbers of the authorized users, the Qualified Medical Physicist, and the Radiation Safety Officer to be contacted if the device or console operates abnormally; and
9. The Radiation Safety Officer, or the Radiation Safety Officer's designee, and an authorized user shall be notified immediately if the patient has a medical emergency, suffers injury or dies. The Radiation Safety Officer or the Qualified Medical Physicist

shall inform the manufacturer of the event.

**H.** Safety Precautions for Electronic Brachytherapy Devices.

1. Any person in the treatment room, other than the person being treated, shall wear personnel monitoring devices;
2. An authorized user and a Qualified Medical Physicist shall be physically present during the initiation of all new patient treatments involving the electronic brachytherapy device;
3. After the first treatment one of the following individuals shall be physically present during continuation of all patient treatments involving the electronic brachytherapy device:
  - a. A Qualified Medical Physicist, or
  - b. An authorized user, or
  - c. A certified therapy technologist (CTT) certified by the Arizona Medical Radiologic Technology Board of Examiners, under the direct supervision of an authorized user, who has been trained in the operation and emergency response for the electronic brachytherapy device;
4. When shielding is required by subsection (C)(4), surveys shall be conducted to ensure that the requirements of R9-7-408, R9-7-414, and R9-7-416 are met. Alternatively, a Qualified Medical Physicist shall designate shield locations sufficient to meet the requirements of R9-7-603(C) and R9-7-607(C) for any individual, other than the patient, in the treatment room; and
5. All personnel in the treatment room are required to remain behind shielding during treatment. A Qualified Medical Physicist shall approve any deviation from this requirement and shall designate alternative radiation safety protocols, compatible with patient safety, to provide an equivalent degree of protection.

**I.** Electronic Brachytherapy Source Calibration Measurements.

1. Calibration of the electronic brachytherapy source output shall be performed by, or under the direct supervision of, a Qualified Medical Physicist. If the control console is integral to the electronic brachytherapy device, the required procedures shall be kept where the operator is located during electronic brachytherapy device operation;
2. Calibration of the electronic brachytherapy source output shall be made for each electronic brachytherapy source, or after any repair affecting the x-ray beam generation, or when indicated by the electronic brachytherapy source quality assurance checks;
3. Calibration of the electronic brachytherapy source output shall utilize a dosimetry system appropriate for the energy output of the unit and calibrated by the National Institute for

Standards and Technology (NIST) or by an American Association of Physicists in Medicine (AAPM) Accredited Dosimetry Calibration Laboratory (ADCL). The calibration shall have been performed within the previous 24 months and after any servicing that may have affected system calibration;

4. Calibration of the electronic brachytherapy source output shall include, as applicable, determination of:
  - a. The output within two percent of the expected value, if applicable, or determination of the output if there is no expected value;
  - b. Timer accuracy and linearity over the typical range of use;
  - c. Proper operation of back-up exposure control devices;
  - d. Evaluation that the relative dose distribution about the source is within five percent of that expected; and
  - e. Source positioning accuracy to within one millimeter within the applicator;
5. Calibration of the x-ray source output required shall be in accordance with current published recommendations from a recognized national professional association with expertise in electronic brachytherapy (when available). In the absence of a calibration protocol published by a national professional association, the manufacturer's calibration protocol shall be followed.
6. The registrant shall maintain a record of each calibration in an auditable form for the duration of the registration. The record shall include: the date of the calibration; the manufacturer's name, model number and serial number for the electronic brachytherapy device and a unique identifier for its electronic instrument or instruments brachytherapy source; the model numbers and serial numbers of the instrument or instruments used to calibrate the electronic brachytherapy device; and the name and signature of the Qualified Medical Physicist responsible for performing the calibration.

**J. Periodic and Day-of-Use Quality Assurance Checks for Electronic Brachytherapy Devices.**

1. Quality assurance checks shall be performed on each electronic brachytherapy device:
  - a. At the beginning of each day of use;
  - b. Each time the device is moved to a new room or site; and
  - c. After each x-ray tube installation.
2. The registrant shall perform periodic quality assurance checks required in accordance with procedures established by the Qualified Medical Physicist;
3. To satisfy the requirements of this subsection, radiation output quality assurance checks shall include at a minimum:

- a. Verification that output of the electronic brachytherapy source falls within three percent of expected values, as appropriate for the device, as determined by:
    - i. Output as a function of time, or
    - ii. Output as a function of setting on a monitor chamber.
  - b. Verification of the consistency of the dose distribution to within three percent (or the manufacturer's or Qualified Medical Physicist's documented recommendation not to exceed five percent), observed at the source calibration required by subsection (I); and
  - c. Validation of the operation of positioning methods to ensure that the treatment dose exposes the intended location within one millimeter; and
4. The registrant shall use a dosimetry system that has been intercompared within the previous 12 months with the dosimetry system described in this Section to make the quality assurance checks required in subsection (J)(3);
  5. The registrant shall review the results of each radiation output quality assurance check to ensure that:
    - a. An authorized user and Qualified Medical Physicist is immediately notified if any parameter is not within its acceptable tolerance, and the electronic brachytherapy device is not used until the Qualified Medical Physicist has determined that all parameters are within their acceptable tolerances;
    - b. If all radiation output quality assurance check parameters appear to be within their acceptable range, the acceptable quality assurance checklist shall be reviewed and signed by either the authorized user or Qualified Medical Physicist prior to the next patient use of the unit. In addition, the Qualified Medical Physicist shall review and sign the results of each radiation output quality assurance check at intervals not to exceed 30 days.
  6. To satisfy the requirements of subsection (J)(1), safety device quality assurance checks shall, at a minimum, assure:
    - a. Proper operation of radiation exposure indicator lights on the electronic brachytherapy device and on the control console;
    - b. Proper operation of viewing and intercom systems in each electronic brachytherapy facility, if applicable;
    - c. Proper operation of radiation monitors, if applicable;
    - d. The integrity of all cables, catheters or parts of the device that carry high voltages; and

- e. Connecting guide tubes, transfer tubes, transfer-tube-applicator interfaces, and treatment spacers are free from any defects that interfere with proper operation.
  - 7. If the results of the safety device quality assurance checks required in subsection (J)(6) indicate the malfunction of any system, a registrant shall secure the control console in the OFF position and not use the electronic brachytherapy device except as may be necessary to repair, replace, or check the malfunctioning system.
  - 8. The registrant shall maintain a record of each quality assurance check required by this Section in a legible form for three years.
    - a. The record shall include the date of the quality assurance check; the manufacturer's name, model number and serial number for the electronic brachytherapy device; the name and signature of the individual who performed the periodic quality assurance check and the name and signature of the Qualified Medical Physicist who reviewed the quality assurance check;
    - b. For radiation output quality assurance checks required by subsection (J)(3), the record shall also include the unique identifier for the electronic brachytherapy source and the manufacturer's name; model number and serial number for the instrument or instruments used to measure the radiation output of the electronic brachytherapy device.
- K.** Therapy-related Computer Systems. The registrant shall perform acceptance testing on the treatment planning system of electronic brachytherapy-related computer systems in accordance with current published recommendations from a recognized national professional association with expertise in electronic brachytherapy (when available). In the absence of an acceptance testing protocol published by a national professional association, the manufacturer's acceptance testing protocol shall be followed.
  - 1. Acceptance testing shall be performed by, or under the direct supervision of a Qualified Medical Physicist. At a minimum, the acceptance testing shall include, as applicable, verification of:
    - a. The source-specific input parameters required by the dose calculation algorithm;
    - b. The accuracy of dose, dwell time, and treatment time calculations at representative points;
    - c. The accuracy of isodose plots and graphic displays;
    - d. The accuracy of the software used to determine radiation source positions from radiographic images; and
    - e. If the treatment planning system is different from the treatment delivery system,

the accuracy of electronic transfer of the treatment delivery parameters to the treatment delivery unit from the treatment planning system.

2. The position indicators in the applicator shall be compared to the actual position of the source or planned dwell positions, as appropriate, at the time of commissioning.
3. Prior to each patient treatment regimen, the parameters for the treatment shall be evaluated for correctness and approved by the authorized user and the Qualified Medical Physicist through means independent of that used for the determination of the parameters.

**L. Training for e-brachytherapy Authorized Users.**

1. The registrant for any therapeutic radiation machine subject to this Section shall require the authorized user to be a physician who is:
  - a. Certified in:
    - i. Radiation oncology or therapeutic radiology by the American Board of Radiology or radiology (combined diagnostic and therapeutic radiology program) by the American Board of Radiology prior to 1976; or
    - ii. Radiation oncology by the American Osteopathic Board of Radiology; or
    - iii. Radiology, with specialization in radiotherapy, as a British “Fellow of the Faculty of Radiology” or “Fellow of the Royal College of Radiology”; or
    - iv. Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or
  - b. In the active practice of therapeutic radiology, and has completed 200 hours of instruction in basic radiation techniques applicable to the use of an external beam radiation therapy unit, 500 hours of supervised work experience, and a minimum of three years of supervised clinical experience.
2. To satisfy the requirement in subsection (L)(1)(b) for:
  - a. Instruction, the classroom and laboratory training shall include:
    - i. Radiation physics and instrumentation;
    - ii. Radiation protection;
    - iii. Mathematics pertaining to the use and measurement of ionization radiation; and
    - iv. Radiation biology;
  - b. Supervised work experience, training shall be under the supervision of an authorized user and shall include:
    - i. Review of the full calibration measurements and periodic quality

- assurance checks;
  - ii. Evaluation of prepared treatment plans and calculation of treatment times or patient treatment settings or both;
  - iii. Using administrative controls to prevent medical events as described in R9-7-444;
  - iv. Implementing emergency procedures to be followed in the event of the abnormal operation of an external beam radiation therapy unit or console; and
  - v. Checking and using radiation survey meters; and
- c. A period of supervised clinical experience, training shall include one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user. The supervised clinical experience shall include:
- i. Examining individuals and reviewing their case histories to determine their suitability for external beam radiation therapy treatment, and any limitations or contraindications or both;
  - ii. Selecting proper dose and how it is to be administered;
  - iii. Calculating the therapeutic radiation machine doses and collaborating with the authorized user in the review of patients' progress and consideration of the need to modify originally prescribed doses or treatment plans as warranted by patients' reaction to radiation or both; and
  - iv. Post-administration follow-up and review of case histories.
3. A physician shall not act as an authorized user until such time as the physician's training has been reviewed and approved by the Department.
4. Notwithstanding the requirements of subsections (L)(1) through (L)(3), the registrant for any therapeutic radiation machine subject to this Section may also submit the training of the prospective authorized user physician for Department review on a case-by-case basis if the training includes substantially equivalent training as that listed in subsections (L)(1)(b) and (L)(2) and the training includes dosimetry calculation training and experience.

**M.** Training for Qualified Medical Physicist. The registrant for any therapeutic radiation machine subject to this Section shall require the Qualified Medical Physicist to:

1. Be certified with the Department, as a provider of radiation services in the area of calibration and compliance surveys of external beam radiation therapy units; and
2. Be certified by the American Board of Radiology in:
  - a. Therapeutic radiological physics; or
  - b. Roentgen-ray and gamma-ray physics; or
  - c. X-ray and radium physics; or
  - d. Radiological physics; or
3. Be certified by the American Board of Medical Physics in Radiation Oncology Physics; or
4. Be certified by the Canadian College of Physicists in Medicine; or
5. Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university, and have completed one year of full-time training in medical physics and an additional year of full-time work experience under the supervision of a Qualified Medical Physicist at a medical institution. This training and work experience shall be conducted in clinical radiation facilities that provide high-energy external beam radiation therapy (photons and electrons with energies greater than or equal to one MV/one MeV). To meet this requirement, the individual shall have performed the tasks listed in this subsection under the supervision of a Qualified Medical Physicist during the year of work experience.

**N.** Qualifications of Operators.

Individuals who will be operating a therapeutic radiation machine for medical use shall be certified by the Department as a CTT by the Arizona Medical Radiologic Technology Board of Examiners.

**O.** Additional training requirements.

1. A registrant shall provide instruction, initially and at least annually, to all individuals who operate the electronic brachytherapy device, as appropriate to the individual's assigned duties, in the operating procedures identified in subsection (G). If the interval between patients exceeds one year, retraining of the individuals shall be provided.
2. In addition to the requirements of subsection (L) for therapeutic radiation machine authorized users and subsection (M) for Qualified Medical Physicists, these individuals shall also receive device-specific instruction initially from the manufacturer, and annually from either the manufacturer or other qualified trainer. The training shall be of a duration

recommended by a recognized national professional association with expertise in electronic brachytherapy (when available). In the absence of any training protocol recommended by a national professional association, the manufacturer's training protocol shall be followed. The training shall include, but not be limited to:

- a. Device-specific radiation safety requirements;
  - b. Device operation;
  - c. Clinical use for the types of use approved by the FDA;
  - d. Emergency procedures, including an emergency drill; and
  - e. The registrant's quality assurance program.
3. A registrant shall retain a record of individuals receiving manufacturer's instruction for three years. The record shall include a list of the topics covered, the date of the instruction, the name or names of the attendee or attendees, and the name or names of the individual or individuals who provided the instruction.
- P.** Mobile Electronic Brachytherapy Service. A registrant providing mobile electronic brachytherapy service shall, at a minimum:
1. Check all survey instruments before medical use at each address of use or on each day of use, whichever is more restrictive;
  2. Account for the electronic brachytherapy x-ray tube in the electronic brachytherapy device before departure from the client's address; and
  3. Perform, at each location on each day of use, all of the required quality assurance checks specified in this Section to assure proper operation of the device.
- Q.** Medical events shall be reported to the Department. For purposes of this Section "medical event" means a therapeutic radiation dose from a machine:
1. Delivered to the wrong patient;
  2. Delivered using the wrong mode of treatment;
  3. Delivered to the wrong treatment site; or
  4. Delivered in one week to the correct patient, using the correct mode, to the correct therapy site, but greater than 130 percent of the prescribed weekly dose; or
- R.** A therapeutic radiation dose from a machine with errors in the calibration, time of exposure, or treatment geometry that result in a calculated total treatment dose differing from the final, prescribed total treatment dose by more than 20 percent, except for treatments given in 1 to 3 fractions, in which case a difference of more than 10 percent constitutes a medical event.
- S.** Reports of therapy medical events:
1. Within 24 hours after discovery of a medical event, a registrant shall notify the

Department by telephone by speaking to a Department staff member. The registrant shall also notify the referring physician of the affected patient and the patient or a responsible relative or guardian, unless the referring physician personally informs the registrant either that he or she will inform the patient, or that in his or her medical judgment, telling the patient or the patient's responsible relative or guardian would be harmful to one or the other, respectively. If the Department staff member, referring physician, or the patient's responsible relative or guardian cannot be reached within 24 hours, the registrant shall notify them as soon as practicable. The registrant shall not delay medical care for the patient because of notification problems.

2. Within 15 days following the verbal notification to the Department, the registrant shall report, in writing, to the Department and individuals notified under subsection (S)(1). The written report shall include the registrant's name, the referring physician's name, a brief description of the event, the effect on the patient, the action taken to prevent recurrence, whether the registrant informed the patient or the patient's responsible relative or guardian, and if not, why not. The report shall not include the patient's name or other information that could lead to identification of the patient.
3. Each registrant shall maintain records of all medical events for Department inspection. The records shall:
  - a. Contain the names of all individuals involved in the event, including:
    - i. The physician,
    - ii. The allied health personnel,
    - iii. The patient,
    - iv. The patient's referring physician,
    - v. The patient's identification number if one has been assigned,
    - vi. A brief description of the event,
    - vii. The effect on the patient, and
    - viii. The action taken to prevent recurrence.
  - b. Be maintained for three years beyond the termination date of the affected registration.

**R9-7-611.02. Other Use of Electronically-Produced Radiation to Deliver Superficial Therapeutic Radiation Dosage**

A person shall not utilize any device which is designed to electrically generate a source of ionizing radiation to deliver superficial therapeutic radiation dosage, and which is not appropriately regulated

under any existing category of therapeutic radiation machine, until:

1. The applicant or registrant has, at a minimum, provided the Department with:
  - a. A detailed description of the device and its intended application or applications;
  - b. Facility design requirements, including shielding and access control;
  - c. Documentation of appropriate training for authorized user physician or physicians and qualified medical physicist or physicists;
  - d. Methodology for measurement of dosages to be administered to patients or human research subjects;
  - e. Documentation regarding calibration, maintenance, and repair of the device, as well as instruments and equipment necessary for radiation safety;
  - f. Radiation safety precautions and instructions; and
  - g. Other information requested by the Department in its review of the application; and
2. The applicant or registrant has received written approval from the Department to utilize the device in accordance with the regulations and specific conditions the Department considers necessary for the medical use of the device; and
3. The applicant or registrant has submitted the application information and forms required by Article 2.
4. In addition to the requirements of this Section, a registrant using a device for x-ray radiation therapy shall meet the requirements of R9-7-611.01(Q), (R), and (S).

**R9-7-612. Computed Tomography Systems**

**A. Definitions:**

1. “CT” means computed tomography.
2. “CT conditions of operation” means all selectable parameters governing the operation of a CT including nominal tomographic section thickness, and technique factors.
3. “CTDI” means computed tomography dose index, the integral of the dose profile along a line perpendicular to the tomographic plane divided by the product of the nominal tomographic thickness and the number of tomogram produced in a single scan.
4. “CTDI vol” means a value of a volume-weighted tomography dose index. The unit of the CTDI vol is Gray or subunits of the Gray. The value of the CTDI vol for patient scan is used to trigger a notification when the value exceeds or will exceed a threshold value.
5. “CTN” means CT number, the number used to represent the x-ray attenuation associated with each elemental area of the CT image.

6. “Dose profile” means the dose as a function of position along a line.
7. “DLP” means the dose-length product. The DLP is the mathematical product of the CTDI vol and the length of the scan. The unit DLP is the Gray-cm or subunits of the Gray-cm. The DLP is used to trigger a notification when the value exceeds or will exceed a threshold value.
8. “Elemental area” means the smallest area within a tomogram for which the x-ray attenuation properties of a body are depicted.
9. “Multiple tomogram system” means a CT system that obtains x-ray transmission data simultaneously during a single scan to produce more than one tomogram.
10. “Nominal tomographic section thickness” means the full width at half-maximum of the sensitivity profile taken at the center of the cross section volume over which x-ray transmission data are collected.
11. “Reference plane” means a plane that is displaced from and parallel to the tomographic plane.
12. “Scan” means the complete process of collecting x-ray transmission data for the production of a tomogram. Data can be collected simultaneously during a single scan for the production of one or more tomograms.

**B. Facility:** A registrant shall ensure that a CT facility has:

1. An operable two-way communication system between the patient and the operator in each CT room.
2. A viewing system that will allow the operator to continuously view the patient from the control panel during each examination. If the viewing system malfunctions the CT shall not be used until the viewing system is repaired.

**C. Equipment.** A registrant shall ensure that:

1. There is a means to terminate x-ray exposure automatically in the event of equipment failure by:
  - a. De-energizing the x-ray source, or
  - b. Shuttering the x-ray beam.
2. The equipment shall provide the operator the ability to terminate the x-ray exposure at any time during the examination, provided the scan or series of scans is greater than one-half second duration.
  - a. If an operator terminates an x-ray exposure, the operator shall reset the CT conditions of operation before the initiation of another scan.
  - b. A visible signal shall indicate when an x-ray exposure has been terminated

because of equipment failure.

3. A means is provided to permit visual determination of the tomographic plane for a single tomogram system, or the location of a reference plane offset from a single tomograph or multiple tomogram system.
  - a. If a light source is used to satisfy this requirement, it shall provide illumination of the tomographic plane or reference plane under ambient light conditions.
  - b. The difference between the actual plane location and the indicated location of a tomographic plane or reference plane shall not exceed 5 millimeters.
  - c. The deviation of indicated scan increment versus actual increment shall not exceed plus or minus 1 millimeter with any mass from 0 to 100 kilograms resting on the patient support device.
4. The control panel and gantry provides a visual indication, if x-rays are produced.
5. Emergency buttons and switches are marked by function.
6. Parameters of CT operation used during a patient examination are visible to the operator upon initiation of the scan. If an operational parameter is not adjustable by the operator, this subsection may be met by indicating on the control panel the parameter is not adjustable by the operator.
7. Radiation exposure does not exceed 100 mR in one hour at one meter in any direction from the tube port of an operating CT.
8. The angular position or positions where the maximum surface CTDI occurs is identified to allow for reproducible positioning of a CT dosimetry phantom, except in those cases where the x-ray tubes are designed to move, in which case, the maximum dose and associated tube position shall be evaluated according to manufacturer recommendations.

**D. Operating Procedures.** A registrant shall ensure that:

1. Operating procedures are available at the control panel, or by electronic means, regarding the operation of a CT and evaluation of a CT's operation.
2. The operating procedures contain the following information:
  - a. A copy of the latest evaluation of the CT's operation, to include output for each CT procedure, performed by a qualified expert;
  - b. Instructions on the use of the CT performance phantom by the qualified expert, a schedule of quality control tests with the results of the most recent quality control test, and the allowable variations for the indicated parameters;
  - c. The distance in millimeters between the tomographic plane and the reference plane if a reference plane is used; and

- d. A current technique chart that contains the information required in R9-7-607(D)(4)(a) for both adult and pediatric patients, as applicable, is available at the CT operating console, and a procedure for determining whether a CT has been performed according to instructions of a physician.
  - e. A written or electronic log that contains the information required in R9-7-607(D)(5) as well as an entry in the record of any displayed values for the exam from either a CTDI vol or DLP measurement for each patient exam completed on equipment manufactured on or after January 1, 2011.
3. If the evaluation of the CT's operation or quality control test identifies a parameter exceeding the tolerance established by a qualified expert, the use of a CT for patient examination is limited to those uses established in written instructions from the qualified expert.
- E.** Quality control tests. A registrant shall have a written quality control test procedure, developed by a qualified expert, and ensure that the quality control test procedure:
- 1. Incorporates the use of a CT performance phantom that is compatible with an approved accreditation program approved by the Medicare Improvements for Patients and Providers Act (MIPPA) or supplied by or approved for use by the manufacturer of the unit.
  - 2. Is followed in the evaluation of the CT's operation, that the interval between tests does not exceed those set forth in the application for accreditation or quarterly if not accredited by an organization approved by (MIPPA), and that system conditions are specified by the registrant's qualified expert.
  - 3. Includes obtaining quality control test images with the CT performance phantom using the same processing mode and CT conditions of operation that are used to perform the evaluation of the CT's operation.
  - 4. Requires that images obtained under subsection (E)(3) be retained until a new evaluation of the CT's operation is performed.
  - 5. Requires that any Alerts and Notification settings using CTDI vol or DLP are reviewed against preloaded techniques in the system and any missing fields are reviewed with the staff radiologist and noted in the annual report.
  - 6. Requires the quality control test procedure and records of quality control tests performed be maintained for three years for Department inspection.
- F.** Evaluation of a CT's operation. A registrant shall ensure that:
- 1. The evaluation of a CT's operation is performed by, or under the direct supervision of, a

qualified expert who is physically present at the facility during the evaluation of the CT's operation.

2. The evaluation of a CT's operation:
    - a. Is performed before initial patient use and annually (within two months of the annual due date) and after any change or replacement of components that could, in the opinion of the qualified expert, cause a change in radiation output; and
    - b. Shall measure the CTDI in a dosimetry phantom along the two axes specified in subsection (F)(4)(b).
    - c. A complete evaluation of a CT unit, performed before the annual due date shall clearly list if the new survey changes the annual due date for the unit. It shall be clearly noted on all documentation for the next three years that the survey has established a new annual due date based upon the date of the new survey.
  3. The evaluation of a CT's x-ray system is performed with a calibrated dosimetry system that:
    - a. Has been calibrated using a method that is traceable to the National Institute of Standards and Technology (NIST), and
    - b. Has been calibrated within the preceding two years.
  4. CT dosimetry phantoms used in determining radiation output are compatible with an approved accreditation program approved by (MIPPA) or supplied by or approved for use by the manufacturer of the unit; and
    - a. Are constructed in a way that the parameters used to image the most commonly imaged parts of the human body are evaluated; and
    - b. At a minimum, provide means for placement of a dosimeter along the axis of rotation and along a line parallel to the axis of rotation 1.0 centimeter from the outer surface and within the phantom.
  5. Any effects on the measured dose due to the removal of phantom material to accommodate the dosimeter are accounted for in the reported data or included in the statement of maximum deviation for the measured values.
- G.** CT units designated for simulator use, veterinary use, dental use, podiatry use, and non-diagnostic use on humans are exempt from the annual requirements in subsections (E) and (F) provided an initial evaluation is conducted by a qualified expert and the output does not exceed the manufacturers specified limits. The initial evaluation shall be maintained for Department review.

**R9-7-613. Veterinary Medicine Radiographic Systems**

- A.** Equipment. A registrant shall ensure that:
1. The total filtration permanently in the useful beam is not less than 1.5 millimeters aluminum-equivalent for equipment operating at up to 70 kVp and 2.0 millimeters aluminum-equivalent for equipment operating in excess of 70 kVp;
  2. A device is provided to terminate the exposure after a preset time or exposure;
  3. Each radiographic system has a “dead-man” exposure switch with an electrical cord of sufficient length to allow the operator to stand at least 1.82 meters (six feet) away from the useful beam during x-ray exposures.
- B.** Procedures: A registrant shall ensure that:
1. Unless required to restrain an animal, the operator stands at least 1.82 meters (6 feet) away from the useful beam and the animal during a radiographic exposure;
  2. An individual other than the operator is not in the x-ray room or area while an exposure is being made, unless the individual’s assistance is required;
  3. If possible, an animal is held in position during an x-ray exposure using mechanical supporting or restraining devices;
  4. An individual holding an animal during an x-ray exposure is:
    - a. Wearing protective gloves and an apron of not less than 0.5 millimeter lead equivalent or positioned behind a whole-body protective barrier;
    - b. Wearing required personnel monitoring devices; and
    - c. Positioned so that no part of the person’s body, except hands and arms, will be struck by the useful beam;
  5. If an individual holds or supports an animal or a film during an x-ray exposure, the name of the individual is recorded in an x-ray log that contains the animal’s name, the type of x-ray procedure, the number of exposures, and the date of the procedure; and
  6. As a condition of employment an individual is not required to routinely hold or support animals, or hold film during radiation exposures.

**R9-7-614. Mammography Systems**

- A.** Equipment. A registrant shall ensure that:
1. Only radiation machines specifically designed for mammographic examinations are used;
  2. The film processor used in the registrant’s facility is maintained in accordance with the film processor’s and film manufacturer’s recommendations;
  3. Each facility has an image development system onsite unless the Department has approved an alternate system;

4. If used with screen-film image receptors, and the contribution to filtration made by the compression device is included, the useful beam has a half-value layer between the values of: “measured kVp/100 and measured kVp/100 + L millimeters” of aluminum equivalent, where L = 0.12 for Mo/Mo, L= 0.19 for Mo/Rh, L=0.22 for Rh/Rh, L=0.30 for W/Rh target filtration combinations and L= 0.33 for other target filtration combinations not otherwise specified.
5. The combination of focal spot size, source-to-image distance and magnification produces a radiograph with a resolution of at least 12 line pairs per millimeter at an object-to-image receptor distance of 4.5 centimeters; or the standards in Table 3-3 of the American Association of Physicists in Medicine (AAPM), Report No. 29, Equipment Requirements and Quality Control for Mammography, August 1990, published by the American Institute of Physics, Suite 1NO1, 2 Huntington Quadrangle, Melville, NY 11747 (This report is incorporated by reference and available under R9-7-101. The incorporated material contains no future editions or amendments. The report is available online at: <http://www.aapm.org/pubs/reports>; print copies may be purchased from Medical Physics Publishing, 4513 Vernon Blvd., Madison, WI 53705; toll free at (800) 442-5778.);
6. The compression device used with the mammographic unit, unless specifically manufactured otherwise, is parallel to the imaging plane, not varying at any spot by more than 1 centimeter;
7. The mammographic x-ray system with initial power drive:
  - a. Has compression paddles compatible with each size of image receptor;
  - b. Is capable of compressing the breast with a force of at least 25 pounds, but not more than 45 pounds, and maintaining the compression for at least three seconds; and
  - c. Is used in a manner so that the chest wall edge of the compression device is aligned just beyond the chest wall edge of the image receptor so that the chest wall edge of the compression device does not appear on the image receptor;
8. A mammographic x-ray system using screen-film image receptors has:
  - a. At least two different sizes of moving anti-scatter grids, including one for each size of image receptor utilized; and
  - b. Automatic exposure control;
9. All mammographic x-ray systems indicate or provide a means of determining, the mAs resulting from each exposure made with automatic exposure control;
10. The collimation provided limits the useful beam to the image receptor so that the beam

does not extend beyond any edge of the image receptor at any designated source to image receptor distance by more than 2 percent of the source to image receptor distance;

11. The accuracy of the indicated kVp is within plus or minus 2kVp;
12. Mammographic x-ray systems operating with automatic exposure control are capable of maintaining a film density within plus or minus 0.15 optical density units over the clinical range of kVp used, for a breast having an equivalent phantom thickness from 2 to 6 centimeters. If a technique chart is used, the operator shall maintain the film density within plus or minus 0.15 optical density units of the mean optical density;
13. At a kVp of 28, the mammographic x-ray system is capable of generating at least 2.0  $\mu\text{C}/\text{kg}/\text{mAs}$  (8mR/mAs) and at least 200  $\mu\text{C}/\text{kg}/\text{second}$  (800 mR/second), measured at a point 4.5 centimeters above the surface of the patient support device when the Source-image receptor distance is at its maximum;
14. Screens are not used for mammography if one or more areas of greater than 1 centimeter squared of poor screen-film contact are seen when tested, using a 40 mesh screen test;
15. Mammographic image quality meets the minimum mammography film standards for phantom performance in Mammography Quality Control Manual, 1999 edition, published by the American College of Radiology (ACR). (This manual is incorporated by reference and available under R9-7-101. The incorporated material contains no future editions or amendments. The manual is available from ACR Publication Sales, P.O. Box 533, Annapolis Junction, MD 20701: toll free at (800) 227-7762; e-mail at: [acr@brightkey.net](mailto:acr@brightkey.net)).
16. The mean glandular dose for one cranio-caudal view of a 4.2 centimeter (1.8 inch) compressed breast, composed of 50 percent adipose and 50 percent glandular tissue, does not exceed 300 millirads (3 milligray); and
17. A radiologic physicist who meets the requirements in R9-7-615(A)(1)(c) evaluates the operation of a mammographic x-ray system:
  - a. When first installed and annually thereafter,
  - b. Following any major change in equipment or replacement of parts, and
  - c. When quality assurance tests indicate calibration is necessary.

**B. Operating Procedures.** A registrant shall ensure that:

1. Each mammographic facility has a quality assurance program, and that the quality assurance program includes performance and documentation of the quality control tests in subsection (B)(2), conducted at the required time intervals. Test results shall fall within the specified limits in subsection (B)(2) or the registrant shall take corrective action and

maintain documentation that the results are within specified limits before performing or processing any further examinations using the system that failed. A radiologic physicist, as defined in R9-7-615(A)(1)(c), shall review the program and make any recommendations necessary for the facility to comply with this Section;

2. The quality assurance program meets federal requirements (Contained in 21 CFR 900.12(d)(1), and (e)(1) through (e)(10), revised April 1, 2013, incorporated by reference and available under R9-7-101. This incorporated material contains no future editions or amendments.); or the following requirements:
  - a. Daily sensitometric and densitometric evaluation of the image processing system demonstrates that Base + Fog < +0.03 optical density of operating level, Mid Density  $\pm$  0.15 optical density of operating level, and Density Difference  $\pm$  0.15 optical density of operating level;
  - b. Weekly phantom image quality evaluations demonstrate the visualization of at least four fibers, three speck groups, and three masses with a background of greater than 1.40 optical density, not varying by 0.20 optical density of operating level;
  - c. Monthly technique chart evaluations demonstrate updates for all equipment changes and that all examinations are being performed according to a physicist's density control recommendation;
  - d. Quarterly fixer retention evaluations demonstrate an acceptable limit of less than or equal to 5.0 micrograms per square centimeter;
  - e. Quarterly repeat analysis demonstrates an acceptable limit of less than 2 percent increase in repeats;
  - f. Semiannual darkroom fog evaluations meet the limit of less than or equal to 0.05 optical density of fog, using the two minute exposed film method;
  - g. Semiannual screen film contact evaluations meet the limit of less than one area of poor contact of 1 centimeter squared, using a 40 mesh screen on all clinically-used screens;
  - h. Semiannual automatic compression force evaluations meet the limit of greater than or equal to 25 pounds (111 Newtons) and less than 45 pounds (200 Newtons);
  - i. A survey shall be conducted annually and whenever indicated for installation, major repairs, parts replacement, or as deemed necessary by a qualified expert when quality control test results indicate a survey is necessary; the survey shall

include all of the following tests:

- i. Automatic exposure control performance and thickness response;
  - ii. Accuracy and reproducibility of kVp;
  - iii. System resolution;
  - iv. Breast entrance air kerma and automatic exposure control reproducibility;
  - v. Average glandular dose;
  - vi. X-ray field, light field, and image receptor alignment;
  - vii. Compression paddle alignment;
  - viii. Uniformity of screen speed;
  - ix. System artifacts;
  - x. Radiation output;
  - xi. Decompression;
  - xii. Beam quality and half value layer;
- j. For systems with image receptor modalities other than screen film:
- i. The quality assurance and quality control program for the acquisition system meets or exceeds the recommendations by the manufacturer;
  - ii. The quality assurance and quality control program for the printer meets or exceeds the recommendations by the image receptor manufacturer. In the absence of recommendations by the image receptor manufacturer for the specified printer, the quality control and assurance program meets or exceeds the recommendations of the printer manufacturer; and
  - iii. The quality assurance and quality control program for the interpretation monitors meets or exceeds the recommendations by the image receptor manufacturer. In the absence of recommendations by the image receptor manufacturer for the specified monitor or monitors, the quality control and assurance program meets or exceeds the recommendations of the interpretation monitor or monitors manufacturer; and
- k. The registrant maintains records documenting compliance with the provisions in this subsection for three years from the date each requirement is met. The records shall be made available for Department inspection.

**C. Mammographic films and reports.**

1. A registrant shall maintain films and reports for a minimum of five years. In those cases where no subsequent mammographic procedures are performed, the registrant shall

maintain films and associated reports for 10 years. If the mammographic facility is closed, the registrant shall make arrangements for storage of the films and associated reports for five years after the closure; and

2. A registrant shall make films and reports available for comparison upon request for temporary or permanent transfer to other mammographic facilities.

**R9-7-615. Mammography Personnel**

**A. Personnel.**

1. Each registrant shall require personnel who perform mammography, which includes the production, processing, and interpretation of mammograms and related quality assurance activities, to meet the following requirements:
  - a. An interpreting physician shall meet federal requirements (Contained in 21 CFR 900.12(a)(1), revised April 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.); or
    - i. Be licensed under A.R.S. Title 32, Chapters 13 or 17;
    - ii. Have initially completed 40 hours of medical education credits in mammography;
    - iii. Be certified by the American Board of Radiology or the American Osteopathic Board of Radiology or meet the requirements of the mammography quality standards act regulations for quality standards of interpreting physicians;
    - iv. Have interpreted or reviewed an average of 300 mammograms per year during the preceding two years or have completed a radiology residency that included mammogram image interpretation in the preceding two years;
    - v. Have completed 15 hours of continuing medical education credits in mammography during the preceding three years; and
    - vi. Have received at least eight hours of training specific to each mammographic modality before engaging in independent interpretation.
  - b. A mammographic technologist shall meet federal requirements (Contained in 21 CFR 900.12(a)(2), revised April 1, 2013, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.); or

- i. Possess a valid mammographic technologist certificate issued by the Medical Radiologic Technology Board of Examiners, as required in A.R.S. § 32-2841, or be pursuing mammography certification by training under the direct supervision of a technologist who possesses a valid mammographic technologist certificate;
    - ii. Have performed at least 200 mammographic examinations in the preceding two years;
    - iii. Have completed 15 hours of continuing medical education credits in mammography during the preceding three years; and
    - iv. Have received at least eight hours of training specific to each mammographic modality to be used by the technologist in performing mammographic examinations.
  - c. A radiologic physicist shall meet federal requirements (Contained in 21 CFR 900.12(a)(3), revised April 1, 2013, incorporated by reference and available under R9-7-101. This incorporated material contains no future editions or amendments.); or
    - i. Be certified by the American Board of Radiology, American Board of Medical Physics, or the American Board of Health Physics;
    - ii. Possess documentation of state approval;
    - iii. Hold a master's degree or higher in a physical science;
    - iv. Have, upon initial employment as a radiologic physicist, experience conducting, at least one mammographic facility survey and evaluating at least 10 mammographic units;
    - v. Have, after completing the experience requirements in subsection (A)(1)(c)(iv), continuing experience surveying two mammographic facilities and evaluating six mammographic units during the preceding two years;
    - vi. Have completed 15 hours of continuing medical education credits in mammography during the three preceding years; or
    - vii. Have received at least eight hours of training specific to any modality surveyed; and
2. Each registrant shall maintain records documenting the requirements in subsection (A)(1) for three years from the date the requirement is met and make the records available for Department inspection.

- B.** Radiologic physicists shall apply for and renew their certification on Department-approved forms. In addition to the Department-approved forms, applicants must also submit documentation showing education, mammography specific training, education, and board certification. Upon renewal, an applicant must submit documentation showing current continuing education requirements are met.

**Appendix A. Information Submitted to the Department According to R9-7-604(A)(3)(c)**

- A.** Name and address of the applicant and, if applicable, the name and address of any person within this state that is authorized to act on behalf of the applicant;
- B.** Disease or conditions to be diagnosed using the proposed x-ray examination;
- C.** A detailed description of each x-ray examination that will be used in the diagnosis;
- D.** A description of the population to be examined in the screening program, using characteristics such as age, sex, physical condition, and other descriptive information;
- E.** An evaluation of any known alternative diagnostic modalities not involving ionizing radiation that could achieve the same diagnosis as a screening program and why these modalities have not been chosen;
- F.** An evaluation by a qualified expert of the x-ray equipment used in the screening program, which demonstrates that the x-ray equipment satisfies the requirements of this Article;
- G.** A description of the quality control program;
- H.** A copy of the technique chart for the planned x-ray examination;
- I.** The qualifications of each individual who will be operating the x-ray equipment;
- J.** The qualifications of the individual who will be supervising each operator of the x-ray equipment;
- K.** The name and address of the individual who will interpret each radiographic image;
- L.** A description of the planned procedures for advising a screened individual and the screened individual's physician of the screening procedure results, and the need for further medical care, and
- M.** A description of the procedures for retention or disposition of the radiographic images and other records pertaining to the x-ray examination.

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

### **30-654. Powers and duties of the department**

A. The department may:

1. Accept grants or other contributions from the federal government or other sources, public or private, to be used by the department to carry out any of the purposes of this chapter.
2. Do all things necessary, within the limitations of this chapter, to carry out the powers and duties of the department.
3. Conduct an information program, including:
  - (a) Providing information on the control and regulation of sources of radiation and related health and safety matters, on request, to members of the legislature, the executive offices, state departments and agencies and county and municipal governments.
  - (b) Providing such published information, audiovisual presentations, exhibits and speakers on the control and regulation of sources of radiation and related health and safety matters to the state's educational system at all educational levels as may be arranged.
  - (c) Furnishing to citizen groups, on request, speakers and such audiovisual presentations or published materials on the control and regulation of sources of radiation and related health and safety matters as may be available.
  - (d) Conducting, sponsoring or cosponsoring and actively participating in the professional meetings, symposia, workshops, forums and other group informational activities concerned with the control and regulation of sources of radiation and related health and safety matters when representation from this state at such meetings is determined to be important by the department.

B. The department shall:

1. Regulate the use, storage and disposal of sources of radiation.
2. Establish procedures for purposes of selecting any proposed permanent disposal site located within this state for low-level radioactive waste.
3. Coordinate with the department of transportation and the corporation commission in regulating the transportation of sources of radiation.
4. Assume primary responsibility for and provide necessary technical assistance to handle any incidents, accidents and emergencies involving radiation or sources of radiation occurring within this state.
5. Adopt rules deemed necessary to administer this chapter in accordance with title 41, chapter 6.
6. Adopt uniform radiation protection and radiation dose standards to be as nearly as possible in conformity with, and in no case inconsistent with, the standards contained in the regulations of the United States nuclear regulatory commission and the standards of the United States public health service. In the adoption of the standards, the department shall consider the total occupational radiation exposure of individuals, including that from sources that are not regulated by the department.
7. Adopt rules for personnel monitoring under the close supervision of technically competent people in order to determine compliance with safety rules adopted under this chapter.
8. Adopt a uniform system of labels, signs and symbols and the posting of the labels, signs and symbols to be affixed to radioactive products, especially those transferred from person to person.
9. By rule, require adequate training and experience of persons utilizing sources of radiation with respect to the hazards of excessive exposure to radiation in order to protect health and safety.
10. Adopt standards for the storage of radioactive material and for security against unauthorized removal.
11. Adopt standards for the disposal of radioactive materials into the air, water and sewers and burial in the soil in accordance with 10 Code of Federal Regulations part 20.

12. Adopt rules that are applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States treasury department and the United States postal service.
  13. In individual cases, impose additional requirements to protect health and safety or grant necessary exemptions that will not jeopardize health or safety, or both.
  14. Make recommendations to the governor and furnish such technical advice as required on matters relating to the utilization and regulation of sources of radiation.
  15. Conduct or cause to be conducted off-site radiological environmental monitoring of the air, water and soil surrounding any fixed nuclear facility, any uranium milling and tailing site and any uranium leaching operation, and maintain and report the data or results obtained by the monitoring as deemed appropriate by the department.
  16. Develop and utilize information resources concerning radiation and radioactive sources.
  17. Prescribe by rule a schedule of fees to be charged to categories of licensees and registrants of radiation sources, including academic, medical, industrial, waste, distribution and imaging categories. The fees shall cover a significant portion of the reasonable costs associated with processing the application for license or registration, renewal or amendment of the license or registration and the costs of inspecting the licensee or registrant activities and facilities, including the cost to the department of employing clerical help, consultants and persons possessing technical expertise and using analytical instrumentation and information processing systems.
  18. Adopt rules establishing radiological standards, personnel standards and quality assurance programs to ensure the accuracy and safety of screening and diagnostic mammography.
- C. All fees collected under subsection B, paragraph 17 of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

### **30-657. Records**

- A. Each person that possesses or uses a source of radiation shall maintain records relating to its receipt, storage, transfer or disposal and such other records as the department requires by rule.
- B. The department shall require each person that possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules adopted by the department. Copies of records required by this section shall be submitted to the department on request by the department.
- C. Any person that possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at such times as prescribed by rules adopted by the department.
- D. Any person that possesses or uses a source of radiation, when requested, shall submit to the department copies of records or reports submitted to the United States nuclear regulatory commission regardless of whether the person is subject to regulation by the department. The department, by rule, shall specify the records or reports required to be submitted to the department under this subsection.

### **30-671. Radiation protection standards**

- A. Radiation protection standards in rules adopted by the department under this chapter do not limit the kind or amount of radiation that may be intentionally applied to a person or animal for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.
- B. Radiation sources shall be registered, licensed or exempted at the discretion of the department.

### **30-672. Licensing and registration of sources of radiation; exemptions**

- A. The department by rule shall provide for general or specific licensing of by-product, source, special nuclear materials or devices or equipment using those materials. The department shall require from the applicant satisfactory evidence that the applicant is using methods and techniques that are demonstrated to be safe and that the applicant is familiar with the rules adopted by the department under section 30-654, subsection B, paragraph 5 relative to uniform radiation standards, total occupational radiation exposure norms, labels, signs and symbols, storage, waste disposal and shipment of radioactive materials. The department may require that, before

it issues a license, the employees or other personnel of an applicant who may deal with sources of radiation receive a course of instruction approved by the department concerning department rules. The department shall require that the applicant's proposed equipment and facilities be adequate to protect health and safety and that the applicant's proposed administrative controls over the use of the sources of radiation requested be adequate to protect health and safety.

B. The department may require registration or licensing of other sources of radiation if deemed necessary to protect public health or safety.

C. The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section if it finds that exempting such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

D. The director may suspend or revoke, in whole or in part, any license issued under subsection A of this section if the licensee or an officer, agent or employee of the licensee:

1. Violates this chapter or rules of the department adopted pursuant to this chapter.

2. Has been, is or may continue to be in substantial violation of the requirements for licensure of the radiation source and as a result the health or safety of the general public is in immediate danger.

E. If the licensee, or an officer, agent or employee of the licensee, refuses to allow the department or its employees or agents to inspect the licensee's premises, such an action shall be deemed reasonable cause to believe that a substantial violation under subsection D, paragraph 2 of this section exists.

F. A license may not be suspended or revoked under this chapter without affording the licensee notice and an opportunity for a hearing as provided in title 41, chapter 6, article 10.

G. The department shall not require persons who are licensed in this state to practice as a dentist, physician assistant, chiropractor or veterinarian or licensed in this state to practice medicine, surgery, osteopathic medicine, chiropractic or naturopathic medicine to obtain any other license to use a diagnostic x-ray machine, but these persons are governed by their own licensing acts.

H. Persons who are licensed by the federal communications commission with respect to the activities for which they are licensed by that commission are exempt from this chapter.

I. Rules adopted pursuant to this chapter may provide for recognition of other state or federal licenses as the department deems desirable, subject to such registration requirements as the department prescribes.

J. Any licenses issued by the department shall state the nature, use and extent of use of the source of radiation. If at any time after a license is issued the licensee desires any change in the nature, use or extent, the licensee shall seek an amendment or a new license under this section.

K. The department shall prescribe by rule requirements for financial security as a condition for licensure under this article. The department shall deposit all amounts posted, paid or forfeited as financial security in the radiation regulatory and perpetual care fund established by section 30-694.

L. Persons applying for licensure shall provide notice to the city or town where the applicant proposes to operate as part of the application process.

M. Any facility that provides diagnostic or screening mammography examinations by or under the direction of a person who is exempt from further licensure under subsection G of this section shall obtain certification by the department. The department shall prescribe by rule the requirements of certification in order to ensure the accuracy and safety of diagnostic and screening mammography.

### **30-673. 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.

### **32-2811. Prohibitions and limitations; exceptions**

A. No person may use ionizing radiation on a human being unless the person is a licensed practitioner or the holder of a certificate as provided in this chapter.

B. A person holding a certificate may use ionizing radiation on human beings only for diagnostic or therapeutic purposes while operating in each particular case at the direction of a licensed practitioner, except that a person holding a certificate may use ionizing radiation on human beings for diagnostic purposes only while operating in each particular case at the direction of a licensed practitioner who is licensed in any other state, territory or district of the United States. The application of ionizing radiation and the direction to apply ionizing radiation are limited to those persons or parts of the human body specified in the law under which the practitioner is licensed. The provisions of the technologist's certificate govern the extent of application of ionizing radiation.

C. Nothing in this chapter relating to technologists shall be construed to limit, enlarge or affect in any respect the practice of their respective professions by duly licensed practitioners.

D. The requirement of a certificate shall not apply to:

1. A hospital resident specializing in radiology who is not a licensed practitioner in this state or a student enrolled in and attending a school or college of medicine, osteopathy, podiatry, dentistry, naturopathic medicine, chiropractic or radiologic technology who applies ionizing radiation to a human being while under the specific direction of a licensed practitioner.
2. A person engaged in performing the duties of a technologist in that person's employment by an agency, bureau or division of the government of the United States.
3. Dental hygienists licensed in the state of Arizona and dental assistants holding a valid certificate in dental radiology from a course approved by the state board of dental examiners.
4. Persons providing assistance during an ionizing radiation procedure, apart from such procedures conducted in a health care institution, under the direction of a person licensed for the use of an ionizing radiation machine.
5. A person who is employed by or acting on behalf of the state department of corrections or a county jail and who uses a low-dose ionizing radiation body scanning device to detect contraband, as defined in section 13-2501, in or on an inmate.

E. Subsection B of this section does not apply to ionizing radiation ordered by a licensed practitioner for other than diagnostic or therapeutic purposes pursuant to section 13-2505, subsection E.

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

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

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

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

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

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

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

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

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

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

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

I. The director, by rule, shall:

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

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the

conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

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

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

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

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

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

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

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

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

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

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

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

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum

standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**DEPARTMENT OF INSURANCE**

Title 20, Chapter 6, Articles 4, 5, 6, & 19, Department of Insurance



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** September 1, 2020

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

**FROM:** Council Staff

**DATE:** August 13, 2020

**SUBJECT:** Department of Insurance  
Title 20, Chapter 6, Articles 4-6 & 19

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This Five-Year-Review Report (5YRR) from the Department of Insurance relates to rules in Title 20, Chapter 6 regarding insurance companies. The report covers the following:

**Article 4** - Types of Insurance Companies

**Article 5** - The Insurance Contract

**Article 6** - Types of Insurance Contracts

**Article 19** - Health Care Services Organizations Oversight

In the last 5YRR of these rules the Department indicated it would amend two rules in Article 4, but did not complete the changes due to constraints in resources. The Department also proposed to amend rules in Article 5 to make stylistic changes, but did not complete the proposed changes. Lastly, the Department proposed to amend rules in Article 6, and completed a rulemaking in 2018 that addressed the changes.

### **Proposed Action**

The Department is proposing to amend several rules to improve overall clarity, conciseness, understandability, effectiveness and consistency with other rules and statutes. Specifically, the Department is proposing to amend the following:

- R20-6-401 - Proxies, Consents, and Authorizations of Domestic Stock Insurers
- R20-6-405 - Health Care Services Organization
- R20-6-409 - Service Companies
- R20-6-501 - Ten-Day Period to Examine Disability Insurance Policy

The Department indicates it plans to complete a rulemaking in August 2020 that would address R20-6-407, and another rulemaking in October 2021 that address the remaining rules.

**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:**

The stakeholders include the Department and insurers regulated by the Department. The economic impact of the rules reviewed by the Department are as follows:

- Article 4 –Types of Insurance Companies – The Department has not identified any economic impact that is significantly different from the impact provided when the rule were last amended.
- Article 5 –The Insurance Contract – The Department indicates that no prior economic impact statement is available; however, the Department believes any costs associated with the rule are minimal.
- Article 6 –Types of Insurance Contracts – The Department indicates that most cost associated with the rule is the result of statutory requirements, rather than the rule. Other costs are reviewed every three years and are deemed minimal.
- Article 19 – Health Care Services Organizations Oversight – The Department states that it has not identified any economic impact that is significantly different from that projected in the economic impact statement for the rulemaking.

**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 least burden, costs to the regulated community, and provide a minimally burdensome way of achieving the goal of the rule. The Department assumes the rules impose a reasonable regulatory burden and cost in light of the existing business costs and the protection afforded to enrollees.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates it did not receive any written criticisms.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department states the rules under review are overall clear, concise, understandable, and effective with the exception of the following:

- R20-6-405 - Health Care Services Organization
- R20-6-407 - Service Companies
- R20-6-409 - Hospital, Medical, Dental and Optometric Service Corporations
- R20-6-601 - Regulations Governing Bail Transactions
- R20-6-602 - Nationwide Inland Marine Definition

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

Yes, the Department states the rules under review are overall consistent with other rules and statutes with the exception of the following:

- R20-6-405 - Health Care Services Organization
- R20-6-407 - Service Companies
- R20-6-409 - Hospital, Medical, Dental and Optometric Service Corporations

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules under review are overall effective in achieving its objective with the exception of the following:

- R20-6-601 - Regulations Governing Bail Transactions

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

Yes, the Department indicates the rules under review are overall enforced as written with the exception of the following:

- R20-6-601 - Regulations Governing Bail Transactions

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 are not more stringent than the corresponding federal laws, 45 CFR 156.230(B).

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable, the rules do not require a permit or license.

11. **Conclusion**

As mentioned above, the Department is proposing to amend several of its rules to improve overall clarity, conciseness, understandability, effectiveness and consistency with other rules and statutes. DOI plans to complete a rulemaking that would address these changes by October 2021.

While Council staff recommends approval of this report, Council staff does not believe the Commission has provided justification for the timeframe to complete its proposed course of action. Council staff encourages the Council to further discuss the proposed timeframe.



**Office of the Director  
Arizona Department of Insurance**

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**Douglas A. Ducey, Governor**  
**Christina Corieri, Interim Director**

June 23, 2020

VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)  
Ms. Nicole Sornsin, Chairperson  
Governor's Regulatory Review Council  
100 North 15<sup>th</sup> Ave., Suite 305  
Phoenix, AZ 85007

**RE:** Arizona Department of Insurance  
Title 20, Chapter 6, Articles 4, 5, 6 and 19  
Five Year Review Report

Dear Chairperson Sornsin:

Please find enclosed the Five Year Review Report of the Arizona Department of Insurance ("Department") for Title 20, Chapter 6, Articles 4, 5, 6 and 19, due on June 30, 2020.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Mary Kosinski at (602) 364-3476 or [mary.kosinski@difi.az.gov](mailto:mary.kosinski@difi.az.gov), or me at (602) 364-3764 or [scott.greenberg@difi.az.gov](mailto:scott.greenberg@difi.az.gov).

Sincerely,

  
Scott B. Greenberg  
Deputy Director

**The Arizona Department of Insurance**

**Five-Year Review**

**A.A.C. Title 20, Chapter 6, Articles 4, 5, 6 and 19**

**June 2020**



**Arizona Department of Insurance**

**5 YEAR REVIEW REPORT**

**Title 20. Commerce, Financial Institutions, and Insurance**

**Chapter 6. Department of Insurance**

**Article 4. Types of Insurance Companies**

**June 30, 2020**

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

General Statutory Authority: A.R.S. § 20-143 (All rules)

Specific Statutory Authority: A.R.S. § 20-1078 (R20-6-405); Additional authority can be found for this rule at A.R.S. §§ 20-106, 20-142, and 20-1051 through 20-1068

A.R.S. § 20-1095.01 (R20-6-407)

A.R.S. § 20-821 (R20-6-409)

**2. The objective of each rule:**

<b>Rule</b>	<b>Objective</b>
R20-6-401 Proxies, Consents, and Authorizations of Domestic Stock Insurers	R20-6-401 incorporates by reference the National Association of Insurance Commissioners (“NAIC”) Model Laws, Regulations and Guidelines regarding proxies, consents, and authorizations of domestic stock insurers and requires that domestic stock insurers comply (NAIC Model Rule 490). The rule provides proxy requirements, filing requirements, securities solicitations, information to be provided to securities holders, consent and authorization, communications with securities holders, proposals, false and misleading statements, and special provisions related to election contests. NAIC Model Law, Regulations and Guidelines facilitate insurer compliance by enhancing regulatory uniformity.
R20-6-405 Health Care Services Organization	R20-6-405 regulates Health Care Services Organizations by: defining terms, setting forth and clarifying requirements applicable to certificates of authority, solicitations, annual reports, taxes, the statutory deposit, reserves and forms; the application, examination and licensing of agents (producers), and it addresses severability.
R20-6-407 Service Companies	R20-6-407 regulates service companies by establishing comprehensive requirements and procedures for the issuance of service company permits and the filing of forms.
R20-6-409 Hospital, Medical, Dental, and Optometric Service Corporations	The purpose of R20-6-409 is to regulate subscription contracts issued by hospital, medical, dental, and optometric service corporations by establishing the applicability of the contracts and by setting forth the rules with which the subscription contracts shall comply.

3. Are the rules effective in achieving their objectives? Yes X No \_\_\_

4. Are the rules consistent with other rules and statutes? Yes \_\_\_ No X

Rule	Explanation
R20-6-405 Health Care Services Organization	<p>The Department amended Title 20, Chapter 6, Article 19, Health Care Services Organizations Oversight in 2005. No federal laws correspond with R20-6-405. This Section is generally consistent with Article 19, but the Department suggests revisions to improve the rule's consistency. The Department would like to:</p> <ul style="list-style-type: none"> <li>• Improve consistency between A.A.C. R20-6-405 and R20-6-1902: <ul style="list-style-type: none"> <li>• A.A.C. R20-6-405(E)(5) refers to the definition of enrollee found in A.R.S. § 20-1051(2), "an individual who has been enrolled in a health care plan" whereas A.A.C. R20-16-1902 defines it as "an individual who is enrolled in a health plan operated by an HCSO."</li> <li>• Under A.A.C. R20-6-405(E)(19) and R20-1051(11), provider means "any physician, hospital or other person that is licensed or otherwise authorized to furnish health care services in this state." Under A.A.C. R20-6-1902, provider means "any physician, practitioner, ancillary provider, or facility."</li> </ul> </li> <li>• Delete the reference to these obsolete forms <ul style="list-style-type: none"> <li>• E-128 in (H)</li> <li>• P107 in 20-6-405(J)(1).</li> </ul> </li> <li>• Replace the term "agent" with "producer" in subsections A.A.C. R20-6-405(B), (C), (E), (F), (G), (I), and (P) to be consistent with statutory authority.</li> <li>• Correct the following cross-references to statutes: <ul style="list-style-type: none"> <li>• A.A.C. R20-6-405(E)(1) refers readers to A.R.S. § 20-282 for the definition of agent but it is not found in A.R.S. § 20-282. Agent is an incorrect term that should be replaced with "insurance producer" as defined in A.R.S. § 20-281(5).</li> <li>• A.A.C. R20-6-405(E)(2) refers to A.R.S. § 20-1051. No definition of "basic health care services" is found in A.R.S. § 20-1051.</li> <li>• Correct the statutory reference for the definition of insurer in A.A.C. R20-6-405(E)(11) to A.R.S. § 20-104.</li> <li>• Correct the references in A.A.C. R20-6-405(G)(7) and (8) from A.R.S. § 20-1053(13) to A.R.S. § 20-1053(A)(13).</li> </ul> </li> <li>• Delete: <ul style="list-style-type: none"> <li>• A.A.C. R20-6-405(E)(2) because there is no definition of "basic health care services" in Title 20.</li> <li>• A.A.C. R20-6-405(K) as the insurers now file their advertising in</li> </ul> </li> </ul>

	<p>an electronic system that serves as a searchable, historical repository of advertising. This Annual Certification is obsolete.</p> <ul style="list-style-type: none"> <li>• A.A.C. R20-6-405(P)(2) because it is already addressed in statute</li> </ul>
R20-6-407 Service Companies	The rule is currently out of date because it does not reflect statutory changes to the Service Companies Act (A.R.S. §§ 20-1095 through 20-1095.10) made in 2018 (Laws 2018, Ch. 150).
R20-6-409 Hospital, Medical, Dental, and Optometric Service Corporations	<p>The Department would like to:</p> <ul style="list-style-type: none"> <li>• Correct references in Subsection “B” to rules in Article 2 of the Department’s rules, where several of the rule names and citations have changed: <ul style="list-style-type: none"> <li>• B. Subscription contract provision. Subscription contracts of hospital, medical, dental and optometric service corporations subject to the provisions of Article 3, Chapter 4 of Title 20, A.R.S., shall meet the requirements of the following rules:</li> <li>• R20-6-201. Advertisements of <del>disability</del> <a href="#">Health</a></li> <li>• Change reference from R20-6-209 to R20-6-207. <del>Unfair sex</del> <a href="#">Gender</a> discrimination</li> <li>• Change reference from R20-6-210 to R20-6-208. Group Coverage Discontinuance and Replacement</li> <li>• <del>Change reference from R20-6-213 to R20-6-211. <del>Unfair</del> Discrimination on the Basis of Blindness, <a href="#">or</a> Partial Blindness, <del>or</del> <a href="#">physical disability</a>.</del></li> <li>• Change reference from R20-6-216 to R20-6-213. Life and Disability Insurance Policy Language Simplification</li> </ul> </li> <li>• Delete the reference to R20-6-302 because that Section is expired.</li> <li>• Delete the reference to R20-6-606 because that Section is repealed.</li> <li>• Remove the severability clause in A.A.C. R20-6-409(C) as it is unnecessary.</li> </ul>

5. **Are the rules enforced as written?** Yes X No \_\_\_

6. **Are the rules clear, concise, and understandable?** Yes \_\_\_ No X

Rule	Explanation
R20-6-405 Health Care Services Organization	The revisions suggested in Paragraph 4 above would improve the rule’s clarity and understandability.
R20-6-407 Service Companies	The revisions suggested in Paragraph 4 above would improve the rule’s clarity and understandability.
R20-6-409 Hospital, Medical, Dental, and Optometric Service Corporations	The revisions suggested in Paragraph 4 above would improve the rule’s clarity and understandability.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes \_\_\_ No X

8. **Economic, small business, and consumer impact comparison:**

The Department has not identified any economic impact that is significantly different from the economic impact statement the Department provided when the rule was last amended (R20-6-401 amended at 25 A.A.R. 3008, October 11, 2019) or from the statement in its 2015 5-Year Review Report (R20-6-405, R20-6-407, R20-6-409).

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?**

Rule	Explanation
R20-6-401 Proxies, Consents, and Authorizations of Domestic Stock Insurers	The prior 5-Year Review Report for this rule did not propose any course of action for this rule. However, in 2019, the Department administered an expedited rulemaking to update the addresses for the Department's and National Association of Insurance Commissioner's addresses where the incorporated by reference materials could be located. (25 A.A.R. 3008, October 11, 2019) Unfortunately, the Department's address has changed again since the expedited rulemaking.
R20-6-405 Health Care Services Organization	In its prior 5-Year Review Report, the Department proposed to adopt in 2016 the revisions suggested in Paragraph 4 of this Report. The Department has not pursued the suggested revisions as of this date due to constraints in its resources.
R20-6-407 Service Companies	In response to the statutory changes made to the Service Companies Act (A.R.S. §§ 20-1095 through 20-1095.10), the Department expired R20-6-408 in 2018 (24 A.A.R. 3106, November 2, 2018). The Department is in the process of amending R20-6-407 and has received a rulemaking moratorium exemption from the Governor's Office to pursue this rulemaking.
R20-6-409 Hospital, Medical, Dental, and Optometric Service Corporations	In its prior 5-Year Review Report, the Department proposed to adopt in 2016 the revisions suggested in Paragraph 4 of this Report. The Department has not pursued the suggested revisions as of this date due to constraints in its resources.

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:**

<b>Rule</b>	<b>Explanation</b>
R20-6-401 Proxies, Consents, and Authorizations of Domestic Stock Insurers	Rule 20-6-401 sets forth proxy and consent requirements with which only domestic stock insurers must comply. Similar versions of this rule are currently in effect in 46 other jurisdictions. Compliance pertains to proxies, filings, securities solicitations, information to be provided to securities holders, consent and authorization, communications with securities holders, proposals, false and misleading statements, and special provisions related to election contests. The increased staff time to confirm that the consent requirements are met as well as any additional postage costs incurred are not unduly burdensome in light of the voluminous materials provided to beneficial owners in advance of an annual meeting. Companies typically provide these materials in advance of the annual meeting for other purposes; this rule imposes the least burden and cost to the insurer.
R20-6-405 Health Care Services Organization	There are currently 29 HCSOs active in Arizona. The burden to the regulated community, and the fees and internal costs of complying with R20-6-405 are small and outweighed by the protection afforded to the public by the application process, disciplinary procedures and controls in place for solicitations, providing a minimally burdensome way to achieve the goal of the rule.
R20-6-407 Service Companies	The Department is currently in the process of revising this rule to comply with the statutory changes to the Service Companies Act (A.R.S. §§ 20-1095 through 20-1095.10). It anticipates opening a docket in this rulemaking by August 2020.
R20-6-409 Hospital, Medical, Dental, and Optometric Service Corporations	R20-6-409 notifies hospital, medical, dental and optometric service corporations of provisions and requirements that subscription contracts must include. The protection provided to consumers in the areas of advertising, discrimination, group coverage replacement and simplification of policy language outweighs the industry's burden and costs. Subjecting different health insurance products to the same prohibitions against discrimination, requirements for advertising, group coverage and policy language creates compliance efficiencies for the companies that offer more than one type of health product.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No X

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

**14. Proposed course of action**

<b>Rule</b>	<b>Explanation</b>
R20-6-401 Proxies, Consents, and Authorizations of Domestic Stock Insurers	In its 2015 5-Year Review Report, the Department proposed no action for this rule. However, in 2019, the Department administered an expedited rulemaking to reflect changes to its and the NAIC's addresses for the incorporated by reference materials. (25 A.A.R. 3008, October 11, 2019) The Department will have to run another rulemaking because its address has changed again. The Department has no immediate plans to make the proposed changes before October 2021.
R20-6-405 Health Care Services Organization	In its 2015 5-Year Review Report, the Department planned to open a docket and make proposed changes in May 2016. Those changes did not occur. The Department has no immediate plans to make the proposed changes before October 2021.
R20-6-407 Service Companies	The Department is in the process of amending this rule. It plans to open a docket by August, 2020.
R20-6-409 Hospital, Medical, Dental, and Optometric Service Corporations	In its 2015 5-Year Review Report, the Department planned to open a docket and make proposed changes in May 2016. Those changes did not occur. The Department has no immediate plans to make the proposed changes before October 2021.

**Arizona Department of Insurance**

**5 YEAR REVIEW REPORT**

**Title 20. Commerce, Financial Institutions, and Insurance**

**Chapter 6. Department of Insurance**

**Article 5. The Insurance Contract**

**June 30, 2020**

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

General Statutory Authority: A.R.S. § 20-143

Specific Statutory Authority: A.R.S. §§ 20-1110.01, 20-1111, and 20-1113

**2. The objective of each rule:**

<b>Rule</b>	<b>Objective</b>
R20-6-501 Ten-Day Period to Examine Disability Insurance Policy	R20-6-501 establishes a requirement for policies for individual disability insurance issued for delivery in the State of Arizona by an insurance company or by a hospital or medical service corporation to have printed on the first page a notice of a 10-day period to examine and return the policy and receive a refund of premiums, charges, and fees.

**3. Are the rules effective in achieving their objectives? Yes X No**

**4. Are the rules consistent with other rules and statutes? Yes X No**

**5. Are the rules enforced as written? Yes X No**

**6. Are the rules clear, concise, and understandable? Yes X No**

However, the Department eventually plans to eliminate any unnecessary language and to update the rule to eliminate passive voice and outdated language.

**7. Has the agency received written criticisms of the rules within the last five years? Yes     No X**

**8. Economic, small business, and consumer impact comparison:**

When the Department adopted R20-6-501, no requirement existed for preparation of an economic impact statement. This rule benefits consumers who purchase an insurance policy

by giving them an opportunity to review the policy and decide within 10 days whether to keep the policy or return it for a refund. Insurers might have some nominal administrative costs for processing refunds to the purchaser; however, the insurers have not notified the Department that they are actually experiencing such costs. The Department expects that the number of consumers who actually request a refund within 10 days is nominal. There is no economic impact to the Department or other governmental agencies from this rule.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The previous 5-Year Review Report in 2015 stated that the Department intended to submit a rulemaking as early as 2013 to make stylistic changes to comply with current rule-writing standards, including active voice. The Department has not taken any action in the intervening period of time.

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:**

Although insurers might have some nominal administrative costs for processing refunds to a purchaser who elects within 10 days to return a policy for a refund, the rule imposes minimal burden and costs to the regulated community.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No X

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

14. **Proposed course of action**

Because of other rule writing requirements imposed by recent legislation, the Department will not consider making any changes to this rule before October 2021.

# Arizona Department of Insurance

## 5 YEAR REVIEW REPORT

### Title 20. Commerce, Financial Institutions, and Insurance

#### Chapter 6. Department of Insurance

#### Article 6. Types of Insurance Contracts

June 30, 2020

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

General Statutory Authority: A.R.S. § 20-143 (All rules)

Specific Statutory Authority: A.R.S. § 20-340.05 (R20-6-601)

A.R.S. § 20-1615 (R20-6-604 through R20-6-604.10)

#### 2. The objective of each rule:

Rule	Objective
R20-6-601 Regulations Governing Bail Transactions	R20-6-601 regulates bail transactions by establishing general provisions, definitions, licensing, and conduct of bail bond agents, charges, collateral, refunds, and rebates. The correlate statutory sections are contained at The Bail Bond Agents and Bail Recovery Agents Act (A.R.S. §§ 20-340 through 20-340.06).
R20-6-602 Nationwide Inland Marine Definition	R20-6-602 describes risks and coverages that may be classified as Marine, Inland Marine, or Transportation Insurance by enumerating the requirements applicable to these types of risks and coverages.
R20-6-604 Definitions	R20-6-604 contains definitions applicable to Consumer Credit Insurance. Consumer Credit Insurance is defined at R20-6-604 as credit life insurance or credit disability insurance or both. The correlate statutory sections are contained at the Consumer Credit Insurance Act (A.R.S. §§ 20-1602 through 20-1616.01). Rules R20-6-604 through R20-6-604.10 apply to Consumer Credit Insurance.
R20-6-604.01 Rights and Treatment of Debtors	R20-6-604.01 sets out the requirements for treatment of debtors and debtors' rights.
R20-6-604.02 Satisfying the Reasonableness Standard	R20-6-604.02 regulates components of credit insurance by establishing requirements for satisfying the reasonableness standard in credit insurance premium and insurance charges.
R20-6-604.03 Determination of Prima Facie Rates	R20-6-604.03 regulates credit insurance by setting forth requirements for the Director to establish prima facie credit insurance rates.

R20-6-604.04 Credit Life Insurance Rates and Provisions	R20-6-604.04 regulates credit life insurance by setting forth requirements for the Director to establish prima facie rates and provisions for credit life insurance.
R20-6-604.05 Credit Disability Insurance Rates and Provisions	R20-6-604.05 regulates credit disability insurance by setting forth requirements for the Director to establish prima facie rates for credit disability insurance.
R20-6-604.06 Refund Methods	R20-6-604.06 regulates credit insurers by establishing the methods the insurer shall use for refunding premiums.
R20-6-604.07 Experience Reports	The Department adopted Rule 20-6-604.07 to provide the Director with information about credit insurers by requiring the insurer to file an annual experience report with the Director.
R20-6-604.08 Use of Prima Facie Rates; Rate Deviations	The Department adopted R20-6-604.08 to provide clarity to credit insurers by setting forth requirements for an insurer to file for approval and use of deviated rates higher than the prima facie rates.
R20-6-604.09 Supervision of Consumer Credit Insurance Operations	R20-6-604.09 regulates credit insurers by requiring the insurer to review the operations of each creditor at least once every three years. The personnel costs associated with the review of creditors is largely within the control of the insurer.
R20-6-604.10 Prohibited Transactions	R20-6-604.10 regulates credit insurers and protects consumers by enumerating the practices that are deemed unfair trade practices and clarifies that a violator is subject to penalties.
R20-607 Reasonableness of Benefits in Relation to Premium Charged	R20-6-607 establishes requirements regarding reasonableness of benefits in relation to premiums charged for individual disability policies.

3. **Are the rules effective in achieving their objectives?** Yes  No

Rule	Explanation
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<p>R20-6-601 Regulations Governing Bail Transactions</p>	<p>R20-6-601 along with its correlate statutes (The Bail Bond Agents and Bail Recovery Agents Act (A.R.S. §§ 20-340 through 20-340.06)) require a complete overhaul to reflect current bail bond industry practices. For instance, A.R.S. § 20-340.01(E) provides:</p> <p style="padding-left: 40px;">“E. Each bail bond agent shall have and maintain a place of business in this state that is accessible to the public and where the bail bond agent principally conducts transactions under the agent's license.”</p> <p>And R20-6-601(D)(8) provides:</p> <p style="padding-left: 40px;">8. Maintenance of records. Every bail bond agent shall keep complete records of all business done under authority of his license. Such records shall be open to inspection or examination by the Director or his representatives at all reasonable times at the principal place of business of the bail bond agent as designated in his license.”</p> <p>Because many businesses now do much of their activities online without a brick-and-mortar place of business, this statute and rule are outdated and impose an unnecessary burden on licensees.</p> <p>Because the statutes and rule are outdated, regulation of this industry is difficult and results in petty violations. However, the rule should not be amended until the statutes are updated.</p>
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4. **Are the rules consistent with other rules and statutes?**                      Yes                       No

Rule	Explanation
<p>R20-6-601 Regulations Governing Bail Transactions</p>	<p>There are no federal laws that correspond R20-6-601.</p> <p>R20-6-601 is not consistent with Arizona statutes:</p> <ul style="list-style-type: none"> <li>• R20-6-601(A)(2) refers to authority for the rules being found in A.R.S. Title 20, Chapter 2, Article 3. However, Article 3.5 is the correct authority for the rule.</li> <li>• R20-6-601(C)(2) is inconsistent with A.R.S. § 20-340.03(A)(9).</li> </ul> <p>As stated above in paragraph 3, the Department suggests updating both the statutory and rule sections.</p>

5. **Are the rules enforced as written?**    Yes     No

Rule	Explanation
<p>R20-6-601 Regulations Governing Bail Transactions</p>	<p>As already stated, the current statutes and rule do not reflect modern practices in this industry and are therefore difficult to enforce as written. The statutes should be updated and the rule should be updated afterward.</p>

6. **Are the rules clear, concise, and understandable?** Yes \_\_\_ No X

Rule	Explanation
R20-6-601 Regulations Governing Bail Transactions	Once the Arizona Legislature updates the Bail Bond Agents and Bail Recovery Agents Act (A.R.S. §§ 20-340 through 20-340.06), the Department can rewrite this rule to reflect the updated statutory scheme.
R20-6-602 Nationwide Inland Marine Definition	R20-6-602 is generally clear, concise and understandable. However, the Department plans to revise Rule 20-6-602 so that it is consistent with current rule writing style such as removing gender references. The Department based Rule 20-6-602 on the NAIC Model Regulation 701, versions of which are in effect in other jurisdictions.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes \_\_\_ No X

8. **Economic, small business, and consumer impact comparison:**

Rule	Explanation
R20-6-601 Regulations Governing Bail Transactions	<p>When the Department adopted Rule 20-6-601, no requirement existed for preparation of an economic impact statement; therefore, none is available for comparison.</p> <p>However, because of the antiquated nature of the rule and the statutes, a negative economic impact is presumed to the regulated community. In addition, the Department spends a disproportionate amount of time in light of the number of licensees holding this license type investigating complaints against these licensees which creates a cost the Department.</p>
R20-6-602 Nationwide Inland Marine Definition	<p>Marine and transportation is not an insurer type <i>per se</i>. Rather, marine and transportation are lines of business that certain property and casualty insurers have the authority to transact. When the Department adopted R20-6-602, no requirement existed for preparation of an economic impact statement; therefore, none is available for comparison.</p> <p>Any economic impact companies realize from issuing an inland marine and transportation policy is attributed to statutes imposing various requirements, not the requirement of the rule. There is no economic impact to consumers, small businesses, insurers filing inland marine and transportation forms, the Department, or other governmental agencies.</p>

<p>R20-6-604 through R20-6-604.10 Consumer Credit Insurance</p>	<p>R20-6-604 was effective June 7, 2002. Pursuant to the economic, small business and consumer impact summary completed when the rule was proposed, the Department reviewed the loss experience history on credit life and credit disability insurance business for the period of 1997 through 1999. Based on that review, the Department determined that it was necessary to lower the prima facie rates to maintain the same loss ratio.</p> <p>R20-6-604.03(B) requires the Director to determine, once every three years whether the prima facie rates require adjustment. On December 24, 2002, the Director issued an order which established prima facie rates for credit life and credit disability insurance (Docket Number 02A-139-INS). The Director has not issued a subsequent adjustment to prima facie rates for consumer credit insurance.</p>
<p>R20-6-607 Reasonableness of Benefits in Relation to Premium Charged</p>	<p>When the Department adopted Rule 20-6-607, no requirement existed for preparation of an economic impact statement; therefore, none is available for comparison. This rule was recently updated (24 A.A.R. 103, January 12, 2018).</p> <p>The rule relates to how much premium an insurer should reasonably be allowed to charge. An insurer is required to provide actuarial documentation, maintain records and evaluate data. Consumers benefit from the protection resulting from the requirement that benefits be reasonable in relation to premiums charged. The Department incurs costs for the review and evaluation of filings, but the Department's costs result from statutory requirements, rather than this rule.</p>

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?**

Rule	Explanation
<p>R20-6-601 Regulations Governing Bail Transactions</p>	<p>The 2015 5-Year Review Report stated: "The Department intends to submit a rulemaking to the Council in May 2017 if the Governor's Office grants an exception to the Moratorium. This rulemaking will require a significant amount of public outreach and participation. "</p> <p>This action has not been pursued but it is the Department's position that no rulemaking activity should be pursued until the statutory sections are updated.</p>

R20-6-602 Nationwide Inland Marine Definition	<p>The 2015 5-Year Review Report stated: “The Department recommends that Rule 20-6-602 continue in force. If the Governor’s Office grants the Department an exception to the Moratorium, the Department will submit a rulemaking to Council to remove “his” from 20-6-602(B)(6)(k) and correct the instances of passive voice in (B)(2), (B)(5)(j), (B)(5)(k), (B)(5)(p)(ii), (B)(5)(r)(1). The Department intends to open a docket in February 2017.”</p> <p>No action has been taken on updating this rule.</p>
R20-6-604 through R20-6- 604.10 Consumer Credit Insurance	<p>The 2015 5-Year Review Report did not propose any action except to number the definitions in R20-6-604. The Department did not propose any changes to R20-6-604.01 through R20-6-604.10.</p> <p>No action has been taken on updating this rule.</p>
R20-6-607 Reasonableness of Benefits in Relation to Premium Charged	<p>The 2015 5-Year Review Report stated: “The Department recommends that Rule 20-6-607 continue in force. The Department will submit a rulemaking to delete (K) and correct passive voice in the first paragraphs of 20-6-607(E) and (H) as well as 20-6-607(G), (H)(2), and (J). Provided the Department receives an exception to the Moratorium, it will make the changes suggested above in February 2017.”</p> <p>In 2018, the Department updated this rule to correct some reference errors and to update the subsection governing the reasonableness of benefits in relation to premium charged with respect to individual disability insurance policy forms. (24 A.A.R. 103, January 12, 2018) The Department raised the dollar thresholds for low-dollar premium policies, which effectively increased the number of policies that fall into a lower benefit-to-premium ratio. The effect of the rule change was to expand the number of policies that meet the low-dollar premium category to reflect pricing in the current insurance market. The rule change did not delete subsection (K).</p>

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:**

<b>Rule</b>	<b>Explanation</b>
R20-6-601 Regulations Governing Bail Transactions	Because of the outdated nature of both the statutory scheme and Rule 20-6-601, the Department believes that the rule no longer imposes the least burden and costs to bail bond agents.

R20-6-602 Nationwide Inland Marine Definition	Rule 20-6-602 is based on NAIC Model Regulation 701, Nationwide Inland Marine Definition, 1996 Version, which is the current version (Model Regulation). Versions of the Model Regulation are adopted in a majority of other states. The uniformity of the rule lessens property and casualty insurers' regulatory burden by defining the risks and coverages identified as marine, inland marine or transportation insurance.
R20-6-604 through R20-6- 604.10 Consumer Credit Insurance	Rules R20-6-604 through R20-6-604.10 are based on NAIC Model Regulation 370, Consumer Credit Insurance Model Regulation, 1994 version, which is the current version (Model Regulation). The Model Regulation protects the interests of debtors and the public by providing a system of rate, policy form, and operating standards for the transaction of consumer credit insurance. Versions of the Model Regulation are adopted in a majority of other states. The uniformity of the rule lessens consumer credit insurers' regulatory burden by providing uniform regulation of consumer credit insurance.
R20-6-607 Reasonableness of Benefits in Relation to Premium Charged	R20-6-607 is based on NAIC Model Regulation 134, Guidelines for Filing of Rates for Individual Health Insurance Forms, 2000 version, which is the current version (Model Regulation). The rule requires insurers to file rates and forms for individual disability insurance policies with the Department. There is a cost to the insurer in preparing the filings, including the actuarial memorandum in support of the rates and maintaining the experience records as required. The costs of compliance are largely within the company's control. The regulatory burden is low when compared to the benefit to Arizona consumers who pay premiums that are reasonable as compared to their policy benefits.

12. **Are the rules more stringent than corresponding federal laws? Yes \_\_\_ No X**

Not applicable.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

14. **Proposed course of action**

<b>Rule</b>	<b>Explanation</b>
R20-6-601 Regulations Governing Bail Transactions	The Department does not plan to complete any course of action on this rule until the Legislature updates The Bail Bond Agents and Bail Recovery Agents Act (A.R.S. §§ 20-340 through 20-340.06).
R20-6-602	The Department has no plan to complete any course of action on this rule

Nationwide Inland Marine Definition	at this time.
R20-6-604 through R20-6- 604.10 Consumer Credit Insurance	The Department has no plan to complete any course of action on this set of rules at this time although R20-6-604 would benefit from a title change to reflect that it and the following rules pertain to Consumer Credit Insurance.
R20-6-607 Reasonableness of Benefits in Relation to Premium Charged	In 2018, the Department updated this rule to correct some reference errors and to update the subsection governing the reasonableness of benefits in relation to premium charged with respect to individual disability insurance policy forms. (24 A.A.R. 103, January 12, 2018) The Department has no plan to take any further action on this rule at this time.

**Arizona Department of Insurance**

**5 YEAR REVIEW REPORT**

**Title 20. Commerce, Financial Institutions, and Insurance**

**Chapter 6. Department of Insurance**

**Article 19. Health Care Services Organizations Oversight**

**June 30, 2020**

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

General Statutory Authority: A.R.S. § 20-143 (All rules)

Specific Statutory Authority: A.R.S. § 20-1078

**2. The objective of each rule:**

<b>Rule</b>	<b>Objective</b>
R20-6-1901 Applicability	A Health Care Services Organization (HCSO) is Arizona's equivalent to a Health Maintenance Organization (HMO). Its statutory correlate is the Health Care Services Organizations Act (A.R.S. §§ 20-1051 through 20-1079). R20-6-1901 describes to whom and to what Article 19 applies.
R20-6-1902 Definitions	R20-6-1902 defines terms applicable to Article 19.
R20-6-1903 Documentation	R20-6-1903 requires the CEO to submit certain documents and information about the HCSO in writing and to have those items readily available for inspection.
R20-6-1904 Health Care Plan	R20-6-1904 requires a HCSO to provide the Department with a description of its proposed health care plan.
R20-6-1905 Geographic Area	R20-6-1905 requires a HCSO to provide the Department with a written description of the geographic area the HCSO serves.
R20-6-1906 Chief Executive Officer	R20-6-1906 sets out qualifications, duties and responsibilities for the HCSO's chief executive officer (CEO) and requires the HCSO to notify the Department within ten days of a change in CEO.
R20-6-1907 Medical Director	R20-6-1907 requires the HCSO to designate a physician as medical director and sets out the medical director's responsibilities.
R20-6-1908 Quality Assurance	R20-6-1908 requires the HCSO to provide enrollees with an effective quality assurance process and sets out the minimum standards for review and evaluation of covered services.
R20-6-1909 Evaluation of Network	R20-6-1909 requires the HCSO to have an effective process to evaluate the timeliness of its network.
R20-6-1910 Process for Referral, Prior Authorization, Pre-Certification, or Network Exception	R20-6-1910 requires a HCSO to have effective processes for referral, prior authorization, pre-certification and the handling of network exceptions.

R20-6-1911 HCSO Communication with Providers	R20-6-1911 requires the HCSO to develop an effective process for communicating with contracted providers.
R20-6-1912 Network Directories	R20-6-1912 requires HCSOs to publish network directories in both paper and electronic formats.
R20-6-1913 Demographic Information Reports	R20-6-1913 sets the deadlines for HCSOs to report certain demographic information about enrollees, contracted providers, contracted physicians and/or practitioners to the Department.
R20-6-1914 Access	R20-6-1914 sets deadlines for an enrollee's access to services or appointments for a HCSO.
R20-6-1915 Alternative Access	R20-6-1915 permits a HCSO to use alternative methods to provide enrollee access to specified services.
R20-6-1916 Availability Ratios	R20-6-1916 requires a HCSO to establish and maintain provider-to-enrollee ratios.
R20-6-1917 Geographic Availability in an Urban Area	R20-6-1917 requires a HCSO to meet distance or travel-time standards in urban areas.
R20-6-1918 Geographic Availability in a Suburban Area	R20-6-1918 requires a HCSO to meet distance or travel-time standards in suburban areas.
R20-6-1919 Geographic Availability in a Rural Area	R20-6-1919 requires a HCSO to meet distance or travel-time standards in rural areas.
R20-6-1920 Travel Requirements	R20-6-1920 requires a HCSO to reimburse enrollees for travel expenses incurred when the HCSO authorizes the enrollee to travel outside the service area because the services are not available in the area.
R20-6-1921 Enforcement Consideration	R20-6-1921 allows the Department to consider certain documentation provided by a HCSO when determining enforcement action or penalties against the HCSO.

3. **Are the rules effective in achieving their objectives?** Yes X No
4. **Are the rules consistent with other rules and statutes?** Yes X No
5. **Are the rules enforced as written?** Yes X No
6. **Are the rules clear, concise, and understandable?** Yes X No
7. **Has the agency received written criticisms of the rules within the last five years?** Yes     No X

**8. Economic, small business, and consumer impact comparison:**

Rule	Explanation
R20-6-1901 through R20-6-1921 Health Care Services Organizations Oversight	This Article became effective in 2005. When the rules were proposed, the Department believed that standards were minimal and would cause little disruption to HCSO operations. During the public comment period, no HCSO notified the Department that it believed the rule would increase its costs. The network adequacy protection afforded HCSO members, employers and care providers would not increase their costs, and in the case of consumers, would improve their access to healthcare services. To date, the Department has not identified any economic impact that is significantly different from that projected in the economic impact statement for the rulemaking. The passage of the Affordable Care Act has not changed the Department's assessment of any initial economic impact.

**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?**

Rule	Explanation
R20-6-1901 through R20-6-1921 Health Care Services Organizations Oversight	The Department did not propose any course of action for these rules in its 2015 5-Year Review 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:**

Rule	Explanation
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R20-6-1901 through R20-6-1921 Health Care Services Organizations Oversight	Because this Article was adopted in 2005 and because the Department has not received any comments from the HCSOs operating in Arizona requesting changes to these rules, the Department assumes that the rules impose a reasonable regulatory burden and cost in light of the existing business costs and the protection afforded to enrollees.
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**12. Are the rules more stringent than corresponding federal laws?      Yes \_\_\_ No X**

Federal Regulation 45 CFR 156.230(B), "Network adequacy standards" ([https://ecfr.io/Title-45/se45.1.156\\_1230](https://ecfr.io/Title-45/se45.1.156_1230)) corresponds to rules R20-6-1912, R20-6-1914, R20-6-1916, R20-6-1917, and R20-6-1919. None of the rules is more stringent than the federal law.

**13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

**14. Proposed course of action**

<b>Rule</b>	<b>Explanation</b>
R20-6-1901 through R20-6-1921 Health Care Services Organizations Oversight	These rules were enacted in 2005. The rules remain clear and effective. The only changes the Department would consider at this time would be to delete R20-6-1912(C) which is a requirement to publish a paper directory and to amend R20-6-1906(E) because requiring an HCSO to have its CEO located in the state is outdated. However, the Department has no plans to pursue these changes at this time.

## ARTICLE 4. TYPES OF INSURANCE COMPANIES

### **R20-6-401. Proxies, Consents, and Authorizations of Domestic Stock Insurers**

A. The Department incorporates by reference National Association of Insurance Commissioners Model Laws, Regulations and Guidelines, Volume III, pp. 490-1 through 490-40, Regulation Regarding Proxies, Consents, and Authorization of Domestic Stock Insurers, April 1995 (and no future editions or amendments), which is on file with and available from the Department of Insurance, 100 N. 15th Ave., Suite 102, Phoenix, AZ 85007-2624 and the National Association of Insurance Commissioners, Publications Department, 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197, modified as follows:

Section 1 A is modified to read: “No domestic stock insurer that has any class of equity securities held of record by 100 or more persons, or any director, officer or employee of that insurer, or any other person, shall solicit, or permit the use of the person’s name to solicit, by mail or otherwise, any proxy, consent, or authorization in respect to any class of equity securities in contravention of this regulation and Schedules A and B, hereby made a part of this regulation.

B. Domestic stock insurance companies shall comply with this Section as required under A.R.S. § 20-143(B).

#### **Historical Note**

Former General Rule 57-3. R20-6-401 recodified from R4-14-401 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3). New Section made by final rulemaking at 9 A.A.R. 1086, effective March 6, 2003 (Supp. 03-1). Section amended by final expedited rulemaking with an immediate effective date of September 16, 2019 (Supp. 19-3).

### **R20-6-402. Expired**

#### **Historical Note**

Former General Rule 69-19. R20-6-402 recodified from R4-14-402 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

### **Exhibit A. Expired**

#### **Historical Note**

Former General Rule 69-19. R20-6-402 recodified from R4-14-402 (Supp. 95-1). Exhibit expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

### **Exhibit B. Expired**

#### **Historical Note**

Former General Rule 69-19. R20-6-402 recodified from R4-14-402 (Supp. 95-1). Exhibit expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

### **R20-6-403. Expired**

#### **Historical Note**

Former General Rule 69-21. R20-6-403 recodified from R4-14-403 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

### **Appendix A. Expired**

#### **Historical Note**

R20-6-403, Appendix A recodified from R4-14-403, Appendix A (Supp. 95-1). Appendix expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

### **Appendix B. Expired**

#### **Historical Note**

R20-6-403, Appendix B recodified from R4-14-403, Appendix B (Supp. 95-1). Appendix expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

### **Appendix C. Expired**

#### **Historical Note**

R20-6-403, Appendix C recodified from R4-14-403, Appendix C (Supp. 95-1). Appendix expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

### **R20-6-404. Repealed**

#### **Historical Note**

Former General Rule 73-31; Repealed effective January 1, 1981 (Supp. 80-6). R20-6-404 recodified from R4-14-404 (Supp. 95-1).

**R20-6-405. Health Care Services Organization**

- A.** Authority. This rule is adopted pursuant to A.R.S. §§ 20-142, 20-143, 20-106 and 20-1051 through 20-1068.
- B.** Purpose. The purpose of this rule is to implement the legislative intent, as expressed in Chapter 128, Laws of 1973, to regulate and control Health Care Services Organizations in the State of Arizona, (including, but not limited to Certificate of Authority, licensing, fees for licensing, disciplinary procedures for agents and control of solicitation of members and evidences of coverage).
- C.** Scope
1. The scope of this Rule is the scope of A.R.S. Title 20 as it relates to Insurers or Hospital or Medical Service Corporations. As it relates to Health Care Services Organizations, the scope of this rule is the scope of Title 20, Chapter 1 and Title 20, Chapter 4, Article 9, as provided in A.R.S. § 20-1068. This rule is applicable to agents of persons, and persons operating or proposing to operate Health Care Services Organizations in the State of Arizona.
  2. The statutory authority for this rule, A.R.S. Title 20, Chapter 4, Article 9, does not provide for exemptions therefrom for persons or agents of persons subject thereto, and no such exemption is intended or should be presumed by this rule or any provision thereof.
- D.** Repeal. This rule does not repeal any known prior rule, memorandum, bulletin, directive or opinion on this subject matter. If such prior rule or directive exists and is in conflict herewith, the same is repealed hereby.
- E.** Definitions. As used in this rule, unless the context otherwise requires:
1. "Agent" has the meaning of A.R.S. § 20-282.
  2. "Basic Health Care Services" has the meaning of A.R.S. § 20-1051.
  3. "Certificate of Authority" means a Certificate authorizing operation of a Health Care Services Organization.
  4. "Director" means the Director of Insurance of the State of Arizona.
  5. "Enrollee" has the meaning of A.R.S. § 20-1051.
  6. "Evidence of coverage" has the meaning of A.R.S. § 20-1051.
  7. "Health Care Plan" has the meaning of A.R.S. § 20-1051.
  8. "Health Care Services" has the meaning of A.R.S. § 20-1051.
  9. "Health Care Services Organizations" has the meaning of A.R.S. § 20-1051.
  10. "Hospital Service Corporation" has the meaning of A.R.S. § 20-822.
  11. "Insurer" has the meaning of A.R.S. § 20-106(C).
  12. "License" means the authority to act as an agent of a Health Care Services Organization.
  13. "Medical Service Corporation" has the meaning of A.R.S. § 20-822.
  14. "Net charges" means the total of all sums prepaid by or for all enrollees, less approved refunds, adjustments and deductions, as consideration for Health Care Services of a Health Care Plan under an Evidence of Coverage.
  15. "Person" has the meaning of A.R.S. § 20-1051.
  16. "Physician and patient relationship" has the meaning of A.R.S. § 20-833.
  17. "Prepaid Health Plans" means any Health Care Plan to pay or make reimbursement for Health Care Services on a prepaid basis other than insured plans otherwise authorized and approved under A.R.S. Title 20.
  18. "Prepaid Group Practice Plan" means a person authorized and approved under A.R.S. Title 20.
  19. "Provider" has the meaning of A.R.S. § 20-1051.
  20. "Transact" has the meaning of A.R.S. § 20-106(A) and (B).
  21. "Unqualified agent" means a person directly or indirectly representing or acting for a Health Care Services Organization and not qualified as an agent thereof.
- F.** Certificate of Authority
1. Policy. Persons and agents of persons operating Health Care Services Organizations as of May 7, 1973, shall comply with the application requirements of A.R.S. § 20-1052 on or before August 7, 1973.
  2. A Certificate of Authority shall not be granted until the Director is satisfied that the requirements of A.R.S. §§ 20-1052, 20-1053 and 20-1054 are met and will continue to be met.
  3. An examination of an applicant at the expense of the applicant for a Certificate of Authority may be ordered to be made if the applicant is not a resident, is controlled by a non-resident, or maintains a head or principal office out of its service area, and will be ordered to be made if the applicant contracts with providers, or for services outside a reasonable area, or has contract obligations under its evidence of coverage that are, or appear to be, inequitable or unreasonable as to the enrollees.
- G.** Certificate of Authority – Application
1. A person required to be qualified to do business in this State as a Health Care Services Organization, pursuant to A.R.S. § 20-1052 shall file an application for Certificate of Authority on Department Form E-104.
  2. Applications failing to comply with the requirements of A.R.S. § 20-1053 will be denied without prejudice to the filing of an application complying with such requirements.
  3. Health Care Services Organizations operating in this State as of May 7, 1973, and having submitted a sufficient application for Certificate of Authority as required by this rule, including the disclosure filings of paragraph (7) of this subsection, may continue to operate as an organization until the Director acts upon the application.
  4. The application for Certificate of Authority shall be verified by an authorized and qualified officer of the Health Care Services Organization.

5. The application for Certificate of Authority shall be accompanied by the fees required for a hospital or medical service corporation by A.R.S. § 20-167 and a tax return or returns on Department Form E-162, for the calendar year previous to the calendar year of application during which the applicant has done business in this State as a Health Care Services Organization, and the amount of tax due thereon after the effective date hereof, if any, as provided by A.R.S. § 20-1060. The filing of such returns or payment of such tax may be adjusted or waived by the Director upon application and affirmative showing in writing therefor justifying the adjustment or waiver.
  6. The Director may, upon written request accompanied by supporting documentation justifying the request, authorize the substitution of public information filed by an applicant under similar statutes or regulations in another state, or under federal requirements, or may waive such information or additional information.
  7. Pursuant to the authority of A.R.S. § 20-1053(13), the Director finds that biographical information disclosing the past activities, employment and financial transactions or principals, principal officers, controlling persons, and agents of applicant Health Care Services Organizations is necessary for the protection of residents of this State.
  8. Pursuant to the authority of A.R.S. § 20-1053(13), the Director finds that records of fingerprints of principal officers and agents of applicant Health Care Services Organizations may be necessary for the protection of citizens of this state and may be required prior to licensing or approval of a Certificate of Authority.
- H.** Certificate of Authority – Application. The application for Certificate of Authority shall be accompanied by a power of attorney as required by A.R.S. § 20-1053(A)(10) on Department Form E-128.
- I.** Certificate of Authority – Grounds for denial
1. Policy. A Certificate of Authority to operate a Health Care Services Organization shall not be granted until the Director is satisfied by the affirmative showing, verified by the applicant, that all of the requirements of A.R.S. §§ 20-1052, 20-1053 and 20-1054 are met and will continue to be met.
  2. Guidelines. The guidelines and standards for determination of appropriate mechanisms to achieve an effective Health Care Plan include, but are not limited to the following:
    - a. Ability to provide basic Health Care Services without undue restrictions, limitations, discrimination, unreasonable fee schedules, or unreasonable administrative costs; an affirmative showing that the form of organization does not evidence any coercion, duress or other compulsion over members;
    - b. The form of organization does not lend itself to practices prohibited by A.R.S. §§ 20-441 through 20-459, and
    - c. The evidence of coverage does not contain provisions or statements which are unjust, inequitable, misleading, deceptive or untrue or encourage misrepresentation.
  3. Failure to pay obligations. Applications for a Certificate of Authority to operate a Health Care Services Organization may be denied or rejected if the applicant has failed after 30 days from the entry of final judgment, to pay obligations within the provisions of an evidence of coverage issued by such applicant. The provisions of this Section may be waived by the Director upon a clear affirmative showing that the applicant is defending an action or appealing a judgment at law or equity in a court of this state, or is required to obtain a Certificate of Authority so as to maintain such action.
  4. Unauthorized agents. Applications for a Certificate of Authority to operate a Health Care Services Organization may be denied or rejected, after stated cause and opportunity to answer, if the applicant has, 90 days after the effective date, permitted transactions by an unauthorized agent.
- J.** Solicitation requirements
1. Forms for evidences of coverage, advertising matter, sales material and amendments thereto, will not be approved until the Director is satisfied by filing of Department Form P-107 accompanying the filing of such form and the payment of necessary fees, that the requirements of A.R.S. §§ 20-1057, 20-1054(2), and 20-1061 have been met and will continue to be met.
  2. Each Health Care Services Organization shall maintain at its home or principal office a complete file containing every printed, published or prepared advertisement brochure, form letter of solicitation, evidence of coverage, certificate, agreement or contract, and a copy of all radio and television forms of the above hereafter disseminated in this or any other State with a notation attached to each such solicitation or inducement to indicate the manner and extent of distribution and the date of approval by the Department of such solicitation. Such advertising file shall be maintained for a period of not less than three years.
- K.** Annual report. Each Health Care Services Organization required to file an annual statement, shall, on or before March 1 of each year, file with the Director, together with its annual statement on Department Form E-13, a certificate executed by an authorized officer of the Health Care Services Organization stating that to the best of his knowledge, information and belief, all written solicitations disseminated during the preceding statement year complied or were made to comply with the provisions of Title 20, Chapter 4, Article 9, and this rule, and that no forms of solicitation were disseminated without the prior approval of the Director.
- L.** Taxes
1. All Health Care Services Organizations operating and transacting business in the State of Arizona shall on or before March 1 and with the filing of the Annual Report, file a tax return on Department Form E-162, and pay the tax due on such return pursuant to A.R.S. § 20-1060.
  2. A tax return required to be filed and filed with an application for Certificate of Authority may cover a period of time of less than a calendar year as specified in the return and approved by the Director. Annual tax returns required to be filed coincident with the annual report shall be for the full calendar year next preceding the date of filing the annual report.

3. Net charges, as in this rule defined, shall represent the net charges received during the calendar year next preceding the date of filing the annual report and tax return.

**M. Deposit requirements**

1. In the event a Health Care Services Organization determines to maintain statutory deposits by a surety bond, such surety bond shall be in form as approved by the Director guaranteeing the payment of Health Care Services furnished to enrollees, and shall be deposited with the State Treasurer.
2. In the event a Health Care Services Organization determines to maintain the deposit requirements by filing securities with the State Treasurer, a full and complete statement of the securities proposed to be deposited, together with sufficient information to permit a determination of eligibility of such securities shall be filed with the Director on Department Form E-123, and such securities shall not be deposited until such securities are approved by the Director in writing.
3. No securities deposited as herein provided shall be exchanged or substituted for similar securities, except upon the prior written approval of the Director.
4. Health Care Services Organizations claiming to be exempt from the deposit requirement, pursuant to A.R.S. § 20-1055(f) shall submit to the Director an affirmative showing or certification executed by an authorized federal, state or municipal government or political subdivision thereof, demonstrating operational commitments equivalent to the statutory deposit requirements.
5. Statutory deposits shall not be withdrawn or a surety bond cancelled until all contingent and perfected liens, including judgments, debts, and other liabilities for payment of Health Care Services to which the enrollee is entitled under the evidence of coverage shall have been paid and the Director has given his authority in writing to withdraw such deposits or cancel such bonds.

**N. Reserve requirements.** Reserves required by A.R.S. § 20-1056 shall be deposited or maintained as cash, as Certificates of Deposit, or as securities eligible for investment of the capital of domestic insurers, pursuant to A.R.S. §§ 20-537 and 20-538.

**O. Insurers and hospital and medical service corporations – Certificate of Authority**

1. Insurers, Hospital Service Corporations, Medical Service Corporations, and Hospital and Medical Service Corporations, holding current Certificates of Authority to do business in this state may organize and operate Health Care Services Organizations jointly or severally without compliance with the deposit and reserve requirements of the statute, if the application contains an affirmative showing that the applicant organization has complied with comparable provisions of Title 20, and is an appropriate mechanism to achieve an effective Health Care Plan.
2. The provisions of statute and this rule applying to Certificates of Authority and Application therefor, shall apply to all insurers, Hospital Service Corporations, Medical Service Corporations, and Hospital and Medical Service Corporations doing business in this state.
3. Organizations claiming exemption or partial exemption pursuant to A.R.S. § 20-1063(c) shall file with the Director simultaneously with the application for Certificate of Authority, a statement affirmatively showing that the applicant has complied with provisions of Title 20 A.R.S. comparable to or more restrictive than the provisions of Title 20, Chapter 4, Article 9, and shall have received the written approval of the Director for such exemption or partial exemption.

**P. Application, examination and licensing of agents**

1. No agent of a Health Care Services Organization shall be eligible for transactions of a Health Care Services Organization, unless, prior to making any solicitation or transaction, he has been appointed agent by a Health Care Services Organization holding a current valid Certificate of Authority and has been licensed as herein provided. Persons directly or indirectly representing or acting for a Health Care Services Organization and not licensed as herein provided, or otherwise qualified under A.R.S. Title 20, shall be an unqualified agent.
2. Any person applying for a license as an agent of a Health Care Services Organization shall do so by filing with the Department of Insurance the following:
  - a. An application for such license on a form approved by the Director of the Department of Insurance;
  - b. The required fees for such license;
  - c. Such additional information as the Director may deem necessary.
3. The licensing of an agent of a Health Care Services Organization shall not become effective until such applicant shall have satisfactorily passed a written examination in accordance with A.R.S. § 20-292 as supplemented by A.R.S. § 20-167.
4. The examination shall be given in such places and at such times as the Director shall from time to time designate.
5. The form of examination and the manual may be altered and amended from time to time, so as to represent a fair test of the applicant's qualifications.
6. Every applicant for license shall satisfactorily complete the examination given with a grade of at least 70%, or such other percentage as may be fixed from time to time by the Director prior to the examination commensurate with the nature of the examination given.
7. License and examination fees shall be in accordance with A.R.S. § 20-167.
8. Report of the results of any examination given pursuant to this rule shall be mailed to the applicant and to the applicant's Health Care Services Organization at the address shown on the application.
9. Except as modified by this rule, the provisions for examination, licensing, annual fees and disciplinary procedures of Chapter 2, Article 3 of Title 20, shall apply.

10. Any agent licensed in this state shall immediately report to the Director any judgment or injunction entered against him on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or other violation affecting his license and all complaints or charges of misconduct lodged with his employer, any public agency of the state, or another state.
11. The Director may reject any application or suspend or revoke, or refuse to renew any agent's license for inducements or statements which are unjust, unfair, inequitable, misleading or deceptive, or which encourage misrepresentation, or are untrue or misleading.
12. The rules, standards and guidelines governing any proceeding relating to the suspension or revocation of the license of a life insurance agent, where applicable, shall also govern any proceedings for suspension or revocation of the license of an agent of a Health Care Services Organization.
13. Renewal of a license of an agent shall follow the same procedure as heretofore established for renewal of insurance agents' licenses in this state.
14. Renewal of a license of an agent shall follow the same procedure as heretofore established for renewal of insurance agents' licenses in this state.

**Q. Forms**

1. The forms prescribed by this rule and the instructions applicable thereto are adopted as requirements of the Director and necessary for the protection of citizens of this state. Such forms, instructions, manuals or examinations are those currently in use, but the same may be amended without reference to this rule and when approved as amended are incorporated in this rule by reference. The form of manual or examination of agents, or any form adopted by the Director may be reproduced for the purpose of reporting or for other purposes.
2. For good cause shown, the Director may authorize the filing of forms and reports on dates other than required by this rule, if applied for in writing not less than 10 days prior to the due date of such report and statement, exhibit, return or accounting.

**R. Severability.** In any provision of this rule or the forms, statements, returns or reports made part of this rule, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions of applications of this rule, which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**S. Effective date.** This rule became effective on the 7th day of May, 1973. Amendments to this rule shall become effective upon filing with the Secretary of State.

**Historical Note**

Former General Rule 73-33; Amended subsections (E), (P), (R), (S), and (T) effective August 12, 1981 (Supp. 81-4). R20-6-405 recodified from R4-14-405 (Supp. 95-1).

**R20-6-406. Expired**

**Historical Note**

Adopted effective May 18, 1978 (Supp. 78-3). R20-6-406 recodified from R4-14-406 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**R20-6-407. Service Companies**

**A. Scope.** This rule shall apply to all service companies except those which are exempt under A.R.S. § 20-1095.02.

**B. Definitions.**

1. "Gray Market" auto means an imported motor vehicle which has not been certified for all safety, emission, and other federal and state standards prior to the arrival of the vehicle into the United States.
2. "Service" within the meaning of Article 11, Chapter 4, Title 20 includes reimbursement for towing, car rental, lodging or travel breakdown expenses.
3. The "Contract Holder" means the consumer as defined in A.R.S. § 20-1095(1).

**C. Application for service company permit.**

1. The application for a service company permit under this rule shall be on the form designated by the director which shall contain the following information:
  - a. The name of applicant;
  - b. Arizona address of applicant;
  - c. The home office address of applicant;
  - d. Type of entity (e.g. corporation, partnership);
  - e. Type of equipment to be serviced;
  - f. Fiscal year of applicant;
  - g. A list of suspensions, revocations or other disciplinary or rehabilitative actions against the service company in this or any other jurisdiction. The application form shall be signed under oath and acknowledged by the chief executive officer, chairman of the board of directors, or other person having power of attorney, in which case the power of attorney shall be attached.
2. The following items shall be attached to the application form and shall complete the application:
  - a. A copy of the service company's most recent financial statement, sworn to and certified by the owner, duly elected officers, or a certified public accountant.

- b. Evidence of having deposited cash or acceptable securities pursuant to A.R.S. § 20-1095.04.
  - c. Surety bond in lieu of deposit under subparagraph (b) on a form acceptable to the Director.
  - d. Initial nonrefundable permit fee of \$100 with each new application.
  - e. A biographical affidavit, on a form approved by the director, for each officer, director, manager or person owning 25% or more of the service company, and for each officer, director, manager or person owning 25% or more of an entity which owns the service company.
  - f. A copy of the service company's service contract, application, claim forms, brochures, and other forms used in connection with the sale.
- D. Deposit. A service company providing a deposit of cash or alternatives to cash pursuant to A.R.S. § 20-1095.04 shall maintain the deposit in the amount required and such deposit shall not be encumbered. The deposit shall not be released except pursuant to one of the following:
- 1. The service company provides a bond or mechanical reimbursement policy which covers the outstanding service contract liabilities.
  - 2. All outstanding service contracts and liabilities thereunder have been assumed by a service company, in good standing, with the approval of the director, acknowledged by the assuming service company's administrator and acknowledged by endorsement by the mechanical reimbursement insurer or surety.
  - 3. Evidence satisfactory to the director that:
    - a. All outstanding service contracts and liabilities have expired or been cancelled in accordance with the service contract terms,
    - b. That all claims have been settled,
    - c. That there is no reason to believe there are any unreported claims, and
    - d. That the service company is financially able and agrees to be financially responsible for any valid unreported claims.
- E. The service contract, approval of forms.
- 1. Each service company holding a service company permit or applying for such permit shall submit all contract, claim and application forms, brochures and other advertising material to the Director for approval not less than 30 days prior to the proposed effective date thereof. No form, brochure or other printed material may be used until approved by the Director or has been on file with the Director more than 30 days.
  - 2. No service contract shall be approved unless it contains a provision permitting the cancellation of the contract. The cancellation provision shall provide for a pro rata refund after deducting for administrative expenses associated with the cancellation. No claim incurred or paid shall be deducted from the amount to be returned. The cancellation provision shall not contain both cancellation penalty and a cancellation fee.
  - 3. No service contract or application shall be approved unless it:
    - a. Is written in nontechnical, readily understood language, using words with common everyday meanings;
    - b. Provides for the performance of services within a reasonable period of time of the request for such services by the holder of the contract;
    - c. Discloses on the face of the application and the contract:
      - i. The name, address and telephone number of the service company;
      - ii. The name, address and telephone number of the service contract administrator, if any;
      - iii. The name of the individual who sold the service contract.
    - d. Clearly, conspicuously and plainly states:
      - i. The services to be performed by the service company and the terms and conditions of such performance;
      - ii. The service fee or deductible charge, if any, to be charged, or applied, for service calls and/or each covered repair.
      - iii. Each of the systems, products, appliances and components covered by the contract;
      - iv. The period during which the contract will remain in effect;
      - v. All limitations respecting the performance of services, including any restrictions as to time periods when services may be required or will be performed;
      - vi. The cost of the service contract;
      - vii. Those specific items or components which are excluded from coverage in large bold type;
      - viii. The conditions, if any, under which the service contract or coverage may be reinstated after coverage has been voided by acts or omissions by the service contract holder;
      - ix. The material acts or omissions by the contract holder which cancel or void coverage;
  - 4. No service contract shall be approved if:
    - a. The coverage may be cancelled or voided due to acts or omissions of the service company, its assignees or subcontractors for their failure to provide correct information of their failure to perform the services or repairs provided in a timely, competent, workmanlike manner;
    - b. Parts or components repaired or replaced under the service contract are excluded;
    - c. The contract can be cancelled or voided by the service company or its representatives for the following reasons including but not limited to:
      - i. Pre-existing conditions;
      - ii. Prior use or unlawful acts relating to the product;

- iii. Misrepresentation by either the service company or its subcontractors;
  - iv. Ineligibility for the program, including gray market, high performance and GM diesel autos.
- F. Disapproval of contracts, applications or advertising. The director may disapprove any service contract, application or advertising material that is in violation of this rule by issuing an order specifying in what respect the service contract, application or advertising material violates this rule. Any person aggrieved by such an order can demand a hearing thereon in accordance with A.R.S. § 20-1095.09.
- G. Permit expiration; renewal.
  1. Each permit issued pursuant to this rule shall expire at midnight on the last day of the service company's fiscal year. Thereafter, the service company shall have 90 days in which to file its completed renewal application including its certified financial statement and pay the renewal fee of \$100. A permit shall remain in effect upon the service company's timely payment of the renewal fee, timely filing of its annual financial statement and completed renewal application. An incomplete application will not be considered received until it is complete.
  2. Any late filing of the renewal application, financial report or late payment of the renewal fee shall be subject to a late fee of \$25 per day. Such late fee shall not release the service company of liability for other violations of these rules or other laws.

**Historical Note**

Adopted effective April 30, 1981 (Supp. 81-2). Former Section R4-14-407 repealed and a new Section R4-14-407 adopted effective July 2, 1987 (Supp. 87-3). R20-6-407 recodified from R4-14-407 (Supp. 95-1).

**R20-6-408. Expired**

**Historical Note**

Former Section R4-14-408 renumbered as Section R4-14-409; a new Section R4-14-408 adopted effective July 15, 1987 (Supp. 87-3). R20-6-408 recodified from R4-14-408 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 3106, effective October 9, 2018 (Supp. 18-4).

**R20-6-409. Hospital, Medical, Dental, and Optometric Service Corporations**

- A. Applicability. This rule applies to all subscription contracts issued by hospital, medical, dental and optometric service corporations.
- B. Subscription contract provision. Subscription contracts of hospital, medical, dental and optometric service corporations subject to the provisions of Article 3, Chapter 4 of Title 20, A.R.S., shall meet the requirements of the following rules:
  1. R20-6-201. Advertisements of disability insurance.
  2. R20-6-209. Unfair sex discrimination.
  3. R20-6-210. Group coverage discontinuance and replacement.
  4. R20-6-213. Unfair discrimination on the basis of blindness, partial blindness, or physical disability.
  5. R20-6-216. Life and disability insurance policy language simplification.
  6. R20-6-302. Valuation of reserves for disability policies.
  7. R20-6-606. Medicare supplement insurance disclosure and minimum standards.
  8. R20-6-607. Reasonableness of benefits in relation to premium charged.
- C. Severability. If any provision of this rule or the application thereof to any person or circumstance is for any reason held invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

**Historical Note**

Adopted effective July 9, 1982 (Supp. 82-4). Former Section R4-14-408 renumbered without change as Section R4-14-409 effective July 15, 1987 (Supp. 87-3). R20-6-409 recodified from R4-14-409 (Supp. 95-1).

**ARTICLE 5. THE INSURANCE CONTRACT**

**R20-6-501. Ten-day Period to Examine Disability Insurance Policy**

For the purpose of implementing A.R.S. §§ 20-442, 20-443, 20-826, 20-1111 and 20-1113 and to make more specific the regulation therein provided relative to policies of individual disability insurance (accident and sickness, hospitalization, medical, surgical and loss of time) issued in the State of Arizona and further to provide satisfactory public remedy against the hazards of misunderstanding by an applicant, of deception and coercion by an agent and of certain policy exclusions and limitations that cheapen the value of coverage, the Insurance Department of Arizona adopts the following rule:

1. Each policy of individual disability insurance, except one for which no provision for renewal is made, issued for delivery in the State of Arizona on or after October 1, 1961, by an insurance company or by a hospital or medical service corporation shall have printed on the first page thereof or attached thereto or endorsed thereupon in prominent style a notice declaring that, during a period of 10 days (or, at the insurer's option, a longer period) from the date of delivery to the policyholder, such policy may be returned for cancellation to the insurer at its home office (or, at the insurer's option, to its branch office or to the agent through whom it was purchased) and declaring further that in the event of such return the insurer will refund the entirety of any premium paid therefor, including any policy fees or other charges, and that the policy shall be deemed void from the beginning and that the parties shall be returned to their original position as if no policy had been issued.
2. The Insurance Department does not specify the particular language the notice shall contain but prefers usage of a phraseology approximately along the lines of either the longer (Form A) or shorter (Form B) sample below:

**Sample Form A**

**NOTICE OF TEN-DAY RIGHT TO EXAMINE POLICY**

The \_\_\_\_\_ Insurance Company urges you to read this policy carefully and trusts that upon doing so you will fully understand, and will be pleased with, its coverage. If, however, questions arise or information is desired, do not hesitate to consult the selling agent. In addition, should the policy for any reason be unsatisfactory, by surrendering it within ten days following receipt to our office at \_\_\_\_\_ or to the selling agent, immediately full premium will be refunded and the policy will be cancelled and deemed void and as never in force and effect.

**Sample Form B**

**IMPORTANT NOTICE**

If for any reason this policy is unsatisfactory, it may be returned for cancellation within ten days following receipt – in which case the entire premium will be refunded.

**Historical Note**

Former General Rule 61-7. R20-6-501 recodified from R4-14-501 (Supp. 95-1).

## ARTICLE 6. TYPES OF INSURANCE CONTRACTS

### R20-6-601. Regulations Governing Bail Transactions

#### A. General provisions

1. Effective date
  - a. These regulations are effective November 1, 1960. On and after date, no bail transaction or severable portion thereof shall be conducted, directly or indirectly except in full conformity herewith.
  - b. No surety insurer shall furnish for use and no bail bond agent shall use any forms or documents which contain any provisions contrary to these regulations on or after the effective date hereof.
2. Authority. Authority for these regulations is A.R.S. §§ 20-142, 20-143 and 20-257 and A.R.S. Chapter 2, Article 3.
3. Public interest served. These regulations serve the public interest by prohibiting inequities in bail transactions and by establishing standards of licensing and conduct for bail bond agents.
4. Regulations as severable. These regulations shall be construed as severable, such that, where one or more Sections are held invalid, such remaining Sections will not be adversely affected.
5. Penalty. Violation of these regulations will subject the guilty party to the penalties of A.R.S. §§ 20-114, 20-220 and 20-316 and to the enforcement procedures of A.R.S. §§ 20-152 and 20-160 through 20-166.

#### B. Definitions

1. "Bail transaction" defined. As used in these regulations, the term "bail transaction" includes solicitation and inducement, preliminary negotiation and effectuation of a contract of surety insurance and the transaction of matters subsequent thereto and arising therefrom – all in connection with the release of persons arrested or confined.
2. "Bail bond agent" defined. As used in these regulations, the term "bail bond agent" means any person who engages in a bail transaction on behalf of a surety insurer or representative thereof.
3. "Arrestee" defined. As used in these regulations, the term "arrestee" means any person arrested or detained whose release on bail is solicited or procured or concerning whose release negotiations are commenced.
4. "Director" defined. As used in these regulations, the term "Director" means the Director of Insurance of the state.

#### C. Licensing

1. Application for license. Each application for original or renewal license as a bail bond agent shall be on a form furnished by the Director, and each applicant for such license shall furnish such supplementary information and supporting statements as the Director may require.
2. Prohibited associations. A bail bond license shall not be issued to, renewed for or maintained by any person who associates regularly with criminals, gamblers or persons of poor repute – except to the extent such association is required by business or professional duty and responsibility.
3. Transactions by unlicensed persons prohibited. No bail bond agent shall directly or indirectly permit any person on his behalf to solicit or negotiate bail transactions unless such person is duly licensed by the Director.
4. Employees. Employees of bail bond agents performing only clerical duties need not be licensed hereunder and shall be deemed not engaged in bail transactions.

#### D. Conduct of bail bond agents

1. Disclosure of business. Every bail bond agent shall conduct his business in such a manner that the public and those dealing with him shall be aware of the capacity in which he is acting.
2. Control of employees. A bail bond agent shall exercise direct supervision over his employees and keep informed of their actions as his employees.
3. Prohibited employees. No bail bond agent shall have in his employ at any time any criminal, gambler or person of poor repute.
4. Acting for attorney. No bail bond agent shall receive, or collect for an attorney any money or other item of value for attorney's fee, costs or any other purpose on behalf of an arrestee, unless a receipt is given therefor.
5. Informants prohibited. No bail bond agent shall for any purpose, directly or indirectly, enter into an arrangement of any kind or have an understanding with a law enforcement officer, with a newspaper employee, with a messenger service or employee thereof, with a trusty in a jail, with other person incarcerated in a jail, or with any person whatever, to inform or notify any bail bond agent directly or indirectly of:
  - a. The existence of a criminal complaint;
  - b. The fact of an arrest; or
  - c. The fact that an arrest of any person is pending or contemplated; or
  - d. Any information pertaining to matters set forth in (a), (b), and (c) hereof or to the persons involved therewith.
6. Compliance with rules of public authority. No bail bond agent shall solicit any person in a bail transaction in a prison or jail or other place of detention, court or public institution connected with the administration of justice unless said bail bond agent has fully complied with every rule, regulation and ordinance issued by each public authority governing the conduct of persons in or about said premises.
7. Representations to public authority
  - a. No bail bond agent shall make any misleading or untrue representation to a court or to a public official with respect to a bail transaction, nor for the purpose of avoiding or preventing a forfeiture of bail or of having set aside a forfeiture which has occurred.

- b. Every bail bond agent shall truthfully and fully answer every question asked him by the Director or his representative respecting his bail transactions and matters relating to the conduct of his bail business. Any bail bond agent may have his attorney present when he answers any such question.
  8. Maintenance of records. Every bail bond agent shall keep complete records of all business done under authority of his license. Such records shall be open to inspection or examination by the Director or his representatives at all reasonable times at the principal place of business of the bail bond agent as designated in his license.
- E. Charges, collateral, refunds and rebates**
1. Rates
    - a. No bail bond agent shall issue or deliver a bail bond except at the premium rates most recently filed and approved by the Director in accordance with A.R.S. § 20-357.
    - b. Every bail bond agent shall post the premium rates of the surety insurer he represents in a conspicuous manner at his place of business.
  2. Charges permitted. No bail bond agent shall, in any bail transaction or in connection therewith, directly or indirectly, charge or collect money or other valuable consideration from any person except for the following purposes:
    - a. To pay the premium at the rates established by the surety insurer and approved by the Director.
    - b. To provide collateral.
    - c. To reimburse himself for actual and reasonable expenses incurred in connection with the individual bail transaction, including:
      - i. Guard fees after the first 12 hours following release of an arrestee on bail;
      - ii. Notary fees, recording fees, necessary long distance telephone expenses, telegram charges, and travel expenses for other than local community travel.
      - iii. Any other actual expenditure necessary to the bail transaction which is not usually and customarily incurred in connection with the ordinary operation and conduct of bail transactions.
  3. Delivery of documents to arrestee
    - a. Every bail bond agent shall, at the time of obtaining the release of an arrestee on bail or immediately thereafter, deliver to such arrestee or to the principal person with whom negotiations were made, if other than the arrestee, a copy of the bail bond premium agreement, which shall include:
      - i. The name of the surety insurer and the name and business address of the bail bond agent.
      - ii. The amount of bail and the premium thereof.
    - b. The bail bond agent shall also deliver at such time a statement detailing all charges in addition to the premium, the amount received on account, the unpaid balance if any, and a description of and a receipt for any collateral received.
  4. Collateral
    - a. Any bail bond agent who receives collateral in connection with a bail transaction shall do so in a fiduciary capacity and, prior to any forfeiture of bail, shall keep such collateral separate and apart from any other funds, assets or property of such bail bond agent.
    - b. Any collateral received shall be returned to the person who deposited it with the bail bond agent or any assignee as soon as the obligation, the satisfaction of which was secured by the collateral, is discharged. Where such collateral has been deposited to secure the obligation of a bond, it shall be returned immediately upon the entry of any order by an authorized official by virtue of which liability under the bond is terminated, or, if any bail bond agent fails to cooperate fully with any authorized official to secure the termination of such liability, immediately upon the accrual of any right to secure an order of termination of liability.
    - c. When such collateral has been deposited as security for unpaid premium or charges and, if such premium or charges remained unpaid at the time of exoneration and after demand therefor has thereafter been made by the bail bond agent, collateral other than cash may be levied upon in the manner provided by law and cash collateral up to the amount of such unpaid premium or charges may be applied in payment thereof.
    - d. If collateral received by a bail bond agent is in excess of the bail forfeited, such excess shall be returned to the depositor immediately upon application of the collateral to the forfeiture subject, however, to any claim of the bail bond agent for unpaid premium or charges as provided in subparagraph (c) of paragraph (4) of subsection (E), or as agreed to in writing by the bail bond agent and arrestee or his indemnitor.
  5. Premium refund upon surrender of arrestee. No bail bond agent shall surrender an arrestee to custody prior to the time specified in the bail bond for the appearance of the arrestee, or prior to any other occasion when the presence of the arrestee in court is lawfully required, without returning all premium paid therefor, unless as a result of judicial action, or material misrepresentation by the arrestee or his indemnitor with respect to the execution of the bail bond agreement, or a material and substantial increase in the hazard assumed. Failure of the arrestee to pay the premium, or charges permitted under these regulations or any part thereof, and failure to furnish collateral required by the bail bond agent, shall not be considered a material and substantial increase in the hazard assumed.
  6. Rebating prohibited. No bail bond agent shall pay or allow in any manner, directly or indirectly, to any person who is not also a bail bond agent any commission or valuable consideration on or in connection with a bail transaction. This Section shall not prohibit payments by a bail bond agent to an unlicensed person of charges by such persons for services of the kind specified in paragraph (2) subsection (E) of this Section.

**Historical Note**

Former General Rule 60-5. R20-6-601 recodified from R4-14-601 (Supp. 95-1).

**R20-6-602. Nationwide Inland Marine Definition**

**A.** Applicability. This rule applies to risks and coverages which may be classified or identified as Marine, Inland Marine or Transportation insurance but shall not be construed to mean that the kinds of risks and coverages are solely Marine, Inland Marine or Transportation insurance in all instances.

This rule shall not be construed to restrict or limit in any way the exercise of any insuring powers granted under charters and license whether used separately, in combination or otherwise.

**B.** Marine and/or transportation policies may cover under the following conditions:

1. Imports.

a. Imports may be covered wherever the property may be and without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation.

b. An import, as a proper subject of marine or transportation insurance, shall be deemed to maintain its character as such so long as the property remains segregated in such a way that it can be identified and has not become incorporated and mixed with the general mass of property in the United States, and shall be deemed to have been completed when such property has been:

i. Sold and delivered by the importer, factor or consignee; or

ii. Removed from place of storage and placed on sale as part of the importer's stock in trade at a point of sale or distribution; or

iii. Delivered for manufacture, processing or change in form to premises of the importer or of another for any such purposes.

2. Exports.

a. Exports may be covered wherever the property may be located without restriction as to time, provided the coverage of each issuing company includes hazards of transportation.

b. An export, as a proper subject of marine or transportation insurance, shall be deemed to acquire its character as such when designated or while being prepared for export and retain that character unless diverted for domestic trade, and when so diverted, the provisions of this rule respecting domestic shipments shall apply, provided, however, that this provision shall not apply to long established methods of insuring certain commodities, e.g., cotton.

3. Domestic shipments.

a. Domestic shipments on consignment, for sale or distribution, exhibit, or trial, or approval or auction, while in transit, while in the custody of others and while being returned, provided the coverage of each issuing company includes hazards of transportation, and further provided that in no event shall the policy cover domestic shipments on consignment on premises owned, leased or operated by the consignor.

b. Domestic shipments not on consignment, provided the coverage of the issuing companies includes hazards of transportation, beginning and ending within the United States, and further provided that such shipments shall not be covered at manufacturing premises nor after arrival at premises owned, leased or operated by assured or purchaser.

4. Bridges, tunnels and other instrumentalities of transportation and communication excluding buildings, their improvements and betterments, their furniture and furnishings, fixed contents and supplies held in storage. The foregoing includes:

a. Bridges, tunnels, other similar instrumentalities, including auxiliary facilities and equipment attendant thereto.

b. Piers, wharves, docks, slips, dry docks and marine railways.

c. Pipelines, including on-line propulsion, regulating and other equipment appurtenant to such pipelines, but excluding all property at manufacturing, producing, refining, converting, treating or conditioning plants.

d. Power transmission and telephone and telegraph lines, excluding all property at generating, converting or transforming stations, substations and exchanges.

e. Radio and television communication equipment in use as such including towers and antennae with auxiliary equipment, and appurtenant electrical operating and control apparatus.

f. Outdoor cranes, loading bridges and similar equipment used to load, unload and transport.

5. Personal Property Floater Risks covering individuals and/or generally

a. Personal Effects Floater Policies

b. The Personal Property Floater

c. Government Service Floater

d. Personal Fur Floaters

e. Personal Jewelry Floaters

f. Wedding Present Floaters for not exceeding 90 days after the date of the wedding.

g. Silverware Floaters.

h. Fine Arts Floaters, covering paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value or artistic merit.

i. Stamp and Coin Floaters.

j. Musical Instrument Floaters. Radios, televisions, record players and combinations thereof are not deemed musical instruments.

- k. Mobile Articles, Machinery and Equipment Floaters, excluding vehicles designed for highway use and auto homes, trailers and semi-trailers except when hauled by tractors not designed for highway use, covering identified property of a mobile or floating nature pertaining to or usual to a household. Such policies shall not cover furniture and fixtures not customarily used away from premises where such property is usually kept.
  - l. Installment Sales and Leased Property Policies covering property pertaining to a household and sold under conditional contract of sale, partial payment contract or installment sales contract or leased, but excluding motor vehicles designed for highway use. Such policies must cover in transit but shall not extend beyond the termination of the seller's or lessor's interest.
  - m. Live Animal Floaters.
6. Commercial Property Floater Risks covering property pertaining to a business, profession or occupation.
- a. Radium Floaters.
  - b. Physicians' and Surgeons Instrument Floaters. Such policies may include coverage of such furniture, fixtures and tenant assured's interest in such improvements and betterments of buildings as are located in that portion of the premises occupied by the assured in the practice of his profession.
  - c. Pattern and Die Floaters.
  - d. Theatrical Floaters, excluding buildings and their improvements and betterments, and furniture and fixtures that do not travel about with theatrical troupes.
  - e. Film Floaters, including builders' risk during the production and coverage on completed negatives and positives and sound records.
  - f. Salesmen's Samples Floaters.
  - g. Exhibition Policies on property while on exhibition and in transit to or from such exhibitions.
  - h. Live Animal Floaters.
  - i. Builders Risks and/or Installation Risks covering interest of owner, seller or contractor, against loss or damage to machinery, equipment, building materials or supplies, being used with and during the course of installation, testing, building, renovating or repairing. Such policies may cover at points or places where work is being performed, while in transit and during temporary storage or deposit, of property designated for and awaiting specific installation, building, renovating or repairing.
    - i. Such coverage shall be limited to Builders Risks or Installation Risks where Perils in addition to Fire and Extended Coverage are to be insured.
    - ii. If written for account of owner, the coverage shall cease upon completion and acceptance thereof; or if written for account of a seller or contractor the coverage shall terminate when the interest of the seller or contractor ceases.
  - j. Mobile Articles, Machinery and Equipment Floaters, excluding motor vehicles designed for highway use and auto homes, trailers and semi-trailers except when hauled by tractors not designed for highway use and snow plows constructed exclusively for highway use covering identified property of a mobile or floating nature, not on sale or consignment, or in course of manufacture, which has come into the custody or control of parties who intend to use such property for the purpose for which it was manufactured or created. Such policies shall not cover furniture and fixtures not customarily used away from premises where such property is usually kept.
  - k. Property in transit to and from and in custody of bailees not owned, controlled or operated by the bailor. Such policies shall not cover bailee's property at his premises.
  - l. Installment sales and leased property. Policies covering property sold under conditional contract of sale, partial payment contract, installment sales contract, or leased but excluding motor vehicles designed for highway use. Such policies must cover in transit but shall not extend beyond the termination of the seller's or lessor's interest. This Section is not intended to include machinery and equipment under certain "lease-back" contracts.
  - m. Garment Contractors Floaters.
  - n. Furriers or Fur Storer's Customer's Policies, i.e., policies under which certificates or receipt are issued by furriers or fur storers covering specified articles the property of customers.
  - o. Accounts Receivable Policies, Valuable Papers and Records Policies.
  - p. Floor Plan Policies, covering property for sale while in possession of dealers under a Floor Plan or any similar plan under which the dealer borrows money from a bank or lending institution with which to pay the manufacturer, provided:
    - i. Such merchandise is specifically identifiable as encumbered to the bank or lending institution.
    - ii. The dealer's right to sell or otherwise dispose of such merchandise is conditioned upon its being released from encumbrance by the bank or lending institution.
    - iii. That such policies cover in transit and do not extend beyond the termination of the dealer's interest.
    - iv. That such policies shall not cover automobiles or motor vehicles; merchandise for which the dealer's collateral is the stock or inventory as distinguished from merchandise specifically identifiable as encumbered to the lending institution.
  - q. Sign and Street Clock Policies, including neon signs, automatic or mechanical signs, street clocks, while in use as such.

- r. Fine Arts Policies covering paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value or artistic merit, for account of museums, galleries, universities, businesses, municipalities and other similar interests.
- s. Policies covering personal property which, when sold to the ultimate purchaser, may be covered specifically, by the owner, under Inland Marine Policies including:
  - i. Musical Instrument Dealers Policies, covering property consisting principally of musical instruments and their accessories. Radios, televisions, record players and combinations thereof are not deemed musical instruments.
  - ii. Camera Dealers Policies, covering property consisting principally of cameras and their accessories.
  - iii. Furrier's Dealers Policies, covering property consisting principally of furs and fur garments.
  - iv. Equipment Dealers Policies, covering mobile equipment consisting of binders, reapers, tractors, harvesters, harrows, tedders and other similar agricultural equipment and accessories therefor; construction equipment consisting of bulldozers, road scrapers, tractors, compressors, pneumatic tools, and similar equipment and accessories therefor; but excluding motor vehicles designed for highway use.
  - v. Stamp and Coin Dealers covering property of philatelic and numismatic nature.
  - vi. Jewelers' Block Policies.
  - vii. Fine Arts Dealers.
 

Such policies may include coverage of money in locked safes or vaults on the Assured's premises. Such policies also may include coverage of furniture, fixtures, tools, machinery, patterns, molds, dies and tenant insureds interest in improvements of buildings.
  - t. Wool Growers Floaters.
  - u. Domestic Bulk Liquids Policies, covering tanks and domestic bulk liquids stored therein.
  - v. Difference in Conditions Coverage excluding fire and extended coverage perils.
  - w. Electronic Data Processing Policies.
- C. Unless otherwise permitted, nothing in the foregoing shall be construed to permit MARINE OR TRANSPORTATION POLICIES TO COVER:
  - 1. Storage of assured's merchandise, except as hereinbefore provided.
  - 2. Merchandise in course of manufacture, the property of and on the premises of the manufacturer.
  - 3. Furniture and fixtures and improvements and betterments to buildings.
  - 4. Monies and/or securities in safes, vaults, safety deposit vaults, bank or assured's premises, except while in course of transportation.

**Historical Note**

Former General Rule 59-4; Amended effective August 30, 1985 (Supp. 85-4). R20-6-602 recodified from R4-14-602 (Supp. 95-1).

**R20-6-603. Repealed**

**Historical Note**

Former General Rule 69-18; Repealed effective July 27, 1981 (Supp. 81-4). R20-6-603 recodified from R4-14-603 (Supp. 95-1).

**R20-6-604. Definitions**

The definitions in A.R.S. § 20-1603 and this Section apply to R20-6-604 through R20-6-604.10.

“Actual loss ratio” means incurred claims divided by earned premiums at rates in use.

“Actuarially equivalent” means of equal actuarial present value determined as of a given date with each value based on the same set of actuarial assumptions. When used in this Article in reference to rates and coverage, “actuarially equivalent” means a rate or coverage that is actuarially determined to yield loss ratios of 50% for credit life insurance and 60% for credit disability insurance.

“Credit insurance” means credit life insurance, credit disability insurance, or both, but does not include any insurance for which there is no identifiable charge.

“Earned premiums” means earned premiums at prima facie rates and earned premiums at rates in use.

“Earned premiums at prima facie rates” means an insurer's actual earned premiums, adjusted to the amount that the insurer would have earned if the insurer's premium rates had equaled the prima facie rates in effect during the experience period.

“Earned premiums at rates in use” means the premiums that an insurer actually earns on the premium rates the insurer charges during an experience period.

“Evidence of individual insurability” means information about a debtor's health status or medical history that a debtor provides as a condition of credit insurance becoming effective.

“Experience” means an insurer's earned premiums and incurred claims during an experience period.

“Experience period” means a period of time for which an insurer reports income and expense information on the insurer’s credit insurance business.

“Final adjusted rates” means the prima facie rates referred to in R20-6-604.04 and R20-6-604.05, subject to any deviations approved under R20-6-604.08.

“Gross debt” means the sum of the remaining payments that a debtor owes a creditor.

“Identifiable charge” means a charge for credit insurance that is imposed on a debtor with credit insurance but not on a debtor without credit insurance, and includes a charge for insurance that is disclosed in the credit or other financial instrument furnished to the debtor, which sets forth the financial elements of a credit transaction, and any difference in finance, interest, service charges, or other similar charges made to a debtor in like circumstances except for the debtor’s status as insured or noninsured.

“Incurred claims” means the total claims an insurer pays during an experience period, adjusted for the change in the claim reserves.

“Net debt” means the amount necessary to liquidate a debt in a single lump-sum payment excluding unearned interest and other unearned finance charges.

“Plan of credit insurance” means an insurance plan based on one of the following rate and coverage categories:

Credit life insurance, other than on revolving accounts, including joint and single life coverage, decreasing and level insurance, and outstanding balance and single premium;

Credit life insurance on revolving accounts;

Credit life insurance on an age-graded basis;

Credit disability insurance, other than on revolving accounts, including outstanding balance and single premium, and each combination of waiting period and retroactive or non-retroactive benefits;

Credit disability insurance on revolving accounts, including each combination of waiting period and retroactive or non-retroactive benefits.

“Preexisting condition” means a condition:

For which a debtor received medical advice, consultation, or treatment within six months before the effective date of credit insurance coverage; and

From which the debtor dies, in the case of life insurance, or becomes disabled, in the case of disability insurance, within six months after the effective date of coverage.

“Prima facie adjusted loss ratio” means incurred claims divided by earned premiums at prima facie rates.

“Prima facie rates” means the rates established by the Director as prescribed in R20-6-604.03.

“Reasonableness standard” means the requirement in A.R.S. § 20-1610(B) that an insurer’s premiums for credit insurance shall not be excessive in relation to the benefits provided under the policy.

“Rule of Anticipation” means the product of the gross single premium per \$100 of indebtedness for a debtor’s remaining term of indebtedness, times the number of hundreds of dollars of remaining indebtedness.

#### **Historical Note**

Former General Rule 70-22; Correction, original publication did not include Exhibit C (Supp. 76-1). Amended effective January 8, 1980 (Supp. 80-1). Former Section R4-14-604 repealed, new Section R4-14-604 adopted effective April 1, 1982. See subsection (N) for further detail (Supp. 82-2). Amended subsection (N) and Exhibit A effective March 30, 1983 (Supp. 83-2). R20-6-604 recodified from R4-14-604 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

#### **Exhibit A. Repealed**

#### **Historical Note**

Former General Rule 70-22; Correction, original publication did not include Exhibit C (Supp. 76-1). Amended effective January 8, 1980 (Supp. 80-1). Former Section R4-14-604 repealed, new Section R4-14-604 adopted effective April 1, 1982. See subsection (N) for further detail (Supp. 82-2). Amended subsection (N) and Exhibit A effective March 30, 1983 (Supp. 83-2). R20-6-604 recodified from R4-14-604 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

#### **R20-6-604.01. Rights and Treatment of Debtors**

##### **A. Creditor Obligations.**

1. Multiple plans of insurance. If a creditor makes more than one plan of credit insurance available to debtors, the creditor shall inform each debtor of each plan for which the debtor is eligible and of the premium and charges for each plan.

2. Substitution. If a creditor requires a debtor to have credit insurance as additional security for a debt, the creditor shall inform the debtor in writing of the debtor's right to obtain alternative coverage as prescribed in A.R.S. § 20-1614 before the loan transaction is completed.
  3. Remittance of premiums. If a creditor adds an insurance charge or premium to a debt, the creditor shall remit the insurance charge or premium to the insurer within 60 days after it is added to the debt.
- B. Creditor and insurer obligations regarding insurance on refinanced debt.**
1. If a debt is discharged because the debtor refinances the debt before the scheduled maturity date, the creditor shall notify the insurer that issued the credit insurance on the discharged debt.
  2. An insurer shall not issue any credit insurance that covers the refinanced debt with an effective date preceding the termination date of the insurance on the original debt.
  3. The insurer issuing the coverage on the discharged debt shall refund to or credit the debtor with all unearned insurance charges or premium according to R20-6-604.06.
  4. If a debt is refinanced, the effective date of the policy provisions in any new insurance covering the refinanced debt shall be the first date on which the debtor became insured under the previous policy. An insurer may apply any new exclusion period or preexisting condition limitation only to the portion of the new loan that exceeds the previous loan.
- C. Required policy provisions.**
1. Termination provisions for group policies. A group credit insurance policy shall provide for continued coverage of debtors covered under the policy if the policy terminates, as follows:
    - a. For a policy with a single premium payment, or any other payment method that prepays coverage for more than one month, a provision requiring continued insurance coverage for the entire period for which the premium has been paid; and
    - b. For a policy with a monthly premium payment, a provision requiring the insurer to send the debtor a termination notice at least 30 days before the effective date of termination, unless an insurer is issuing replacement coverage in at least the same amount, without lapse of coverage.
  2. Maximum aggregate provisions. A provision in an individual policy or group certificate that sets a maximum limit on total claim payments shall apply only to that individual policy or group certificate.
- D. Creditor and insurer obligations when debtor prepays debt.**
1. Except as provided in subsection (D)(2), if a debtor prepays a debt in full, any credit insurance covering the debt shall terminate on the date of prepayment. The creditor and insurer shall refund to or credit the debtor with any unearned premium according to R20-6-604.06.
  2. If a debt is fully prepaid because of the debtor's death or any other lump-sum credit insurance payment, a creditor or insurer is not required to refund premium for the coverage under which the lump sum was paid.
  3. If a claim under credit disability coverage is in progress at the time of prepayment, the insurer:
    - a. May calculate the refund as if the prepayment did not occur until the end of the period for payment of benefits, and
    - b. Is not required to refund premiums for any period for which credit disability benefits are payable.
- E. Benefits payable on revolving account.** If a debtor is paying for credit insurance coverage on a revolving account and dies, the insurer shall pay a benefit amount equal to the amount of indebtedness outstanding on the date of death. The insurer may exclude preexisting conditions occurring within six months of any advance on the revolving account, running separately for each advance or charge.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.02. Satisfying the Reasonableness Standard**

- A.** An insurer shall comply with all requirements of A.R.S. § 20-1610 regarding premium and insurance charges.
- B.** An insurer may satisfy the reasonableness standard in A.R.S. § 20-1610(B) if the insurer's premium rate develops a loss ratio of not less than 50% for credit life insurance and not less than 60% for credit disability insurance.
- C.** While in effect, the rates described in R20-6-604.04 and R20-6-604.05, subject to any deviations approved under R20-6-604.08 are conclusively presumed to develop the loss ratios described in subsection (B). For purposes of prospective effect, the Department may rebut this presumption by disapproving or withdrawing approval for the rates as prescribed in A.R.S. § 20-1610.
- D.** An insurer may provide coverage other than the standard coverage described in R20-6-604.04 and R20-6-604.05. An insurer that wishes to provide nonstandard coverage shall:
  1. File the nonstandard coverage policy information as prescribed in A.R.S. § 20-1609, and
  2. Demonstrate that the rates for the coverage are reasonably expected to develop a loss ratio of not less than 50% for credit life insurance and not less than 60% for credit disability insurance.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.03. Determination of Prima Facie Rates**

- A.** The Director shall, by order, establish prima facie rates as prescribed in this Section.
- B.** At least once every three years, the Director shall:

1. Determine the rate of expected claims on a statewide basis;
  2. Compare the rate of expected claims with the rate of actual claims for the past three years determined from the incurred claims and earned premiums at prima facie rates; and
  3. If the Director determines that the prima facie rates require adjustment, issue a notice of hearing and proposed order adjusting the actual statewide prima facie rates. The hearing date on the proposed order shall be no earlier than 45 days from the date of the notice.
- C. The Director shall mail a copy of the notice and proposed order to:
1. Each insurer that reported transaction of credit insurance on its annual statement immediately preceding the date of the notice, and
  2. Any other person who sends the Director a written request for notice of proceedings to adjust the prima facie rates.
- D. Any person may submit written comments to the Director or appear at the hearing and provide oral comments on the record. Written comments shall be received no later than the close of record date specified in the notice of hearing.
- E. The Director shall:
1. Consider written and oral comments; and
  2. Issue a final order setting prima facie rates no later than 30 days after the close of record date specified in the notice of hearing.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.04. Credit Life Insurance Rates and Provisions**

- A. Under the process prescribed in R20-6-604.03, the Director shall issue an order establishing prima facie rates for credit life insurance.
- B. The Department shall presume that an insurer meets the loss ratios prescribed in R20-6-604.02(B) if the insurer uses the prima facie rates, subject to the requirements in this Section and R20-6-604.08. An insurer may use the prima facie rates without filing additional actuarial support.
- C. A credit life insurance policy shall meet the requirements listed in this Section. The policy shall:
1. Provide coverage for death, by whatever means caused, to all eligible debtors, with or without evidence of individual insurability for debtors that purchase coverage within 30 days of being eligible;
  2. Have no exclusions other than for:
    - a. Suicide within six months after the effective date of coverage, or
    - b. A preexisting condition;
  3. Have no age restrictions, except the following permissible exclusions:
    - a. An age restriction providing that no insurance will become effective on a debtor on or after the attainment of age 70 and that all insurance shall terminate on a debtor attaining age 70; and
    - b. An age restriction for a revolving credit life insurance policy that:
      - i. Excludes a class of debtors determined by age, or
      - ii. Provides for termination of insurance or reduction in the amount of insurance when a debtor reaches age 70; and
  4. For insurance on revolving accounts, have the date on which an advance or charge occurs as the effective date of coverage for each part of the insurance attributable to a different advance or a charge to the plan account. Any exclusion period or preexisting condition limitation shall run separately for each advance or charge.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.05. Credit Disability Insurance Rates and Provisions**

- A. Under the process prescribed in R20-6-604.03, the Director shall issue an order establishing prima facie rates for credit disability insurance.
- B. The Department shall presume that an insurer meets the loss ratios prescribed in R20-6-604.02(B) if the insurer uses the prima facie rates, subject to the requirements in this Section and R20-6-604.08. An insurer may use the prima facie rates without filing additional actuarial support.
- C. A credit disability insurance policy shall meet the requirements listed in this Section. The policy shall:
1. Provide coverage for disability, by whatever means caused, to all eligible debtors, with or without evidence of individual insurability for debtors that purchase coverage within 30 days of becoming eligible;
  2. Include a definition of disability that is no more restrictive than the following:
    - a. For the first 12 months of disability, the inability of the insured to perform the essential functions of the insured's occupation; and
    - b. After the first 12 months of disability, the inability of the insured to perform the essential functions of any occupation for which the insured is reasonably suited by virtue of education, training, or experience;
  3. Not include any employment requirement that a debtor be employed more than full-time on the effective date of coverage, with a definition of "full-time" as a regular work week of at least 30 hours;
  4. Have no exclusions other than for disabilities resulting from:
    - a. Normal pregnancy,

- b. Intentionally self-inflicted injury, or
- c. A preexisting condition;
- 5. For insurance on revolving accounts, have the date on which an advance or charge occurs as the effective date of coverage for each part of the insurance attributable to a different advance or a charge to the plan account. Any exclusion period or preexisting condition limitation shall run separately for each advance or charge;
- 6. Have no age restrictions, except the following permissible exclusion:  
An age restriction providing that no insurance will become effective on a debtor on or after the attainment of age 65 and that all insurance shall terminate on a debtor attaining age 66; and
- 7. Include a provision for a daily benefit of not less than one-thirtieth of the monthly benefit payable under the policy.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.06. Refund Methods**

- A. When refunding premiums as prescribed in A.R.S. § 20-1611, an insurer shall use the following methods:
  - 1. For insurance paid by a single premium, the Rule of Anticipation method; and
  - 2. For insurance paid by other than a single premium, a method that refunds at least the pro rata gross unearned amount charged to the debtor.
- B. The Director may approve other refund methods similar to those described in subsection (A), that are actuarially equivalent to the type of coverage the debtor purchased.
- C. An insurer's refund method may recognize adjustments to a daily basis for interest or payments if the adjustments are consistent with the underlying credit transaction.
- D. An insurer is not required to refund any amount less than \$5.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.07. Experience Reports**

- A. By April 1 of each year, an insurer that transacts credit insurance in this state shall file with the Director an experience report, on a form specified by the Director, for each class of business that the insurer transacts as provided in this Section.
  - 1. In this Section, a "class of business" means:
    - a. Credit unions;
    - b. Banks, savings and loan institutions, and mortgage companies;
    - c. Finance companies, small loan companies, and consumer lenders defined in A.R.S. § 6-601(5);
    - d. Dealers, including auto, truck, and boat dealers, retail stores, and other persons selling financed goods; and
    - e. All other persons selling credit insurance not specifically listed in subsection (A)(1)(a) through (d).
  - 2. The report shall include the following information:
    - a. Mode of premium payment,
    - b. Plan of benefits description,
    - c. Earned premiums,
    - d. Incurred claims,
    - e. Loss ratios, and
    - f. For credit life insurance, mean insurance in force.
- B. For each day a report is late, the Director may assess a penalty as prescribed in A.R.S. § 20-223.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.08. Use of Prima Facie Rates; Rate Deviations**

- A. Use of rates greater than prima facie rates. An insurer may file for approval and use of any deviated rates that are higher than the prima facie rates referred to in R20-6-604.04 and R20-6-604.05 as prescribed in A.R.S. § 20-1610.
  - 1. The deviated rates shall meet the minimum loss ratio standards and other requirements prescribed by R20-6-604.02.
  - 2. The filing shall specify the accounts to which the rates apply.
  - 3. The rates may be:
    - a. Applied uniformly to all accounts of the insurer; or
    - b. Applied on an equitable basis approved by the Director to accounts of the insurer for which the insurer's experience has been less favorable than expected.
- B. Approval period of deviated rates. An insurer may use a deviated rate for the same period of time as the experience period used to establish the rate, not to exceed a period of three years from the date of approval. An insurer may file for a new deviated rate before the end of the approval period, but not more often than once in any 12 month period.
- C. Approval is non-transferable. The Director's approval of a deviated rate is not transferable to another insurer. If an insurer acquires an account for which another insurer obtained a deviated rate, the successor insurer may not charge the deviated rate without obtaining approval for the deviated rate as prescribed in subsection (B).
- D. Use of rates lower than filed rates. An insurer may use a rate that is less than its filed rate without notice to the Director.

#### **Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

#### **R20-6-604.09. Supervision of Consumer Credit Insurance Operations**

- A. At least once every three years, an insurer transacting credit insurance in Arizona shall review the credit insurance operations of each creditor with whom the insurer does business to ensure that each creditor is complying with applicable credit insurance laws. The insurer shall review the following:
  - 1. The creditor does not charge rates in excess of the prima facie rates or any deviated rates for which the insurer obtains approval;
  - 2. The creditor makes benefit payments as prescribed in the policy; and
  - 3. The creditor refunds unearned premiums as prescribed in R20-6-604.06.
- B. The insurer shall maintain for the Director's inspection a written record of each review and action the insurer takes to address any creditor noncompliance found by the insurer, for at least three years following the end of the review.

#### **Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

#### **R20-6-604.10. Prohibited Transactions**

- A. The practices listed in this Section are deemed unfair trade practices under A.R.S. § 20-442. An insurer that commits any of the following practices is subject to penalties as prescribed in A.R.S. § 20-456:
  - 1. Offering or providing a creditor with any special advantage or any service not set out in either the group insurance contract or in the agency contract, other than payment of commissions;
  - 2. Agreeing to deposit with a bank or financial institution, the insurer's money or securities as a substitute for a deposit of money or securities that the financial institution would otherwise require from the creditor as a compensating balance or deposit offset for a loan or other advancement; or
  - 3. Depositing money or securities without interest or at a lesser rate of interest than the creditor, bank, or financial institution is currently paying on other similar deposits.
- B. This Section does not prohibit an insurer from maintaining demand deposits or premium deposit accounts that are reasonably necessary for use in the ordinary course of the insurer's business.

#### **Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

#### **R20-6-605. Emergency Expired**

#### **Historical Note**

Former General Rule 72-26. Repealed effective December 4, 1986 (Supp. 86-6). Adopted as an emergency effective January 9, 1990, pursuant to A.R.S. § 41-1026 valid for only 90 days; re-adopted as an emergency with changes effective March 26, 1990, pursuant to A.R.S. § 41-1026 valid for only 90 days (Supp. 90-1). Re-adopted as an emergency without change effective June 20, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired. R20-6-605 recodified from R4-14-605 (Supp. 95-1).

#### **R20-6-606. Repealed**

#### **Historical Note**

Adopted effective July 1, 1980 (Supp. 80-3). Amended effective June 1, 1981. See also subsection (G) (Supp. 81-1). Amended subsections (D), (E)(3)(a), (F)(2)(b), (3)(a), (4)(e), (G), and (H) effective January 11, 1982 (Supp. 82-1). Amended subsections (G) and (H) as an emergency effective August 1, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Emergency expired. Amended and readopted as an emergency effective November 18, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Corrected and readopted as an emergency effective February 10, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Amended effective August 4, 1989 (Supp. 89-3). Amended and adopted as an emergency effective September 13, 1989 (Supp. 89-3). Emergency expired (Supp. 89-4). Amended effective November 19, 1990 (Supp. 90-4). Repealed by emergency action effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Repealed again by emergency action effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Repealed effective May 28, 1992 (Supp. 92-2). R20-6-606 recodified from R4-14-606 (Supp. 95-1).

#### **R20-6-607. Reasonableness of Benefits in Relation to Premium Charged**

- A. Applicability. This rule shall apply to individual disability insurance (as defined in A.R.S. § 20-253) policy forms and rates.
- B. When rate filing is required. Every individual policy form, rider or endorsement form affecting benefits which is submitted for approval shall be accompanied by a rate filing unless such rider or endorsement form does not require a change in the rate. Any subsequent addition to or change in rates applicable to such policy, rider or endorsement form shall also be filed.
- C. General contents of all rate filings. Each rate submission shall include an actuarial memorandum describing the basis on which rates were determined and shall indicate and describe the calculation of the ratio, hereinafter called "anticipated loss ratio," of the present value of the expected benefits to the present value of the expected premiums over the entire period for

which rates are computed to provide coverage. Each rate submission must also include a certification by a qualified actuary that to the best of the actuary's knowledge and judgment, the rate filing is in compliance with applicable laws and regulations of this state and that the benefits are reasonable in relation to the premiums.

- D.** Previously approved forms. Filings of rate revisions for a previously approved policy, rider or endorsement form shall also include the following:
1. A statement of the scope and reason for the revision, and an estimate of the expected average effect on premiums including the anticipated loss ratio for the form.
  2. A statement as to whether the filing applies only to new business, only to in-force business, or both, and the reasons.
  3. A history of the experience under existing rates, including at least the data indicated in subsection (E). The history may also include, if available and appropriate, the ratios of actual claims to the claims expected according to the assumptions underlying the existing rates. All additional data must be reconciled, as appropriate, to the required data. Additional data might include:
    - a. Substitution of actual claim run-offs for claim reserves and liabilities,
    - b. Determination of loss ratios with the increase in policy reserves (other than unearned premium reserves) added to benefits rather than subtracted from premiums,
    - c. Substitution of net level policy reserves for preliminary term policy reserves,
    - d. Adjustment of premiums to an annual mode basis, or
    - e. Other adjustments or schedules suited to the form and to the records of the company.
  4. The date and magnitude of each previous rate change, if any.
- E.** Experience records. Insurers shall maintain records of earned premiums and incurred benefits for each calendar year for each policy form, including data for rider and endorsement forms which are used with the policy form, on the same basis, including all reserves, as required for the Accident and Health Policy Experience Exhibit to the NAIC annual statement convention blank. Separate data may be maintained for each rider or endorsement form to the extent appropriate. Experience under forms which provide substantially similar coverage may be combined. The data shall be for all years of issue combined, for each calendar year of experience since the year the form was first issued, except the data for calendar years prior to the most recent five years may be combined.
- F.** Evaluation experience data. In determining the credibility and appropriateness of experience data, due consideration must be given to all relevant factors, such as:
1. Statistical credibility of premiums and benefits, e.g., low exposure, low loss frequency.
  2. Experienced and projected trends relative to the kind of coverage, e.g., inflation in medical expenses, economic cycles affecting disability income experience.
  3. The concentration of experience at early policy durations where select morbidity and preliminary term reserves are applicable and where loss ratios are expected to be substantially lower than at later policy durations.
  4. The mix of business by risk classification.
- G.** Anticipated loss ratio standard. With respect to a new form or a currently approved form, except currently approved non-cancelable policy forms, under which the average annual premium (as defined below) is expected to be at least \$700, benefits shall be deemed reasonable in relation to premiums provided the anticipated loss ratio is at least as great as shown in the following table:

Type of Coverage	Renewal Clause			
	OR	CR	GR	NC
Medical expense	60%	55%	55%	50%
Loss of income and other	60%	55%	50%	45%

For a policy form including riders and endorsements, under which the expected average annual premium per policy is \$200 or more but less than \$700, subtract 5 percentage points from the numbers in the table above, or if less than \$200, subtract 10 percentage points.

The average annual premium per policy shall be computed by the insurer based on an anticipated distribution of business by all applicable criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc., except assuming an annual mode for all policies (i.e., the fractional premium loading shall not affect the average annual premium or anticipated loss ratio calculation.)

The above anticipated loss ratio standards do not apply to a class of business which is regulated by specific statutes or regulations mandating loss ratios for such business, e.g., Medicare Supplement and Credit Life and Disability.

**Definitions of Renewal Clause**

OR – Optionally Renewable: renewal is at the option of the insurance company.

CR – Conditionally Renewable: renewal can be declined by the insurance company only for stated reasons other than deterioration of health.

GR – Guaranteed Renewable: renewal cannot be declined by the insurance company for any reason, but the insurance company can revise rates on a class basis.

NC – Non-Cancelable: renewal cannot be declined nor can rates be revised by the insurance company.

- H.** Rate revisions. With respect to filings of rate revisions for a previously approved form, benefits shall be deemed reasonable in relation to premiums provided both the following loss ratios meet the standards in subsection (G) above.
1. The anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage;
  2. The anticipated loss ratio derived by dividing (a) by (b) where:
    - a. Is the sum of the accumulated benefits, from the original effective date of the form or the effective date of this regulation, whichever is later, to the effective date of the revision, and the present value of future benefits; and
    - b. Is the sum of the accumulated premiums from the original effective date of the form or the effective date of the regulation, whichever is later, to the effective date of the revision, and the present value of future premiums.Such present values shall be taken over the entire period for which the revised rates are computed to provide coverage, and such accumulated benefits and premiums to include an explicit estimate of the actual benefits and premiums from the last date as of which an accounting has been made to the effective date of the revision. Interest shall be used in the calculation of these accumulated benefits and premiums and present values only if it is a significant factor in the calculation of this loss ratio.
- I.** Anticipated loss ratios lower than those indicated in subsections (H)(1) and (H)(2) will require justification based on the special circumstances that may be applicable.
1. Examples of coverages requiring special consideration are as follows:
    - a. Accident only;
    - b. Short term nonrenewable, e.g., airline trip, student accident;
    - c. Specified peril, e.g., common carrier; and
    - d. Other special risks.
  2. Examples of other factors requiring special consideration are as follows:
    - a. Marketing methods, giving due consideration to acquisition and administration costs and to premium mode;
    - b. Extraordinary expenses;
    - c. High risk of claim fluctuation because of the low loss frequency of the catastrophic, or experimental nature of the coverage;
    - d. Product features such as long elimination periods, high deductibles and high maximum limits;
    - e. The industrial or debit method of distribution; and
    - f. Forms issued prior to the effective date of this rule.Companies are urged to review their experience periodically and to file rate revisions, as appropriate, in a timely manner to avoid the necessity of later filing of exceptionally large rate increases.
  3. Notwithstanding the foregoing paragraphs to the contrary, hospital indemnity and cancer and other dread diseases policies shall develop the loss ratios pursuant to subsection (G).
- J.** Severability provision. If any provision of this rule or the application thereof to any person or circumstances is held invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.
- K.** Effective date. This rule shall become effective upon filing with the Secretary of State and shall apply to all individual disability policy form and rate filings submitted on and after said date.

#### **Historical Note**

Adopted effective July 14, 1981 (Supp. 81-1). R20-6-607 recodified from R4-14-607 (Supp. 95-1). Amended by final rulemaking at 24 A.A.R. 103, effective February 17, 2018 (Supp. 17-4).

## ARTICLE 19. HEALTH CARE SERVICES ORGANIZATIONS OVERSIGHT

### R20-6-1901. Applicability

- A. This Article applies to:
  - 1. All proposed and existing health care services organizations (HCSOs), and
  - 2. Each product offered by an HCSO under the HCSO's certificate of authority.
- B. The Department shall not issue a certificate of authority to an HCSO unless the HCSO meets the requirements of this Article.
- C. The Department shall not require an existing HCSO to re-file information already on file with the Department, but the HCSO shall modify its operations and procedures as may be necessary to comply with this Article and file with the Department all additional information necessary to make statements complete and current.
- D. This Article applies to inpatient emergency care, but does not apply to emergency services.
- E. This Article applies only to covered services.

### Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

### R20-6-1902. Definitions

In this Article, the following definitions apply:

“Access” or “accessibility” means the extent to which an enrollee can obtain timely covered services from a contracted provider at the appropriate level of care, and appropriate location.

“Adult” means an enrollee in the age group the HCSO has designated for an adult.

“Adult PCP” means a primary care provider practicing in any specialty the HCSO designates as adult primary care.

“Ancillary provider” means a provider of laboratory, radiology, pharmacy or rehabilitative services, physical therapy, occupational therapy, or speech therapy, home health services, dialysis, and durable medical equipment or medical supplies dispensed by order or prescription of a provider with the appropriate prescribing authority.

“Available” or “availability” means the extent to which the plan has contracted providers of the appropriate type and numbers at geographic locations to afford members access to timely covered services.

“Chief executive officer” or “CEO” means the person who has the authority and responsibility for the operation of the health care services organization according to applicable legal requirements and policies approved by the governing authority.

“Child” means an enrollee in the age group the HCSO has designated for children.

“Contracted” means a provider has a current written agreement or an employment arrangement with an HCSO to provide covered services to an enrollee, or a current written agreement or an employment arrangement with a contracted provider to provide covered services to an enrollee.

“Covered” or “covered services” means the health care services described as covered benefits in the HCSO's evidence of coverage.

“Day” means calendar day unless specified otherwise.

“Department” means the Department of Insurance.

“Effective process” means written policies and procedures that:

Outline the steps that the HCSO implements and consistently follows internally,

The HCSO subjects to internal quality improvement, and

The HCSO communicates to providers when established or changed.

“Emergency services” has the meaning in A.R.S. § 20-2801(3).

“Enrollee” means an individual who is enrolled in a health plan operated by an HCSO.

“Facility” means an institution that is licensed or authorized to furnish health care services in this state, including general hospitals, special hospitals, residential treatment centers, residential rehabilitation centers, skilled nursing facilities, urgent care centers, and ambulatory surgical treatment centers.

“Governing authority” means a person or body such as a board of trustees or board of directors in whom the ultimate authority and responsibility for the direction of the HCSO is vested.

“HCSO” means a health care services organization.

“Health care services” has the meaning in A.R.S. § 20-1051(6).

“High profile” means one of no fewer than four specialties designated by the HCSO, and does not include obstetrics-gynecology. An HCSO may designate a specialty as high profile on the basis of high volume or other basis the HCSO reasonably determines is directly related to providing covered services to a member.

“Hospital” means a facility that provides inpatient care, medical services, and continuous nursing services for the diagnosis and treatment of patients.

“Inpatient care” means the covered services that an enrollee who is admitted to a hospital receives for at least 24 consecutive hours.

“Inpatient emergency care” means covered services that would be emergency services if provided in a licensed hospital emergency facility.

“License” means documented authorization issued by the appropriate state of Arizona agency to operate a facility in Arizona, or to practice a health care profession in Arizona.

“Medically necessary” has the meaning set forth in the HCSO’s evidence of coverage.

“Network” means the group of providers contracted with an HCSO to provide covered services to an enrollee covered under the HCSO’s health benefit plan.

“Network exception” means an enrollee receives covered services from a non-contracted provider either:

Because there is no contracted provider accessible or available that can provide the enrollee timely covered services, or

For any reason the HCSO determines it is in the enrollee’s best interests to receive care from a non-contracted provider.

“Non-contracted” means a provider that does not have a contract with an HCSO to provide services to an enrollee.

“Normal business hours” means 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding state or national holidays.

“Outpatient care” means covered services that an enrollee who is not an inpatient receives.

“Pediatric primary care provider” means a physician or practitioner practicing in any specialty the HCSO designates as pediatric primary care.

“Physician” means a licensed doctor of allopathic, chiropractic, optometric, osteopathic, or podiatric medicine.

“Practitioner” means any individual other than a physician who is licensed to furnish health care services, including behavioral health care services, in this state.

“Preventive care” means health maintenance care the HCSO provides or arranges to prevent illness and to improve the general health of an enrollee, including:

Immunizations,

Health education,

Health evaluation and follow-up,

Early disease detection,

Screening tests appropriate for a person’s age and gender, and

Periodic health care examinations.

“Primary care” means any specialty the HCSO designates as primary care.

“Primary care physician” or “PCP” means a physician or practitioner practicing in a specialty the HCSO designates as primary care.

“Provider” means any physician, practitioner, ancillary provider, or facility.

“Quality improvement” means an HCSO’s system for assessing and improving the level of performance of key process and outcomes.

“Routine care” means covered primary care for an enrollee’s non-urgent, symptomatic condition.

“Rural” means a zip code area with fewer than 1,000 persons per square mile as calculated annually by a population data gathering service designated by the Director.

“Service area” means any geographic area designated by any HCSO and approved by the Director under A.R.S. § 20-1053(A)(11).

“Specialty care provider” or “SCP” means a physician or practitioner who has education, training, or qualifications in a specialty, other than primary care, beyond the education or qualifications required for the license.

“Specialty” or “specialty care” means a specific area of medicine practiced by a physician or practitioner who has education, training, or qualifications in that specific area of medicine in addition to the education or qualifications required for the physician’s or practitioner’s license.

“Special hospital” means a hospital that is licensed to provide hospital services within a specific area of medicine, or limits patient admission according to age, gender, type of disease, or medical condition.

“Suburban area” means any zip code area with 1,000-3,000 persons per square mile, as calculated annually by a population data gathering service designated by the Director.

“Telemedicine” means diagnostic, consultation, and treatment services that occur in the physical presence of an enrollee on a real-time basis through interactive audio, video, or data communication.

“Timely” means services are provided at the time when medically necessary.

“Travel expenses” has the meaning set forth in writing by an HCSO.

“Urban area” means a zip code with more than 3,000 persons per square mile as calculated annually by a population data gathering service designated by the Director.

“Urgent care” means unscheduled services for an enrollee’s condition that requires medical attention not amenable to scheduling in order to avoid a serious risk of harm.

#### **Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

#### **R20-6-1903. Documentation**

The CEO shall ensure that the HCSO’s policies, procedures, plans, class specifications, orders, reports, minutes of meetings, contracts, agreements, records, and duty schedules are in writing, compiled and indexed in one or more manuals, and readily available for inspection by the Director.

#### **Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

#### **R20-6-1904. Health Care Plan**

- A.** An HCSO shall submit a statement to the Department that describes the proposed health care plan.
- B.** The HCSO shall have an organized system for the delivery of health care services contained in subsection (D) that includes the following:
  - 1. Contracted providers that provide services under the plan;
  - 2. An effective process to promote a continuing relationship between an enrollee and the same PCP; and
  - 3. An effective process for referrals that ensures continuity of care to an enrollee.
- C.** The HCSO shall list:
  - 1. The proposed or actual enrollment;
  - 2. The number and names of contracted, employed, or HCSO-owned providers that will serve the enrollees and the board eligibility or certification of each physician, if applicable; and
  - 3. The plan for providing covered services to enrollees as required under this Article.
- D.** The HCSO’s health care plan shall provide within the geographic area served the following basic health care services covered by the monthly charges in the evidence of coverage:
  - 1. Emergency care that includes emergency services and inpatient emergency care;
  - 2. Inpatient care;
  - 3. Specialty care, primary care, or ancillary care that includes diagnostic and therapeutic services;
  - 4. Outpatient care;
  - 5. Preventive care; and
  - 6. Emergency ambulance services under A.R.S. § 20-2801(2), and other ambulance services when approved by a plan physician.
- E.** The HCSO shall provide appropriate coverage for out-of-area emergency care to an enrollee traveling outside the area served by the HCSO.

#### **Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). R20-6-1904 repealed; new Section R20-6-1904 renumbered and amended from R20-6-1906 by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

#### **R20-6-1905. Geographic Area**

- A.** An applicant shall describe the proposed geographic area in at least one of the following ways:
  - 1. Legal description,
  - 2. Local governmental jurisdiction such as city or county,
  - 3. Census tracts,
  - 4. Street boundaries, or
  - 5. Area within a specified radius of a specified intersection or a specified primary care center.

- B. An applicant shall submit a map that shows the boundaries for the proposed geographic area.
- C. An applicant shall submit a description of the proposed network including the data required under R20-6-1913(A)(2) and (A)(3).
- D. All advertising matter and sales material provided a prospective enrollee shall include a description of the geographic area in terms readily understandable by the general public.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). R20-6-1905 repealed; new Section R20-6-1905 renumbered and amended from R20-6-1907 by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1906. Chief Executive Officer**

- A. The governing authority shall appoint a CEO who has appropriate education and experience to manage the HCSO. The governing authority shall define the authority and duties of the CEO in writing. The CEO is the appointed representative of the governing authority and is the executive officer of the HCSO.
- B. The CEO shall have at least the following duties and responsibilities:
  1. Manage the HCSO;
  2. Establish and implement policies, procedures, and effective processes of the HCSO;
  3. Act as liaison between the governing authority and the providers of healthcare and other services to the HCSO; and
  4. Establish a written plan of authority that will be in place in the CEO's absence.
- C. When there is a change of CEO, the governing authority shall notify Department within 10 days after the effective date of change.
- D. The HCSO shall ensure that all HCSO employees and contracted providers are knowledgeable about and qualified to perform the duties assigned to them through employment or by contract.
- E. The HCSO shall designate a central place of business within the major geographic area served at which the CEO shall be based and from which the HCSO shall direct administrative activities.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Section R20-6-1906 renumbered to R20-6-1904; new Section R20-6-1906 renumbered and amended from R20-6-1908 by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1907. Medical Director**

- A. The HCSO shall designate a physician as medical director.
- B. The medical director shall be responsible for planning and implementing the method for the continuing review and evaluation of health care provided by the HCSO and the continuing education of its providers of health care services. The medical director may also serve as the CEO if the medical director has appropriate education and experience to manage the HCSO.
- C. The medical director responsibilities include:
  1. Supervising medical staff;
  2. Performance planning and evaluating medical staff;
  3. Coordinating medical staff activities; and
  4. Developing medical care policies.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Section R20-6--1907 renumbered to R20-6-1905; new Section R20-6-1907 renumbered and amended from R20-6-1909 by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1908. Quality Assurance**

- A. The HCSO shall provide an effective process for a continuing review and evaluation of the covered services it provides to enrollees to ensure that:
  1. Treatment and level of covered services are appropriate and adequate and
  2. The quality of covered services is acceptable to the HCSO.
- B. The HCSO shall have a quality assurance committee that includes at least the CEO or designee, the medical director, and representative network providers. The quality assurance committee shall:
  1. Arrange for physicians or practitioners to review and evaluate covered services provided by others physicians or practitioners within the respective disciplines.
  2. Adopt administrative procedures covering frequency of meetings, recordkeeping, committee reports, and disseminating the reports.
- C. The HCSO's effective process in subsection (A) shall include the following:
  1. Standards for health care;
  2. Monitoring of care;
  3. Analysis of any deficiency;

4. Correcting a deficiency including submitting a schedule for correcting the deficiency, requiring continuing education for the provider, if appropriate, and follow-up and periodic reassessment of the deficiency.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Section R20-6-1908 renumbered to R20-6-1906; new Section R20-6-1908 renumbered and amended from R20-6-1911, by final rulemaking at 11 A.A.R. 4861, effective December 31, 2006 (Supp. 05-4).

**R20-6-1909. Evaluation of Network**

Each HCSO shall have an effective process to evaluate the adequacy of its network to provide an enrollee with timely covered services.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Former R20-6-1909 renumbered to R20-6-1907; new Section R20-6-1909 made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1910. Process for Referral, Prior Authorization, Pre-certification, or Network Exception**

- A. An HCSO shall have an effective process for assisting an enrollee to obtain timely covered services when the enrollee or enrollee's referring provider cannot find a contracted provider who is timely accessible or available.
- B. An HCSO shall have an effective process during normal business hours for handling referrals, prior authorizations, pre-certifications, or network exceptions necessary for timely routine care. This process may include the HCSO's procedure for standing referrals required in A.R.S. § 20-1057.01.
- C. Each HCSO shall have an effective process to handle referrals or network exceptions necessary for timely urgent care seven days a week.
- D. An HCSO that requires prior authorization or precertification for urgent care shall have an effective process to handle requests for prior authorization or precertification 24 hours a day, seven days a week.
- E. An HCSO shall have an effective process for handling network exceptions that ensures the HCSO reimburses an enrollee for any out-of-network cost the enrollee incurs that the enrollee would not have incurred if the enrollee had received the services in-network.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1911. HCSO Communication with Providers**

An HCSO shall have an effective process for communicating with contracted providers regarding the following:

1. The providers in the network,
2. Contractual or administrative changes relating to enrollee access or provider availability, and
3. Procedures for handling claims and grievances submitted by providers.

**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2769, effective July 1, 2001 (Supp. 01-2). Former R20-6-1911 renumbered to R20-6-1908; new R20-6-1911 made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1912. Network Directories**

- A. An HCSO shall publish a provider network directory as follows:
  1. An HCSO shall list the name, address, telephone number, specialty, and hospital affiliation for all in-area contracted physicians or practitioners.
  2. An HCSO may list ancillary providers by corporate or group name and is not required to list individual physicians or practitioners.
  3. An HCSO is not required to list physicians or practitioners in the following areas of specialties or areas of practice:
    - a. Emergency medicine;
    - b. Anesthesiology, except anesthesiologists who provide pain management services;
    - c. Hospital-based pathology;
    - d. Hospital-based radiology; and
    - e. Hospitalists.
  4. An HCSO that lists any of the physicians or practitioners in subsections R20-6-1912(A)(3)(a) through (A)(3)(e) may list by corporate or group name and is not required to list individual physicians or practitioners.
  5. An HCSO that uses hospitalists is not required to list the hospital affiliations of PCPs who do not admit or attend hospitalized members.
  6. An HCSO shall publish a provider network directory that lists all its contracted facilities and contains:
    - a. The name, address, and telephone number of each facility;
    - b. For each hospital at which the HCSO uses hospitalists, if any, a statement that the HCSO uses hospitalists at that hospital;

- c. For an HCSO that uses hospitalists and does not list them in the directory, information on how an enrollee can find out what hospitalists or group of hospitalists it uses at each hospital;
- B.** The network directory shall conspicuously state in the directory the following:
  - 1. Changes occur in the network after the directory is published and some providers listed in the directory may no longer be contracted,
  - 2. Enrollee coverage may depend on the contract status of the provider,
  - 3. Where the enrollee can obtain more recent directory information,
  - 4. The effective date of the network directory, and
  - 5. The method for an enrollee or prospective enrollee to find out which PCPs are accepting new enrollees from the HCSO.
- C.** Each HCSO shall make its network directory available on paper to enrollees or prospective enrollees requesting it. The HCSO shall:
  - 1. Publish the paper directory at least once a year;
  - 2. Update or supplement the information in the paper directory at least every six months;
  - 3. Explain in the paper directory how an enrollee or prospective enrollee can use or get assistance using the HCSO's online or telephone directories, if any; and
  - 4. Have discretion to list physicians' or practitioners' hospital affiliations in its paper directory.
- D.** Each HCSO that has an online network directory shall:
  - 1. Update the online directory at least monthly;
  - 2. Make the online directory easy to use and user friendly; and
  - 3. Explain, in the online directory, how an enrollee or prospective enrollee can obtain a paper directory.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1913. Demographic Information Reports**

- A.** An HCSO shall report the following data to the Department:
  - 1. For each enrollee, report annually:
    - a. Street address,
    - b. Zip code,
    - c. Gender, and
    - d. Year of birth.
  - 2. For all contracted providers, report semiannually:
    - a. Provider name,
    - b. Street address or addresses at which the provider provides covered services,
    - c. Zip code, and
    - d. Arizona license number,
  - 3. For all contracted physicians or practitioners, report semiannually:
    - a. Specialty, and
    - b. Medical or other applicable degree or information that designates the type of physician or practitioner.
- B.** The HCSO shall report the information in subsection (A) to the Department by the following deadlines:
  - 1. For information in subsection (A)(1) as of December 31 of each calendar year, by February 15 of the next calendar year.
  - 2. For information in subsection (A)(2) as of June 30, by August 15 of the same calendar year.
  - 3. For information in subsection (A)(2) as of December 31, by February 15 of the next calendar year.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1914. Access**

An HCSO shall provide to or arrange for its enrollees services or appointments for services as follows:

- 1. For preventive care services from a contracted PCP, an appointment date within 60 days of the enrollee's request, or sooner if necessary, for the enrollee to be immunized on schedule.
- 2. For routine-care services from a contracted PCP, an appointment date within 15 days of the enrollee's request to the PCP or sooner if medically necessary.
- 3. For specialty care services from a contracted SCP, an appointment date within 60 days of the enrollee's request or sooner if medically necessary.
- 4. In-area urgent care services from a contracted provider seven days per week.
- 5. Timely non-emergency inpatient care services from a contracted facility.
- 6. Timely services from a contracted physician or practitioner in a contracted facility including inpatient emergency care.
- 7. Services from a contracted ancillary provider during normal business hours, or sooner if medically necessary.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6 1915. Alternative Access**

- A. As an alternative to providing access to covered services from a physician, an HCSO may provide access to covered services from an appropriately licensed practitioner.
- B. As an alternative to providing access to covered services at a hospital under R20-6-1914, an HCSO may provide access to covered services at another appropriately licensed facility.
- C. As an alternative to providing access to covered services from a physician or practitioner who sees an enrollee in person under R20-6-1914, an HCSO may provide access to necessary covered services through:
  - 1. Telephone calls and messages,
  - 2. Electronic mail,
  - 3. Communication with the physician's or practitioner's staff,
  - 4. Coverage by another physician or practitioner, or
  - 5. Telemedicine,
- D. An HCSO that panels enrollees to PCPs may panel enrollees to appropriately licensed practitioners.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1916. Availability Ratios**

- A. An HCSO shall maintain a ratio of contracted adult PCPs to adults that is adequate to provide those adults with covered services. An HCSO with a Medicare Advantage (MA) plan may have one ratio that applies to both its insured and MA populations, or a separate ratio for each.
- B. An HCSO shall maintain a ratio of contracted pediatric PCPs to children that is adequate to provide those children enrollees with covered services.
- C. An HCSO shall maintain a ratio of contracted high profile SCPs to enrollees that is adequate to provide those enrollees with covered services that include services at contracted facilities. An HCSO with a MA plan may have one ratio that applies to both its insured and MA populations, or a separate ratio for each.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1917. Geographic Availability in an Urban Area**

An HCSO shall provide each enrollee living in an urban area of the HCSO's service area the following:

- 1. Primary care services from a contracted PCP located within 10 miles or 30 minutes of the enrollee's home;
- 2. High profile specialty care services from a contracted SCP located within 15 miles or 45 minutes of the enrollee's home; and
- 3. Inpatient care in a contracted general hospital, or contracted special hospital, within 25 miles or 75 minutes of the enrollee's home.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1918. Geographic Availability in a Suburban Area**

Each HCSO shall provide each enrollee member living in a suburban area within the HCSO's service area the following:

- 1. Primary care from a contracted PCP located within 15 miles or 45 minutes of the enrollee's home;
- 2. High profile specialty care services from a contracted SPC within 20 miles or 60 minutes of the enrollee's home; and
- 3. Inpatient care in a contracted hospital, or a contracted special hospital within 30 miles or 90 minutes of the enrollee's home.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1919. Geographic Availability in a Rural Area**

An HCSO shall provide each enrollee living in a rural area with primary care services from a contracted physician or practitioner within 30 miles or 90 minutes of the enrollee's home.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1920. Travel Requirements**

- A. An HCSO may require an enrollee to travel a greater distance in-area to obtain covered services from a contracted provider than the enrollee would have to travel to obtain equivalent services from a non-contracted provider, except where a network exception is medically necessary. Nothing in this Section creates an exception to R20-6-1918 through R20-6-1920.
- B. If the HCSO prior-authorizes services that require an enrollee to travel outside the HCSO service area because the services are not available in the area, the HCSO shall reimburse the enrollee for travel expenses. Except as provided under R20-6-1904(E)(6), an HCSO is not required to reimburse an enrollee for travel expenses the enrollee incurs to obtain covered services in-area.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

**R20-6-1921. Enforcement Consideration**

In determining the appropriate enforcement action or penalties for failure to comply with these rules, the Department shall consider any documentation the HCSO provides regarding:

1. Whether seasonal shifts in demand affect access and availability of covered services;
2. Whether the HCSO's demographic information has changed significantly since the HCSO's most recent report;
3. Whether an enrollee has refused to accept covered services the HCSO has offered in the time-frames or locations required of the HCSO by this Article;
4. Whether an enrollee has requested and obtained covered services from a contracted provider whose location, or appointment availability, or capacity result in the HCSO's non-compliance; and
5. Whether market factors indicate that on a short-term basis, compliance is not possible. Market factors include shortage of providers, enrollee or provider location, and provider practice or contracting patterns.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

### 20-143. Rule-making power

- A. The director may make reasonable rules necessary for effectuating any provision of this title.
- B. The director shall make rules concerning proxies, consents or authorizations in respect of securities issued by domestic stock insurance companies having a class of equity securities held of record by one hundred or more persons to conform with the requirements of section 12(g)(2)(G)(ii) of the securities exchange act of 1934, as amended, and as may be amended. Such rule shall not apply to any such company having a class of equity securities which are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended. Whenever such equity securities of any such company are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended, then, no person shall solicit or permit the use of his name to solicit, in any manner whatsoever, any proxy, consent or authorization in respect of any equity security of such company without having first complied with the rules prescribed by the securities and exchange commission pursuant to section 14 of the securities exchange act of 1934, as amended, or as may be amended.
- C. All rules made pursuant to this section shall be subject to title 41, chapter 6.
- D. In addition to any other penalty provided, wilful violation of any rule made by the director is a violation of this title.

20-821. Scope of article; rules; authority of director

A. Hospital service corporations, medical service corporations, dental service corporations, optometric service corporations and hospital, medical, dental and optometric service corporations incorporated in this state are governed by this article and are exempt from all other provisions of this title, except as expressly provided by this article and any rule adopted by the director pursuant to section 20-143 relating to contracts of such service corporations. No insurance law enacted after January 1, 1955 applies to such corporations unless the law specifically refers to corporations.

B. Chapter 2, article 12 of this title, sections 20-223, 20-234, 20-261, 20-261.01, 20-261.02, 20-261.03, 20-261.04, 20-1133, 20-1377, 20-1408, 20-1692, 20-1692.01, 20-1692.02 and 20-1692.03 and chapters 15, 17 and 20 of this title and any rules adopted to implement these provisions apply to all corporations governed by this article.

C. Chapter 21 of this title applies to a hospital service corporation, a medical service corporation or a hospital and medical service corporation.

20-1078. [Rules](#)

The director may adopt rules pursuant to title 41, chapter 6 to carry out this article.

20-1095.01. Service companies; permits; rules; application of laws

A. A service company may not offer or issue a service contract unless the service company has qualified for and been issued a permit by the director.

B. Except for the registration requirements in this article applicable to service companies, service companies and related service contract sellers, administrators and other persons that market, sell or offer to sell service contracts are exempt from any licensing requirements of this title as a result of activities related to the marketing, selling or offering of service contracts.

C. The director shall adopt rules that provide for the application for permit, renewal procedures, fees, refund of the unearned portion of the contract price and approval of forms. Service companies are subject to chapter 1 of this title, except section 20-116, and this article.

D. A provider shall provide a consumer with a specimen copy of the service contract terms and conditions prior to the time of sale upon a request by the consumer. A provider may comply with this provision by providing the consumer with a complete sample copy of the terms and conditions or by directing the consumer to a website containing a complete sample of the terms and conditions of the service contract.

**MEDICAL BOARD**

Title 4, Chapter 16, Articles 3 & 6



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** September 1, 2020

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

**FROM:** Council Staff

**DATE:** August 5, 2020

**SUBJECT: MEDICAL BOARD**  
**Title 4, Chapter 16, Articles 3 & 6**

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### Summary

This Five-Year Review Report (5YRR) from the Medical Board relates to rules in Title 4, Chapter 16, Articles 3 and 6. The rules address the following:

- **Article 3:** Dispensing of Drugs
- **Article 6:** Disciplinary Actions

In the previous 5YRR for these rules, which the Council approved on September 1, 2015, the Board stated it would amend R4-16-301 through R4-16-303 and R4-16-604 and R4-16-605. The Board states that it has completed a draft of the rule revision but has been unable to begin the official rulemaking process because of the need to address more high priority issues including higher priority rulemakings. The Board further states it has completed five rulemakings and three 5YRRs since 2015 which stretched Board staff and resources thin.

### Proposed Action

The Board proposes to amend the reviewed rules to address the issues identified in the Report. The Board proposes to submit the rulemaking to the Council by March 1, 2021.

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

Yes, the Board cites to both general and specific authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The rules in Article 3 (re-codified from Article 2 in 2005) were last substantively amended in a rulemaking that took effect on May 9, 2002. The Board has received no information since its 2015 5YRR of these rules that causes it to believe the conclusion that the 2002 rulemaking would have minimal economic impact on licensees who register to dispense drugs was incorrect. As of April 2020, there are 25,469 licensed physicians in Arizona. During FY 2019, 699 of these licensees (less than 3 percent) registered to dispense drugs.

The rules in Article 6, which went into effect in 2003, were made under an exemption from the Administrative Procedure Act so no economic, small business, and consumer impact statement was prepared. However, when the rules were made, the Board concluded the economic impact would be positive for both physicians and the public because the rules establish guidelines for the Board to use when imposing sanctions on licensees. The Board believes its conclusions regarding the economic impact of the rules was accurate.

Stakeholders are identified as the Board, allopathic physicians, and the general public.

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

Only the Board bears the minimal costs associated with the rules in Article 6. The rules are not applicable to a licensee who is not alleged to have engaged in unprofessional conduct.

The Board concluded the public health and safety benefits of the rules outweigh the cost of compliance and the rules impose minimal burden on physicians who choose to dispense drugs and devices.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Board has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Board indicates the rules are clear, concise, and understandable.

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

The Board states that the rules are mostly consistent with other rules and statutes, except for the following, for the reasons stated in the report:

- R4-16-301(A) (Registration and Renewal);
- R4-16-301(A)(3) (Registration and Renewal);
- R4-16-302(A) (Packaging and Inventory; Exception); and
- R4-16-303(E) (Prescribing and Dispensing Requirements).

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Board believes that the rules are mostly effective in achieving its objectives. However, the Board believes the rules would be more effective if R4-16-302(B) and (E) add the patient's birth date as an additional identifier to ensure the identity of the patient to whom medication is dispensed. Additionally, the Board believes the rules would be more effective if R4-16-302(F) required the computer used to maintain a dispensing log be password protected.

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

The Board 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?**

The Board states that none of the rules are more stringent than federal law. The federal law regarding prescribing controlled substances is not applicable to the Board's rules.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Board indicates that none of the rules under review were made after July 29, 2010 and therefore, no analysis of compliance with A.R.S. § 41-1037 is required.

11. **Conclusion**

As mentioned above, the Board is planning to amend its rules to address all the issues identified in the Report. Specifically, these changes relate to improving consistency with other rules and statutes and effectiveness in achieving its objectives. The Board plans to complete a rulemaking by March 2021. Council staff recommends approval of this report.



## Arizona Medical Board

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### Executive Director

**Patricia E. McSorley**

June 26, 2020

### VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsins, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

**RE: Arizona Medical Board  
4 A.A.C. 16, Articles 3 and 6  
Five-year-review Report**

Dear Ms. Sornsins:

The Arizona Medical Board submits its Five-year-review Report of 4 A.A.C.16, Articles 3 and 6. The report is due under an extension on June 28, 2020.

The Board certifies compliance with A.R.S. § 41-1091.

If you have questions or comments about this report, please contact Pat McSorley at 480-551-2791 or [patricia.mcsorley@azmd.gov](mailto:patricia.mcsorley@azmd.gov).

Sincerely,

Patricia E. McSorley  
Executive Director

**Five-year-review Report**  
**A.A.C. Title 4. Professions and Occupations**  
**Chapter 16. Arizona Medical Board**  
**Submitted for September 1, 2020**

INTRODUCTION

The Arizona Medical Board's (Board) mission is to protect public safety through the judicious licensing, regulation and education of all allopathic physicians. A.R.S. § 32-1403(A) indicates the primary duty of the Board is to protect the public from unlawful, incompetent, unqualified, impaired, or unprofessional practitioners of allopathic medicine through licensure, regulation, and rehabilitation. Allopathic medicine is the system of medical practice that treats disease by using remedies that produce effects different from or incompatible with those produced by the disease under treatment.

Statute that generally authorizes the agency to make rules: A.R.S. §§ 32-1403(A)(8) and 32-1404(D)

1. Specific statute authorizing the rule:

Article 3. Dispensing of Drugs

R4-16-301. A.R.S. § 32-1491(A)(4)

R4-16-302. A.R.S. § 32-1491(A)(1) and (3), (E), (F), and (G)

R4-16-303. A.R.S. § 32-1491(A)(2), (C), (D), and (G)

R4-16-304. A.R.S. § 32-1491(A)(2) and (3), (E), and (F)

R4-16-305. A.R.S. § 32-1491(E) and (F)

Article 6. Disciplinary Actions

R4-16-604. A.R.S. §§ 32-1401(27) and 32-1403(A)(2), (5), and (8)

R4-16-605. A.R.S. §§ 32-1401(27) and 32-1403(A)(2), (5), and (8)

2. Objective of the rules:

Article 3. Dispensing of Drugs

R4-16-301. Registration and Renewal: The objective of this rule is to specify the procedure for applying to register to dispense controlled substances and prescription-only drugs and devices and to renew a registration.

R4-16-302. Packaging and Inventory; Exception: The objective of this rule is to specify the secure manner in which controlled substances and prescription-only drugs must be stored, the information that must be on the label of a dispensed controlled substance or prescription-only drug, and the information required in an ongoing dispensing log.

R4-16-303. Prescribing and Dispensing Requirements: The objective of this rule is to specify the information that must be recorded in a patient's record when a physician dispenses a controlled substance or prescription-only drug or device to the patient and steps required to ensure that the dispensed controlled substance or prescription-only drug or device is the medication or device intended. The rule specifies the physician must give the patient a prescription order before dispensing a controlled substance or prescription-only drug or device.

R4-16-304. Recordkeeping and Reporting Shortages: The objective of this rule is to specify records that must be maintained regarding purchase and dispensing of controlled substances and prescription-only drugs. The rule also specifies the entities a physician is required to notify when the physician discovers loss or theft of a controlled substance or dangerous drug.

R4-16-305. Inspections; Denial and Revocation: The objective of this rule is to specify the possible disciplinary consequences for a physician who fails to cooperate with the Board or allow access to the physician's office and records.

Article 6. Disciplinary Actions

R4-16-604. Aggravating Factors Considered in Disciplinary Actions: The objective of this rule is to specify the key aggravating factors considered by the Board when determining the degree of discipline to impose on a physician.

R4-16-605. Mitigating Factors Considered in Disciplinary Actions: The objective of this rule is to specify the key mitigating factors considered by the Board when determining the degree of discipline to impose on a physician.

3. Are the rules effective in achieving their objectives? Generally yes

Although there are some issues with consistency and enforcement, which are discussed in items 4 and 5, the Board believes the rules are generally effective in achieving their objectives. It bases this conclusion of the fact it is able to issue dispensing registrations as required under statute and protect the public from unlawful, incompetent, unqualified, impaired, or unprofessional practitioners of allopathic medicine.

The Board believes the rules would be more effective if the following two changes are made:

R4-16-302(B) and (E): Add the patient's birth date as an additional identifier to ensure the identity of the patient to whom medications are dispensed.

R4-16-302(F): Require the computer used to maintain a dispensing log be password protected.

4. Are the rules consistent with other rules and statutes? No

The Board identified the following issues regarding consistency of the rules with statute or other rules:

R4-16-301(A): Under Laws 2018, Chapter 1, A.R.S. § 32-1491 was amended to indicate a physician is allowed to dispense a Schedule II controlled substance that is an opioid only for

medication-assisted treatment of substance-use disorders. This subsection needs to be amended to cross reference that limitation.

R4-16-301(A)(3): This subsection refers to a fee required in A.R.S. § 32-1436. Statute does not require a fee. Rather, it authorizes the Board to establish fees. The correct citation for a required fee is R4-16-205.

A.R.S. § 32-1921(E) provides that a licensed physician who dispenses medication and devices only at a public health facility or qualifying community health center is exempt from paying a fee to register with the Board. The Board needs to amend R4-16-301(A)(3) to indicate this exemption.

R4-16-301(A) and R4-16-302(A): Internal cross references to the Board of Pharmacy statutes are incorrect.

R4-16-303(E): The definition of “dispensing” contained in this subsection is different from that contained in A.R.S. §§ 32-1401(9) and 32-1491(G).

5. Are the rules enforced as written? Yes
6. Are the rules clear, concise, and understandable? Yes
7. Has the agency received written criticisms of the rules within the last five years? No
8. Economic, small business, and consumer impact comparison:

The rules in Article 3 were last substantively amended in a rulemaking that took effect on May 9, 2002. The rules were re-codified from Article 2 on March 25, 2005. The Board has received no information since its 2015 5YRR of these rules that causes it to believe the conclusion that the 2002 rulemaking would have minimal economic impact on licensees who register to dispense drugs was incorrect. As of April 2020, there are 25,469 licensed

physicians in Arizona. During FY2019, 699 of these licensees (less than 3 percent) registered to dispense drugs.

The rules in Article 6, which went into effect on August 12, 2003, were made under an exemption from the Administrative Procedure Act (See Laws 2002, Chapter 37, § 6) so no economic, small business, and consumer impact statement was prepared. However, when the rules were made, the Board concluded the economic impact would be positive for both physicians and the public because the rules establish guidelines for the Board to use when imposing sanctions on licensees. The Board believes its conclusion regarding the economic impact of the rules was accurate. The rules were re-codified from Article 5 to Article 6 on March 25, 2005. During FY2019, 1,228 complaints were opened alleging some form of unprofessional conduct by licensed physicians. Disciplinary action was taken against 92 physicians in FY2019. The most frequent form of discipline was a practice restriction. Almost a third was placed on probation. The Board revoked or accepted surrender of the licenses of 13 (14 percent) physicians.

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 September 1, 2015, the Board indicated it would amend R4-16-301 through R4-16-303 and R4-16-604 and R4-16-605. The Board has completed a draft of the rule revision but has been unable to begin the official rulemaking process because of the need to address more high priority issues, including higher priority rulemakings. Since 2015, the Board has completed five rulemakings and three 5YRRs. Its staff has also completed two rulemakings and a 5YRR for the Arizona Regulatory Board of Physician Assistants. This amount of rule activity has stretched the Board's staff and resources.

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:

A.R.S. § 32-1491 requires the Board to make rules regarding labeling, recordkeeping, storage, and packaging of drugs. The statute also requires a physician who dispenses drugs and devices to register with the Board<sup>1</sup>. The Board has made rules that impose requirements that result in costs but the Board believes the requirements are necessary to protect public health and safety and promote best practices by licensees.

R4-16-301 requires a physician wishing to dispense drugs and devices to complete and submit a registration form to the Board and pay a registration fee (\$200 for the initial dispensing registration). The rule also requires the registration to be renewed annually (\$150 fee).

R4-16-302 requires a physician to put specified information on a prescription label, to establish secure procedures for storing and inventorying controlled substances, and to maintain a dispensing log.

R4-16-303 requires a physician to record specific information in a patient's medical record, to take steps ensuring the intended drug is dispensed, and limits those from whom the physician may purchase drugs to be dispensed.

R4-16-304 specifies the manner in which a physician is required to keep records of prescription orders and invoices for drugs and devices.

Only the Board bears the minimal costs associated with the rules in Article 6. The rules are not applicable to a licensee who is not alleged to have engaged in unprofessional conduct.

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<sup>1</sup> Information regarding state requirements regulating dispensing drugs and devices can be found at this web site: <https://speritek.com/state-dispensing-regulations/>. A few states do not allow dispensing by physicians. Slightly fewer than half the states require a separate registration to dispense. They charge fees ranging from \$0 to \$1,050.

The Board concluded the public health and safety benefits of the rules outweigh the cost of compliance and the rules impose minimal burden on physicians who choose to dispense drugs and devices.

12. Are the rules more stringent than corresponding federal laws? No

None of the rules is more stringent than federal law. There are numerous federal laws relating to the provision of health care, including those regarding prescribing controlled substances, but the laws are not applicable to the Board's rules. A licensed physician who registers with the Board to dispense controlled substances and devices is required by federal law to be registered also with the U.S. Drug Enforcement Administration (See 21 CFR, Chapter II, Part 1301.11).

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, does the rule comply with A.R.S. § 41-1037? Yes

None of the reviewed rules were made after July 29, 2010. Therefore, no analysis of compliance with A.R.S. § 41-1037 is required.

14. Proposed course of action:

The Board intends to amend the reviewed rule to address all issues identified in this report. The Board will submit the rulemaking to the Council by March 1, 2021.

March 31, 2019

(Authority: A.R.S. § 32-1401 et seq.)

### ARTICLE 3. DISPENSING OF DRUGS

*Article 3 heading, recodified from Article 2 heading, at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).*

*Article 3, consisting of Sections R4-16-301 through R4-16-303, adopted effective February 2, 2000 (Supp. 00-1).*

Section		
R4-16-301.	Registration and Renewal	11
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### ARTICLE 6. DISCIPLINARY ACTIONS

Section		
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### ARTICLE 3. DISPENSING OF DRUGS

#### **R4-16-301. Registration and Renewal**

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

#### **Historical Note**

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

#### **R4-16-302. Packaging and Inventory; Exception**

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

either on-screen viewing or printing of a copy.

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

#### Historical Note

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

#### R4-16-303. Prescribing and Dispensing Requirements

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

#### Historical Note

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

#### R4-16-304. Recordkeeping and Reporting Shortages

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

#### Historical Note

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

#### R4-16-305. Inspections; Denial and Revocation

- A. A physician shall cooperate with and allow access to the physician's office and records for periodic inspection of dispensing practices by the Board or its authorized representative. Failure to cooperate or allow access shall be grounds for revocation of a physician's registration to dispense a controlled substance, prescription-only drug, or prescription-only device or denial of renewal of the physician's dispensing registration.
- B. Failure to comply with A.R.S. § 32-1491 or this Article constitutes grounds for denial or revocation of dispensing registration.
- C. The Board shall revoke a physician's registration to dispense a controlled substance, prescription-only drug, or prescription-only device upon occurrence of the following:
1. Suspending, revoking, surrendering, or canceling the physician's license;
  2. Placing the physician's license on inactive status;
  3. Failing to timely renew the physician's license; or
  4. Restricting the physician's ability to prescribe or administer medication, including loss or expiration of the physician's Drug Enforcement Administration Certificate of Registration.
- D. If the Board denies a physician's dispensing registration, the physician may appeal the decision by filing a request, in writing, with the Board, no later than 30 days after receipt of the notice denying the registration.

#### Historical Note

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

## ARTICLE 6. DISCIPLINARY ACTIONS

#### R4-16-604. Aggravating Factors Considered in Disciplinary Actions

When determining the degree of discipline, the Board may consider certain factors including, but not limited to, the following:

1. Prior disciplinary offenses;
2. Dishonest or selfish motive;
3. Pattern of misconduct; multiple offenses;

4. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the Board;
5. Submission of false evidence, false statements, or other deceptive practices during the investigative or disciplinary process;
6. Refusal to acknowledge wrongful nature of conduct; and
7. Vulnerability of the victim.

**Historical Note**

New Section R4-16-604 recodified from R4-16-504 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**R4-16-605. Mitigating Factors Considered in Disciplinary Actions**

When determining the degree of discipline, the Board may consider certain factors including, but not limited to, the following:

1. Absence of prior disciplinary record;
2. Absence of dishonest or selfish motive;
3. Timely good faith effort to rectify consequences of misconduct;
4. Interim rehabilitation;
5. Remoteness of prior offenses; and
6. How much control the physician has of processes in the specific practice setting.

**Historical Note**

New Section R4-16-605 recodified from R4-16-504 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

In this chapter, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

18. "Medical peer review" means:

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

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

19. "Medicine" means allopathic medicine as practiced by the recipient of a degree of doctor of medicine.

20. "Office based surgery" means a medical procedure conducted in a physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center.

21. "Physician" means a doctor of medicine who is licensed pursuant to this chapter.

22. "Practice of medicine" means the diagnosis, the treatment or the correction of or the attempt or the claim to be able to diagnose, treat or correct any and all human diseases, injuries, ailments, infirmities or deformities, physical or mental, real or imaginary, by any means, methods, devices or instrumentalities, except as the same may be among the acts or persons not affected by this chapter. The practice of medicine includes the practice of medicine alone or the practice of surgery alone, or both.

23. "Restrict" means taking a disciplinary action that alters the physician's practice or professional activities if the board determines that there is evidence that the physician is or may be medically incompetent or guilty of unprofessional conduct.

24. "Special purpose licensing examination" means an examination that is developed by the national board of medical examiners on behalf of the federation of state medical boards for use by state licensing boards to test the basic medical competence of physicians who are applying for licensure and who have been in practice for a considerable period of time in another jurisdiction and to determine the competence of a physician who is under investigation by a state licensing board.

25. "Teaching hospital's accredited graduate medical education program" means that the hospital is incorporated and has an internship, fellowship or residency training program that is accredited by the accreditation council for graduate medical education, the American medical association, the association of American medical colleges, the royal college of physicians and surgeons of Canada or a similar body in the United States or Canada that is approved by the board and whose function is that of approving hospitals for internship, fellowship or residency training.

26. "Teaching license" means a valid license to practice medicine as a full-time faculty member of an approved school of medicine or a teaching hospital's accredited graduate medical education program.

27. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

(a) Violating any federal or state laws, rules or regulations applicable to the practice of medicine.

(b) Intentionally disclosing a professional secret or intentionally disclosing a privileged communication except as either act may otherwise be required by law.

(c) Committing false, fraudulent, deceptive or misleading advertising by a doctor of medicine or the doctor's staff, employer or representative.

(d) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by any court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(e) Failing or refusing to maintain adequate records on a patient.

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

(t) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Adequate informed patient consent.

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

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

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

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

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

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

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

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

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

(pp) Failing to report in writing to the Arizona medical board or the Arizona regulatory board of physician assistants any evidence that a doctor of medicine or a physician assistant is or may be medically

incompetent, guilty of unprofessional conduct or mentally or physically unable to safely practice medicine or to perform as a physician assistant.

(qq) As a physician who is the chief executive officer, the medical director or the medical chief of staff of a health care institution, failing to report in writing to the board that the hospital privileges of a doctor of medicine have been denied, revoked, suspended, supervised or limited because of actions by the doctor that appear to show that the doctor is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be unable to engage safely in the practice of medicine.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. The primary duty of the board is to protect the public from unlawful, incompetent, unqualified, impaired or unprofessional practitioners of allopathic medicine through licensure, regulation and rehabilitation of the profession in this state. The powers and duties of the board include:

1. Ordering and evaluating physical, psychological, psychiatric and competency testing of licensed physicians and candidates for licensure as may be determined necessary by the board.

2. Initiating investigations and determining on its own motion whether a doctor of medicine has engaged in unprofessional conduct or provided incompetent medical care or is mentally or physically unable to engage in the practice of medicine.

3. Developing and recommending standards governing the profession.

4. Reviewing the credentials and the abilities of applicants whose professional records or physical or mental capabilities may not meet the requirements for licensure or registration as prescribed in article 2 of this chapter in order for the board to make a final determination whether the applicant meets the requirements for licensure pursuant to this chapter.

5. Disciplining and rehabilitating physicians.

6. Engaging in a full exchange of information with the licensing and disciplinary boards and medical associations of other states and jurisdictions of the United States and foreign countries and the Arizona medical association and its components.

7. Directing the preparation and circulation of educational material the board determines is helpful and proper for licensees.

8. Adopting rules regarding the regulation and the qualifications of doctors of medicine.

9. Establishing fees and penalties as provided pursuant to section 32-1436.

10. Delegating to the executive director the board's authority pursuant to section 32-1405 or 32-1451. The board shall adopt substantive policy statements pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.

11. Determining whether a prospective or current Arizona licensed physician has the training or experience to demonstrate the physician's ability to treat and manage opiate-dependent patients as a qualifying physician pursuant to 21 United States Code section 823(g)(2)(G)(ii).

B. The board may appoint one of its members to the jurisdiction arbitration panel pursuant to section 32-2907, subsection B.

C. There shall be no monetary liability on the part of and no cause of action shall arise against the executive director or such other permanent or temporary personnel or professional medical investigators for any act done or proceeding undertaken or performed in good faith and in furtherance of the purposes of this chapter.

D. In conducting its investigations pursuant to subsection A, paragraph 2 of this section, the board may receive and review staff reports relating to complaints and malpractice claims.

E. The board shall establish a program that is reasonable and necessary to educate doctors of medicine regarding the uses and advantages of autologous blood transfusions.

F. The board may make statistical information on doctors of medicine and applicants for licensure under this article available to academic and research organizations.

G. The committee on executive director selection and retention is established consisting of the Arizona medical board and the chairperson and vice chairperson of the Arizona regulatory board of physician assistants. The committee is a public body and is subject to the requirements of title 38, chapter 3, article 3.1. The committee is responsible for appointing the executive director pursuant to section 32-1405. All members of the committee are voting members of the committee. The committee shall elect a chairperson and a vice chairperson when the committee meets but no more frequently than once a year. The chairperson shall call meetings of the committee as necessary, and the vice chairperson may call meetings of the committee that are necessary if the chairperson is not available. The presence of eight members of the committee at a meeting constitutes a quorum. The committee meetings may be held using communications equipment that allows all members who are participating in the meeting to hear each other. If any discussions occur in an executive session of the committee, notwithstanding the requirement that discussions made at an executive session be kept confidential as specified in section 38-431.03, the chairperson and vice chairperson of the Arizona regulatory board of physician assistants may discuss this information with the Arizona regulatory board of physician assistants in executive session. This disclosure of executive session information to the Arizona regulatory board of physician assistants does not constitute a waiver of confidentiality or any privilege, including the attorney-client privilege.

H. The officers of the Arizona medical board and the Arizona regulatory board of physician assistants shall meet twice a year to discuss matters of mutual concern and interest.

I. The board may accept and expend grants, gifts, devises and other contributions from any public or private source, including the federal government. Monies received under this subsection do not revert to the state general fund at the end of a fiscal year.

[32-1404. Meetings; quorum; committees; rules; posting](#)

A. The board shall hold regular quarterly meetings on a date and at the time and place designated by the chairman. The board shall hold special meetings, including meetings using communications equipment that allows all members participating in the meeting to hear each other, as the chairman determines are necessary to carry out the functions of the board. The board shall hold special meetings on any day that the chairman determines are necessary to carry out the functions of the board. The vice-chairman may call meetings and special meetings if the chairman is not available.

B. The presence of seven board members at a meeting constitutes a quorum. A majority vote of the quorum is necessary for the board to take any action.

C. The chairman may establish committees from the membership of the board and define committee duties necessary to carry out the functions of the board.

D. The board may adopt rules pursuant to title 41, chapter 6 that are necessary and proper to carry out the purposes of this chapter.

E. Meetings held pursuant to subsection A of this section shall be audio and video recorded. Beginning September 2, 2014, the board shall post the video recording on the board's website within five business days after the meeting.

32-1491. Dispensing of drugs and devices; exception; civil penalty; conditions; definition

A. Except as provided in subsection B of this section, a doctor of medicine may dispense drugs and devices kept by the doctor if:

1. All drugs are dispensed in packages labeled with the following information:

(a) The dispensing doctor's name, address and telephone number.

(b) The date the drug is dispensed.

(c) The patient's name.

(d) The name and strength of the drug, directions for its use and any cautionary statements.

2. The dispensing doctor enters into the patient's medical record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing doctor keeps all drugs in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

4. The doctor registers with the board to dispense drugs and devices and pays the registration fee prescribed by section 32-1436.

B. A doctor of medicine may not dispense a schedule II controlled substance that is an opioid, except for an implantable device or an opioid that is for medication-assisted treatment for substance use disorders.

C. Except in an emergency situation, a doctor who dispenses drugs without being registered by the board to do so is subject to a civil penalty by the board of not less than three hundred dollars and not more than

one thousand dollars for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.

D. Before a physician dispenses a drug pursuant to this section, the physician shall give the patient a prescription and inform the patient that the prescription may be filled by the prescribing physician or by a pharmacy of the patient's choice.

E. A doctor shall dispense only to the doctor's own patient and only for conditions being treated by that doctor. The doctor shall provide direct supervision of a medical assistant, nurse or attendant involved in the dispensing process. For the purposes of this subsection, "direct supervision" means that a doctor is present and makes the determination as to the legitimacy or the advisability of the drugs or devices to be dispensed.

F. This section shall be enforced by the board, which shall establish rules regarding labeling, recordkeeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic reviews of dispensing practices to ensure compliance with this section and applicable rules.

G. For the purposes of this section, "dispense" means the delivery by a doctor of medicine of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

**CITIZENS CLEAN ELECTIONS COMMISSION (F20-0904)**

Title 2, Chapter 20, All Articles, Citizens Clean Elections Commission



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** September 1, 2020

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

**FROM:** Council Staff

**DATE:** August 10, 2020

**SUBJECT:** **CITIZENS CLEAN ELECTIONS COMMISSION (F20-0904)**  
Title 2, Chapter 20, All Articles, Citizens Clean Elections Commission

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### Summary

This Five Year Review Report (5YRR) from the Citizens Clean Elections Commission (Commission) relates to rules in Title 2, Chapter 20, All Articles. The Commission adopted these rules in order to implement the Citizens Clean Elections Act, an act that Arizona voters approved in 1998. According to the Commission, the act “created the clean elections system to diminish the influence of special-interest money, including the opportunities for and appearance of quid pro quo corruption, and thereby to promote the integrity of Arizona state government.”

The seven articles in Chapter 20 address the following:

- **Article 1: General Provisions;**
- **Article 2: Compliance and Enforcement Procedures;**
- **Article 3: Standards of Conduct for Commissioners and Employees;**
- **Article 4: Audits;**
- **Article 5: Rulemaking;**
- **Article 6: Ex Parte Communications; and**
- **Article 7: Use of Funds and Repayment.**

In the previous 5YRR for these rules, the Commission did not propose to take any action on the rules, except for R2-20-206 (Executive Director’s Recommendation on Complaint-generated matters) and R2-20-208 (Complaint Processing; Notification). The Commission did not complete the prior proposed course of action for these two rules.

For R2-20-206, the Commission states that “[t]he 2015 report described a proposal to amend this rule to require the Executive Director to first receive Commission approval to initiate an inquiry if a person making an independent expenditure in an election without a participating candidate faces penalties under A.R.S. § 16-942(B). The proposal, however, is not consistent with the Clean Elections Act and the Commission took no action on it.”

For R2-20-208, the Commission states that “[t]he 2015 report described a proposal to amend this rule to clarify processing procedures when a complaint alleges an ‘Article 1’ violation involving an independent expenditure. That amendment was not completed because it is not consistent with the Clean Elections Act.”

### **Proposed Action**

The Commission does not propose to take any action on these rules.

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

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

#### **2. Summary of the agency’s economic impact comparison and identification of stakeholders:**

The economic impact of the rules is not different from what the Commission projected when it adopted/amended the rules. The rules create no discernible economic impact for small businesses or consumers. For small businesses or consumers who make expenditures subject to the rules’ reporting requirements, compliance with the rules imposes zero economic impact because the reporting requirement is simple and may be filed without any filing fee. To the extent that the obligation to file a report itself imposes an economic impact, that impact comes from the statutory reporting requirement and not from the rules. A failure to abide by any of the statutes or rules may create an economic impact on those subject to the penalties the Commission may impose.

The stakeholders include the Commission, small businesses, consumers, and the general public.

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

The Commission has determined that the rules achieve their regulatory objectives with the least burden and cost possible, and the probable benefits of the rules outweigh the probable costs.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Commission did not receive any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes. The Commission states that the rules under review are clear, concise, and understandable.

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

Yes. The Commission 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 Commission states that all rules are effective in achieving their objectives.

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

Yes. The Commission 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?**

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

11. **Conclusion**

Council staff finds that the Commission 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. As stated above, the Commission does not propose to take any action on these rules. Council staff recommends approval of this report.

June 30, 2020

VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)  
Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

**RE: Arizona Citizens Clean Elections Commission, Title 2, Chapter 20 Five Year Review Report**

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of the Arizona Citizens Clean Elections Commission for Title 2, Chapter 20, which Council staff has concluded is due June 30, 2020.

The Arizona Citizens Clean Elections Commission hereby certifies compliance with A.R.S. 41-1091. For questions about this report, please contact Thomas M. Collins at 602-364-3477 or [tom@azcleaselections.gov](mailto:tom@azcleaselections.gov).

Sincerely,



Thomas M. Collins  
Executive Director

*FIVE YEAR REVIEW REPORT*  
*Citizens Clean Elections Commission*  
*A.A.C. Title 2, Chapter 20, All Articles*

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This report covers all rules in A.A.C. Title 2, Chapter 20, all articles. The Citizens Clean Elections Commission (the “Commission”) adopted these rules to further the goals of the Citizens Clean Elections Act (“Act”). The Act was passed by the voters in 1998 and created the clean elections system to diminish the influence of special-interest money, including the opportunities for and appearance of *quid pro quo* corruption, and thereby to promote the integrity of Arizona state government. The Act promotes freedom of speech under the United States and Arizona Constitutions. It also created a voluntary system wherein participating candidates receive public funds to finance campaigns. To qualify for funding, participating candidates must follow the rules and reporting requirements adopted by the Commission. The Act also applies to candidates who are nonparticipating candidates and independent spenders in elections. The Rules implement the provisions of the Act. All rules created or amended prior to June 25, 2013 have been “pre-cleared” by the U.S. Department of Justice pursuant to Section Five of the Federal Voting Rights Act.

The Commission reports the following analysis of its rules in the order required by Arizona Administrative Code (“A.A.C.”) R1-6-301. Pursuant to A.A.C. R1-6-301(B), Part I includes information pertaining to all, or a great number, of the rules. Part II reports information unique to individual rules.

This report is made without waiver of any of the Commission’s legal positions concerning the Commission’s rulemaking authority or the Governor’s Regulatory Review Council’s authority under A.R.S. § 41-1056.

Part I: Analysis Which Is Identical for all Rules

**1. Effectiveness of the rule in achieving the objective**

All the rules are effective in achieving their objectives as stated below.

**2. Written criticisms of the Rules Received in the Past Five Years**

The Commission has not received any written criticisms of the rules in the past five years.

**3. Authorization of the Rules by Existing Statutes**

The Commission’s general rulemaking authority is found in A.R.S. §§ 16-940 through 16-961 and A.R.S. § 16-956 (C) gives the Commission specific authority to adopt rules to carry out the purposes of the Article and to govern procedures of the Commission.

**4. Consistency of the rule with state and federal statutes and rules and enforcement**

In the process of preparing this report the rules have been compared against each other and A.R.S. §§ 16-940 through 16-961 and the Commission has determined the rules are consistent and enforced as written.

**5. Clarity, conciseness, and understandability of the rule**

All the rules are clear, concise, and understandable.

**6. Economic, Small Business, and Consumer Impact Comparison**

The economic impact has not differed from that projected when the rules were adopted/amended. The rules create no discernible economic impact for small businesses or consumers. For small businesses or consumers who make expenditures subject to the rules' reporting requirements, compliance with the rules imposes zero economic impact because the reporting requirement is simple and may be filed without any filing fee. To the extent that the obligation to file a report itself imposes an economic impact, that impact comes from the statutory reporting requirement and not from the rules. A failure to abide by any of the statutes or rules may create an economic impact on those subject to the penalties the Commission may impose.

The main costs are born by the Commission and include staff time to process reports. The Commission receives funds from the following sources:

- A 10% surcharge imposed on all civil and criminal fines and penalties collected pursuant to A.R.S. § 12-116.01;
- A \$5 voluntary contribution per taxpayer (\$10 when married and filing jointly) who files an Arizona state income tax return and marks an optional check-off box on the first page of the form. A taxpayer who checks this box receives a \$5 reduction in tax liability and \$5 goes to the Clean Elections Fund (NOTE: As of August 2, 2012, the Commission only receives \$5 voluntary taxpayer contributions from individuals filing tax returns for tax years 2012 and earlier.);
- A voluntary donation to the Clean Elections Fund by designating the Fund on an income tax return form filed by the individual or business entity, or by making a payment directly to the Fund. Any taxpayer making a donation shall receive a dollar-for-dollar tax credit not to exceed 20 percent of the tax amount on the return or \$680 per taxpayer, whichever is higher (NOTE: As of August 2, 2012, the Commission no longer accepts donations for the dollar-for-dollar tax credit.);
- Qualifying contributions received by participating candidates; and
- Civil penalties assessed against violators of the Citizens Clean Elections Act.

**7. Analysis Submitted by Another Person Regarding the Rules' Impact on this State's Business Competitiveness as Compared to the Competitiveness of Businesses in Other States**

No analysis has been submitted to the Commission.

**8. Completion of the Previous Five-Year –Review Report Process**

The last five-year-review report was completed and did not identify any needed course of action, with the exception of R2-20-206 and R2-20-208 which are discussed individually below.

**9. Probable Benefits Outweigh Probable Costs / Rules Impose Least Burden on Regulated Persons**

In the process of preparing this report, the Commission has determined that the rules achieve their regulatory objectives with the least burden and cost possible, and the probable benefits of the rules outweigh the probable costs.

**10. Corresponding federal law**

There are no corresponding federal laws.

**11. Compliance with A.R.S. § 41-1037**

Commission rules do not require the issuance of a regulatory permit, license, or agency authorization.

**12. Course of action the agency proposes to take regarding each rule**

The Commission does not propose any course of action for the rules..

Part II: Analysis of Individual Rules

**ARTICLE 1 – GENERAL PROVISIONS**

**R2-20-101. Definitions**

**1. Objective**

Supplement the definitions provided in A.R.S. §§16-901 and 16-961 for Chapter 20 of the Arizona Administrative Code, which includes the Commission rules, to define terms used in the rules to make the rules understandable to the reader, achieve clarity in the rules without needless repetition, and afford consistent interpretation.

**R2-20-103. Communications: Time and Method**

**1. Objective**

Clarify procedures for computing periods of time and methods of communicating between the candidate and the Commission.

#### **R2-20-104. Certification as a Participating Candidate**

##### **1. Objective**

Provide guidance on filing an application for certification and electronic campaign finance reports; accepting contributions and making expenditures; and requirements for a nonparticipating candidate to be eligible for participating candidate status.

#### **R2-20-105. Certification for Funding**

##### **1. Objective**

Provide the process for certifying clean elections candidates.

#### **R2-20-106. Distribution of Funds to Certified Candidates**

##### **1. Objective**

Provide the process and criteria for the Commission to evaluate a candidate's application for funding.

#### **R2-20-107. Candidate Debates**

##### **1. Objective**

Provide procedures for conducting debates, for candidates seeking to be excused from participation in the debates and the penalty for failing to participate in the debates.

#### **R2-20-108. Termination of Participating Candidate Status**

##### **1. Objective**

Provide a method for candidates to withdraw their application for certification or funding.

#### **R2-20-109. Independent Expenditure Reporting Requirements**

##### **1. Objective**

Provide the requirements for the submission of independent expenditure reports.

#### **R2-20-110. Participating Candidate Reporting Requirements**

##### **1. Objective**

Provide the reporting requirements of participating candidates.

**R2-20-111. Non-participating Candidate Reporting Requirements and Contribution Limits**

**1. Objective**

Provide the reporting requirements of non-participating candidates.

**R2-20-112. Political Party Exceptions**

**1. Objective**

Provide guidance on the scope of the political party exceptions in A.R.S. § 16-911(B)(4) to the definitions of contributions and expenditures in A.R.S. § 16-901(5), (8). Note, A.R.S. § 16-911(B)(4)(b) is currently subject to the injunction in *Arizona Advocacy Network Fdn. v. State*, CV2017-096705 (Ariz. Sup. Ct. Maricopa June 5, 2019).

**R2-20-113. Candidate Statement Pamphlet**

**1. Objective**

Provide procedures for candidate eligibility and submission of statements for the Commission's primary and general election candidate statement pamphlets in accordance with A.R.S. § 16-956.

**R2-20-114. Candidate Campaign Bank Account**

**1. Objective**

Specify the method for maintaining campaign accounts.

**R2-20-115. Books and Records Requirements**

**1. Objective**

Specify the manner for keeping records and giving the public access to campaign records.

**ARTICLE 2 – COMPLIANCE AND ENFORCEMENT PROCEDURES**

**R2-20-201. Scope**

**1. Objective**

Specify the scope of the rules.

**R2-20-202. Initiation of Compliance Matters**

**1. Objective**

Describe methods for initiating an enforcement matter.

**R2-20-203. Complaints**

**1. Objective**

Provide the process for filing a complaint.

**R2-20-204. Initial Complaint Processing; Notification**

**1. Objective**

Specify the procedures for processing complaints.

**R2-20-205. Opportunity for No Action on Complaint-Generated Matters**

**1. Objective**

Specify the method and time period allowed for an alleged violator to respond to a complaint.

**R2-20-206. Executive Director's Recommendation on Complaint-Generated Matters**

**1. Objective**

Specify the Executive Director's and complainant's role prior to bringing a reason-to-believe recommendation to the Commission.

**8. Completion of the Previous Five-Year –Review Report Process**

The 2015 report described a proposal to amend this rule to require the Executive Director to first receive Commission approval to initiate an inquiry if a person making an independent expenditure in an election without a participating candidate faces penalties under A.R.S. § 16-942(B). The proposal, however, is not consistent with the Clean Elections Act and the Commission took no action on it.

**R2-20-207. Internally Generated Matters; Referrals**

**1. Objective**

Provide the Executive Director with authority to generate an internal complaint.

**R2-20-208. Complaint Processing; Notification**

**1. Objective**

Provide the process for notifying the complainant and the respondent of a reason-to-believe determination.

**8. Completion of the Previous Five-Year –Review Report Process**

The 2015 report described a proposal to amend this rule to clarify processing procedures when a complaint alleges an “Article 1” violation involving an independent expenditure. That amendment was not completed because it is not consistent with the Clean Elections Act.

**R2-20-209. Investigation**

**1. Objective**

Specify the methods used by the Commission to investigate following a reason-to-believe determination.

**R2-20-210. Written Questions Under Order**

**1. Objective**

Allow the Commission to issue an order requiring any person to submit sworn, written answers to written questions.

**R2-20-211. Subpoenas and Subpoenas Duces Tecum; Depositions**

**1. Objective**

Allow the Commission to authorize the Administrative Counsel or Assistant Attorney General to issue subpoenas for a deposition or issue a subpoena *duces tecum* during its investigation.

**R2-20-213. Motions to Quash or Modify a Subpoena**

**1. Objective**

Allow any person to whom a subpoena is directed to apply to the Commission to quash or modify the subpoena.

**R2-20-214. The Probable Cause to Believe Recommendation: Briefing Procedures**

**1. Objective**

Specify the procedure for the Commission’s determination of probable cause to believe that a violation of the statute or rule has occurred or is about to occur.

**R2-20-215. The Probable Cause to Believe Finding; Notification**

**1. Objective**

Provide the process for notifying the respondent of a probable cause finding.

**R2-20-216. Conciliation**

**1. Objective**

Provide the process for settling matters informally.

**R2-20-217. Enforcement Proceedings**

**1. Objective**

Provide the process for assessing civil penalties.

**R2-20-220. Ex Parte Communications**

**1. Objective**

Prohibit ex parte communications with the Commission staff or Commissioner.

**R2-20-221. Representation by Counsel; Notification**

**1. Objective**

Specify the extent of a respondent's right to be represented.

**R2-20-222. Civil Penalties**

**1. Objective**

Designate potential civil penalties.

**R2-20-223. Notice of Appealable Agency Action**

**1. Objective**

Specify the Commission's notice requirement after making a probable cause finding.

**R2-20-224. Request for Administrative Hearing**

**1. Objective**

Designate the timeline and process for a respondent to request a hearing.

**R2-20-225. Informal Settlement Conference**

**1. Objective**

Provide the process for a respondent to request an informal settlement conference.

**R2-20-226. Administrative Hearing**

**1. Objective**

Specify the timeline and process for conducting administrative hearings.

**R2-20-227. Review of Administrative Decision by Commission**

**1. Objective**

Specify the Commission's responsibilities when it receives notice of an administrative decision.

**R2-20-228. Judicial Review**

**1. Objective**

Provide the process for exhausting administrative remedies prior to seeking judicial review.

**ARTICLE 3 - STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES**

**R2-20-301. Purpose and Applicability**

**1. Objective**

Indicate the purpose and scope of this article.

**R2-20-302. Definitions**

**1. Objective**

Define terms for this article to make the rules understandable to the reader, achieve clarity in the rules without needless repetition, and afford consistent interpretation.

**R2-20-303. Notification to Commissioners and Employees**

**1. Objective**

Specify material to be made available to each employee and Commissioner upon revision or entrance of new employment.

**R2-20-304. Interpretation and Advisory Service**

**1. Objective**

Specify the process for seeking advice on questions of conflict of interest.

**R2-20-305. Reporting Suspected Violations**

**1. Objective**

Provide the procedure for reporting suspected violations of conflict of interest requirements.

**R2-20-306. Disciplinary and Other Remedial Action**

**1. Objective**

Specify the disciplinary action for violating this Article.

**R2-20-307. General Prohibited Conduct**

**1. Objective**

Specify conduct that is prohibited for Commissioners or employees.

**R2-20-308. Outside Employment or Activities**

**1. Objective**

Specify the prohibited conduct related to employment and other activities for Commissioners or employees.

**R2-20-309. Financial Interests**

**1. Objective**

Specify financial conflicts of interest requirements.

**R2-20-310. Political and Organizational Activity**

**1. Objective**

Specify conflicts of interest related to express advocacy.

**R2-20-311. Membership in Associations**

**1. Objective**

Specify potential conflicts of interest related to membership in nongovernmental associations or organizations.

**R2-20-312. Use of State Property**

**1. Objective**

Specify limitations on using state property.

**ARTICLE 4 – AUDITS**

**R2-20-401. Purpose and Scope**

**1. Objective**

Provide the purpose and scope of the article.

**R2-20-402. General**

**1. Objective**

Establish the tools available to the Commission in conducting audits.

**R2-20-402.01. Audits of Participating Legislative Candidates**

**1. Objective**

Authorize Commission staff to conduct audits of legislative candidates.

**R2-20-402.02. Audits of Participating Statewide Candidates**

**1. Objective**

Provide for audits of participating statewide legislative candidates.

**R2-20-403. Conduct of Fieldwork**

**1. Objective**

Establish candidate responsibilities during an audit.

**R2-20-404. Preliminary Audit Report**

**1. Objective**

Provide the procedures for the first phase of the audit process.

**R2-20-405. Final Audit Report**

**1. Objective**

Provide the procedures for the final phase of the audit process.

**R2-20-406. Release of Audit Report**

**1. Objective**

Provide details on how an audit report is made available to the public.

**ARTICLE 5 – RULEMAKING**

**R2-20-501. Purpose and Scope**

**1. Objective**

Specify the purpose and scope of the Commission's rulemaking.

**R2-20-502. Procedural Requirements**

**1. Objective**

Provide the process for filing a written petition regarding the issuance, amendment or repeal of an administrative rule.

**R2-20-503. Processing of Petitions**

**1. Objective**

Provide the process for reviewing petitions related to issuing, amending, or repealing rules.

**R2-20-504. Disposition of Petitions**

**1. Objective**

Provide the process for disposition of petitions related to rulemaking.

**R2-20-505. Commission Considerations**

**1. Objective**

Specify a nonexclusive list of criteria the Commission may consider in disposing of a petition for rulemaking.

**R2-20-506. Administrative Record**

**1. Objective**

Designate which records compose the administrative record.

**ARTICLE 6 – EX PARTE COMMUNICATIONS**

**R2-20-601. Purpose and Scope**

**1. Objective**

Specify the purpose and scope of the article.

**R2-20-602. Definitions**

**1. Objective**

Define terms as used in the article.

**R2-20-603. Audits, Investigations & Litigation**

**1. Objective**

Prohibit ex parte communications with the Commission during audits, investigations or litigation.

**R2-20-604. Sanctions**

**1. Objective**

Specify the process for sanctioning those who violate this article.

**ARTICLE 7 – AUDITS AND REPAYMENT**

**R2-20-701. Purpose and Scope**

**1. Objective**

Specify the purpose and scope of the article.

**R2-20-702. Use of Campaign Funds**

**1. Objective**

Specify legal uses of campaign funds.

**R2-20-702.01. Use of Assets**

**1. Objective**

Provide a method for a candidate to use campaign materials from prior elections.

**R2-20-703. Documentation for Direct Campaign Expenditures**

**1. Objective**

Specify the process by which a participating candidate may ensure that campaign expenditures satisfy the direct campaign expenditure requirement.

**R2-20-703.01. Campaign Consultants**

**1. Objective**

Specify how a participating candidate may engage the services of a campaign consultant.

**R2-20-704. Repayment**

**1. Objective**

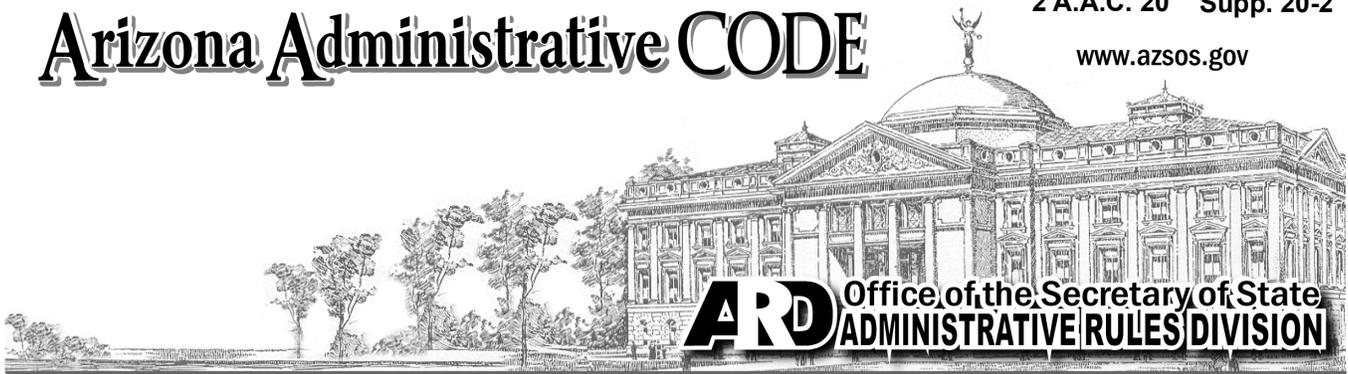
Designate the process for repaying distributed funds to the Clean Elections fund and specify that the Commission may require such repayment.

**R2-20-705. Additional Audits or Repayment Determination**

**1. Objective**

Authorize additional audits or examinations of campaign activity when new facts are available.

###



## TITLE 2. ADMINISTRATION

### CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

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

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

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of April 1, 2020 through June 30, 2020.

<a href="#">R2-20-701.</a>	<a href="#">Purpose and Scope</a> .....	<a href="#">24</a>	<a href="#">R2-20-702.01.</a>	<a href="#">Use of Assets</a> .....	<a href="#">25</a>
<a href="#">R2-20-702.</a>	<a href="#">Use of Campaign Funds</a> .....	<a href="#">24</a>	<a href="#">R2-20-703.01.</a>	<a href="#">Campaign Consultants</a> .....	<a href="#">25</a>

#### Questions about these rules? Contact:

Name: Thomas Collins, Executive Director  
Address: Citizens Clean Elections Commission  
1616 W. Adams  
Phoenix, AZ 85007  
Telephone: (602) 364-3477  
E-mail: [ccec@azcleanelections.gov](mailto:ccec@azcleanelections.gov)  
Website: [www.azcleanelections.gov](http://www.azcleanelections.gov)

#### The release of this Chapter in Supp. 20-2 replaces Supp. 20-1, 1-27 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

## PREFACE

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

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION

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### RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

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

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

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

### AUTHENTICATION OF PDF CODE CHAPTERS

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

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

### HOW TO USE THE CODE

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

### ARIZONA REVISED STATUTE REFERENCES

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

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

### SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

### EXEMPTIONS FROM THE APA

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

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

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

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

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

### EXEMPTIONS AND PAPER COLOR

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

### PERSONAL USE/COMMERCIAL USE

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



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

**TITLE 2. ADMINISTRATION**

**CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION**

*Editor’s Note: The Office of the Secretary of State, Administrative Rules Division, complied with its legal obligation to publish the Notice of Rule Expiration filed for Sections R2-20-109 and R2-20-111 under A.R.S. § 41-1011(C) and 41-1056(G) and (J)(2) in Supp. 17-2, version 2. As a courtesy to the Commission, the Office also published R2-20-109 and R2-20-111 as adopted and made by the Commission because it stated the Governor’s Regulatory Review Council did not have the authority to file such a notice. On December 14, 2017, the Commission “re-adopted” rules in the disputed Sections of R2-20-109 and R2-20-111; therefore, our Division has removed the expired rule Sections as published in Supp. 17-2, version 2. The Office will not interpret the legality of any actions made by the Commission or the Council as to whether the rules in R2-20-109 and R2-20-111 were effective at 23 A.A.R. 1761 or expired at 23 A.A.R. 1757 between the dates of June 7, and December 14, 2017. Those interested in that issue should consult counsel.*

*Editor’s Note: The Citizen’s Clean Elections Commission has filed a Notice of Public Information with the Office of the Secretary of State (Office) stating the Governor’s Regulatory Review Council (G.R.R.C.) “cannot effectively repeal the rules” in this Chapter. The Notice also states, “persons subject to the Act and Rules are advised that it is the Commission’s position [sic] that an action of G.R.R.C.... cannot relieve them of their obligations under the Act and Rules.” [published at 23 A.A.R. 1761] The Office has received a Notice of Rule Expiration from the G.R.R.C. stating R2-20-109 and R2-20-111 have automatically expired [published at 23 A.A.R. 1757]. Under A.R.S. § 41-1056(G), our Office publishes filed G.R.R.C. notices and has included the rule expiration in this Chapter. Since the Office is merely the publisher, it has not, nor will it interpret the legality of the G.R.R.C. authority to “effectively repeal rules.”*

*Editor’s Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-1).*

*Editor’s Note: This Chapter contains rules that were adopted under an exemption from the rulemaking provisions of the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 16-956(D). Exemption from A.R.S. Title 41, Chapter 6 means that these rules were not certified by the Attorney General or the Governor’s Regulatory Review Council. Because this Chapter contains rules that are exempt from the regular rulemaking process, the Chapter is printed on blue paper. The rules affected by this exemption appear throughout this Chapter.*

**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of Sections R2-20-101 through R2-20-113, repealed by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001; new Article 1, consisting of Sections R2-20-101 through R2-20-112, made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1).*

*Article 1, consisting of Sections R2-20-101 through R2-20-113, adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2).*

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## CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

## ARTICLE 1. GENERAL PROVISIONS

**R2-20-101. Definitions**

In addition to the definitions provided in A.R.S. § 16-961, the following shall apply to the Chapter, unless the context otherwise requires:

1. "Act" means the Citizens Clean Elections Act set forth in the Arizona Revised Statutes, Title 16, Chapter 6, Article 2.
2. "Audit" means a written report pertaining to an examination of a candidate's campaign finances that is reviewed by the Commission in accordance with A.A.C. Title 2, Chapter 20, Article 4.
3. "Campaign account" means an account at a financial institution designated by a political committee that is used solely for political campaign purposes.
4. "Candidate" means a natural person who receives or gives consent for receipt of a contribution for the person's nomination for or election to any office in this state, and includes the person's campaign committee, the political committee designated and authorized by the person, or any agents or personnel of the person. When not otherwise specified by statute or these rules, "Candidate" includes a Candidate for Statewide Office or a Legislative Candidate.
5. "Candidate for Statewide Office" means: A natural person seeking the office of governor, attorney general, secretary of state, treasurer, superintendent of public instruction, or mine inspector.
6. "Current campaign account" means a campaign account used solely for election campaign purposes in the present election cycle.
7. "Direct campaign purpose" includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of a candidate. This does not include the candidate's personal appearance, support, or support of a candidate's family member.
8. "Early contributions" means private contributions that are permitted pursuant to A.R.S. § 16-945.
9. "Examination" means an inspection by the Commission or agent of the Commission of a candidate's books, records, accounts, receipts, disbursements, debts and obligations, bank account records, and campaign finance reports related to the candidate's campaign, which may include fieldwork, or a visit to the campaign headquarters, to ensure compliance with campaign finance laws and rules.
10. "Executive Director" means the highest ranking Commission staff member, who is appointed pursuant to A.R.S. § 16-955(J) and is responsible for directing the day-to-day operations of the Commission.
11. "Expressly advocates" means:
  - a. Conveying a communication containing a phrase such as "vote for," "elect," "re-elect," "support," "endorse," "cast your ballot for," "(name of candidate) in (year)," "(name of candidate) for (office)," "vote against," "defeat," "reject," or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates.
  - b. Making a general public communication, such as in broadcast medium, newspaper, magazine, billboard, or direct mailer referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s) that in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement, or timing of the communication, or the inclusion of statements of the candidate(s) or opponents.
  - c. A communication within the scope of subsection (10)(b) shall not be considered as one that "expressly advocates" merely because it presents information about the voting record or position on a campaign issue of three or more candidates, so long as it is not made in coordination with a candidate, political party, agent of the candidate or party, or a person who is coordinating with a candidate or candidate's agent.
12. "Extension of credit" means the delivery of goods or services or the promise to deliver goods or services to a candidate in exchange for a promise from the candidate to pay for such goods or services at a later date.
13. "Family member" means parent, grandparent, spouse, child, or sibling of the candidate or a parent or spouse of any of those persons.
14. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.
15. "Fixed Asset" means tangible property usable in a capacity that will benefit the candidate for a period of more than one year from the date of acquisition.
16. "Fund" means the Citizens Clean Elections Fund established pursuant to A.R.S. § 16-949(D).
17. "Future campaign account" means a campaign account that is used solely for campaign election purposes in an election that does not include the present or prior primary or general elections.
18. "Independent candidate" means a candidate who is registered as an independent or with no party preference or who is registered with a political party that is not eligible for recognition on the ballot.
19. "Legislative Candidate" means: A natural person seeking the office of state senator or state representative.
20. "Officeholder" means a person who has been elected to a statewide office or the legislature in the most recent election, as certified by the Secretary of State, or who is appointed to or otherwise fills a vacancy in such office.
21. "Person," unless stated otherwise, or having context requiring otherwise, means: A corporation, company, partnership, firm, association or society, as well as a natural person.
22. "Prior campaign account" means a campaign account used solely for campaign election purposes in a prior election.
23. "Public funds" includes all funds deposited into the Citizens Clean Elections Fund and all funds disbursed by the Commission to a participating candidate.
24. "Solicitor" means a person who is eligible to be registered to vote in this state and seeks qualifying contributions from qualified electors of this state.
25. "Unopposed" means in reference to state senate candidates and statewide candidates other than Corporation Commission, that the candidate is opposed by no candidates who will appear on the ballot. In reference to candidates for the House of Representatives and Corporation Commission, "unopposed" means that no more candidates will appear on the ballot than the number of seats available for the office sought.

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**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 19 A.A.R. 3515, effective September 27, 2013 (Supp. 13-4). Amended by final exempt rulemaking at 23 A.A.R. 113, effective December 15, 2016 (Supp. 16-4).

**R2-20-102. Repealed****Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Repealed by exempt rulemaking at 19 A.A.R. 3518, effective September 27, 2013 (Supp. 13-4).

**R2-20-103. Communications: Time and Method**

- A. General rule: in computing any period of time prescribed or allowed by the Act or these rules, unless otherwise specified, days are calculated by calendar days, and the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. The term "legal holiday" includes New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday for employees of the state.
- B. Special rule for periods less than seven days: when the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
- C. Whenever the Commission or any person has the right or is required to do some act within a prescribed period after the service of any paper by or upon the Commission by regular mail, three calendar days shall be added to the prescribed period.
- D. Whenever the Commission or any person is required to do some act within a prescribed period after the service of paper by or upon the Commission by overnight delivery, the time period shall begin on the date the recipient signs for the overnight delivery.
- E. The Commission shall use the address of the candidate that is provided on the application for certification filed pursuant to A.R.S. § 16-947. A candidate may designate in writing for the Commission to send written correspondence to a person other than the candidate.
- F. If possible, the Commission shall furnish a copy of all communications electronically.
- G. Delivery of subpoenas, orders and notifications to a natural person may be made by handing a copy to the person, or leaving a copy at his or her office with the person in charge thereof, by leaving a copy at his or her dwelling place or usual place of abode with a person of suitable age and discretion residing therein, by mailing a copy by overnight delivery to his or her last known address, or by any other method whereby actual notice is given.
- H. When the person to be served is not an individual, delivery of subpoenas, orders and notifications may be made by mailing a

copy by overnight delivery to the person at its place of business or by handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing a copy by overnight delivery to such representative at his or her last known address, or by any other method whereby actual notice is given.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2).

**R2-20-104. Certification as a Participating Candidate**

- A. A nonparticipating candidate who accepts contributions up to the limits authorized by A.R.S. § 16-941(B), but later chooses to run as a participating candidate, shall:
  1. Make the change to participating candidate status during the exploratory and qualifying periods only;
  2. Return the amount of each contribution in excess of the individual contribution limit for participating candidates;
  3. Return all Political Action Committee (PAC) monies received;
  4. Not have made expenditures exceeding the early contribution limit, or have spent any part of a contribution exceeding the early contribution limit;
  5. Comply with all provisions of A.R.S. § 16-941 and Commission rules.
  6. Return all contributions received from another candidate's candidate committee.
- B. Money from prior election. If a nonparticipating candidate has a cash balance remaining in the campaign account from the prior election cycle, the candidate may seek certification as a participating candidate in the current election after:
  1. Transferring money from the prior campaign account to the candidate's current election campaign account. The amount transferred shall not exceed the permitted personal monies, early contributions, and debt-retirement contributions, as defined in A.R.S. § 16-945(C), and shall contain contributions received from individuals only;
  2. Spending the money lawfully prior to April 30 of an election year in a way that does not constitute a direct campaign purpose and does not meet the definition of "expenditure" under A.R.S. § 16-901(24); and the event or item purchased is completed or otherwise used and depleted prior to April 30 of an election year;
  3. Remitting the money to the Fund; or
  4. Holding the money in the prior election campaign account, not to be used during the current election, except as provided pursuant to this Section.
- C. Application for certification as a participating candidate. Pursuant to A.R.S. § 16-947, a candidate seeking certification shall file with the Secretary of State a Commission-approved application and a campaign finance report reflecting all campaign activity to date. In the application, a candidate shall certify under oath that the candidate:
  1. Agrees to use all Clean Elections funding for direct campaign purposes only;
  2. Has filed a campaign finance report, showing all campaign activity to date in the current election cycle;

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3. Will comply with all requirements of the Act and Commission rules;
  4. Is subject to all enforcement actions by the Commission as authorized by the Act and Commission rules;
  5. Has the burden of proving that expenditures made by or on behalf of the candidate are for direct campaign purposes;
  6. Will keep and furnish to the Commission all documentation relating to expenditures, receipts, funding, books, records (including bank records for all accounts), and supporting documentation and other information that the Commission may request;
  7. Will permit an audit or examination by the Commission of all receipts and expenditures including those made by the candidate. The candidate shall also provide any material required in connection with an audit, investigation, or examination conducted by the Commission. The candidate shall facilitate the audit by making available in one central location, such as the Commission's office space, records and such personnel as are necessary to conduct the audit or examination, and shall pay any amounts required to be repaid;
  8. Will submit the name and mailing address of the person who is entitled to receive primary and general election funding on behalf of the candidate and the name and address of the campaign depository designated by the candidate. Changes in the information required by this subsection shall not be effective until submitted to the Commission in a letter signed or submitted electronically, by the candidate or the committee treasurer;
  9. Will pay any civil penalties included in a conciliation agreement or otherwise imposed against the candidate;
  10. Will timely file all campaign finance reports with the Secretary of State in an electronic format; and
  11. Will file an amended application for certification reporting any change in the information prescribed in the application for certification within five days after the change.
- D.** If certified as a participating candidate, the candidate shall:
1. Only accept early contributions from individuals during the exploratory and qualifying periods in accordance with A.R.S. § 16-945. No contributions may be accepted from political action committees, political parties or corporations;
  2. Not accept any private contributions, other than early contributions and a limited number of \$5 qualifying contributions;
  3. Make expenditures of personal monies of no more than the amounts prescribed in A.R.S. § 16-941(A)(2) for legislative candidates and for statewide office candidates;
  4. Conduct all campaign activity through a single campaign account. A participating candidate shall only deposit early contributions, qualifying contributions and Clean Elections funds into the candidate's current campaign account. The campaign account shall not be used for any non-direct campaign purpose as provided in Article 7 of these rules;
  5. Attend a Commission sponsored candidate training class within 60 days of being certified or within 60 days of the beginning of the qualifying period if the candidate is certified before the beginning of the qualifying period. If the candidate is unable to attend a training class, the candidate shall:
    - a. Notify the Commission that the candidate is unable to attend a training class. The Commission then will send that person the Commission training materials; and
    - b. The candidate shall sign and send to the Commission a statement certifying that he or she has received and reviewed the Commission training materials; and
- 6.** Limit campaign expenditures. Prior to qualifying for Clean Elections funding, a candidate shall not incur debt, or make an expenditure in excess of the amount of cash on hand. Upon approval for funding by the Secretary of State, a candidate may incur debt, or make expenditures, not to exceed the sum of the cash on hand and the applicable spending limit.
- E.** Loans. A participating candidate may accept an individual contribution as a loan or may loan his or her campaign committee personal monies during the exploratory and qualifying periods only. The total sum of the contribution received or personal funds and loans shall not exceed the expenditure limits set forth in A.R.S. § 16-941(A)(1) and (2). If the loan is to be repaid, the loans shall be repaid promptly upon receipt of Clean Elections funds if the participating candidate qualifies for Clean Elections funding. Loans from a financial institution or bank, to a candidate used for the purpose of influencing that candidate's election shall be considered personal monies and shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2).
- F.** A participating candidate may raise early contributions for election to one office and choose to run for election to another office.
- G.** Contributions to officeholder expense accounts are subject to the restrictions of A.R.S. § 41-1234.01, contributions prohibited during session; exceptions.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3506, effective April 2, 2002 (Supp. 03-3). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 15 A.A.R. 1420, effective April 30, 2010 (Supp. 09-3). Subsection R2-20-104(C)(8) amended by exempt rulemaking at 19 A.A.R. 1685, effective October 6, 2011; Subsection R2-20-104(D)(5) amended by exempt rulemaking at 19 A.A.R. 1685, effective May 23, 2013 (Supp. 13-2). Amended by final exempt rulemaking at 23 A.A.R. 115, effective December 15, 2016 (Supp. 16-4).

**R2-20-105. Certification for Funding**

- A.** After a candidate is certified as a participating candidate, pursuant to A.R.S. § 16-947, in accordance with the procedure set forth in R2-20-104, that candidate may collect qualifying contributions only during the qualifying period.
- B.** A participating candidate must submit to the Secretary of State, a list of names of persons who made qualifying contributions, an application for funding prescribed by the Secretary of State, the minimum number of original reporting slips, and an amount equal to the sum of the qualifying contributions collected pursuant to A.R.S. § 16-950 no later than one week after the end of the qualifying period. Any and all expenses associated with obtaining the qualifying contributions, including credit card processing fees must be paid for from the candi-

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date's early contributions or personal monies. A candidate may develop his or her own three-part reporting slip for qualifying contributions, or one that is photocopied or computer reproduced, if the form substantially complies with the form prescribed by the Commission. The candidate must comply with the Act and ensure that the original qualifying slip is tendered to the Secretary of State, a copy remains with the candidate, and that a copy is given to the contributor.

- C. A candidate may accept electronic \$5 qualifying contributions for the elected office sought by the candidate. The Secretary of State's secured internet portal must be used to collect electronic \$5 qualifying. A \$5 contribution must accompany every \$5 qualifying contribution form and must be submitted via the Secretary of State's portal using a private electronic payment service, specified by the Secretary of State's Office, bank account, credit or debit card. A non-refundable transaction fee may be assessed on electronic \$5 qualifying contribution transactions. The transaction fee is not a contribution to the candidate's campaign and is paid by the contributor. If excess funds are accumulated by the candidate's campaign based on the transaction fee then all excess funds must be given to the Commission and must be entered into the candidate's campaign finance report in a manner that indicates the transaction fees have been accumulated and transferred.
- D. A solicitor who seeks signatures and qualifying contributions on behalf of a participating candidate shall provide his or her residential address, typed or printed name and signature on each reporting slip. The solicitor shall also sign a sworn statement on the contribution slip avowing that the contributor signed the slip, that the contributor contributed the \$5, that based on information and belief, the contributor's name and address are correctly stated and that each contributor is a qualified elector of this state. If a contribution is received unsolicited, the candidate or contributor may sign the qualifying contribution form as the solicitor and is accountable for all of the responsibilities of a solicitor. Nothing in this rule shall prohibit the use of direct mail or the internet to obtain qualifying contributions as long as an original signature is provided on the qualifying contribution form. The candidate may sign the qualifying contribution form as the solicitor and is accountable for all of the responsibilities of a solicitor. For qualifying contributions received in accordance with subsection (C) of this Section, the residential address and signature of the solicitor is not required.
- E. The Secretary of State has the authority to approve or deny a candidate for Clean Elections funding, pursuant to A.R.S. § 16-950(C) based upon the verification of the qualifying contribution forms by the appropriate county recorder. The county recorder shall disqualify any qualifying contribution forms that are:
1. Unsigned by the contributor;
  2. Undated; or
  3. That the recorder is unable to verify as matching signature of a person who is registered to vote, on the date specified inside the electoral district the candidate is seeking.
- F. The Secretary of State will notify the candidate and the Commission regarding the approval or denial of Clean Elections funds. A candidate who is denied Clean Elections funding after all of the slips are verified is eligible to submit supplemental qualifying contribution forms for one additional opportunity to be approved for funding pursuant to subsection (G) of this rule.
- G. The amount equal to the sum of the qualifying contributions collected and tendered to the Secretary of State pursuant to A.R.S. § 16-950(B) will be deposited into the fund, and the

amount tendered will not be returned to a candidate if a candidate is denied Clean Elections funding.

- H. In accordance with the procedure set forth at A.R.S. § 16-950(C), if the Secretary of State determines that the result of the five percent random sample is less than 110 percent of the slips needed to qualify for funding, then the Secretary of State shall send all of the slips for verification. If the county recorder has verified all of the candidate's signature slips and there is an insufficient number of valid qualifying contribution slips to qualify the candidate for funding, the candidate may make only one supplemental filing of additional qualifying contribution slips and qualifying contributions to the Secretary of State if all of the following apply:
1. The candidate files at least the minimum number of additional slips needed to qualify for funding;
  2. The slips are not receipts for duplicate contributions from individuals who have previously contributed to that candidate; and
  3. The period for filing qualifying contributions slips has not expired.
- I. The Secretary of State shall forward facsimiles of all of the supplemental qualifying contribution slips to the appropriate county recorders for the county of the contributors' addresses as shown on the contribution slips. The county recorder shall verify all of the supplemental slips within 10 business days after receipt of the facsimiles and shall provide a report to the Secretary of State identifying as disqualified any slips that are unsigned by the contributor or undated or that the recorder is unable to verify as matching the signature of a person who is registered to vote, on the date specified on the slip, inside the electoral district of the office the candidate is seeking. On receipt of the report of the county recorder on all supplemental slips, the Secretary of State shall calculate the candidate's total number of valid qualifying contribution slips and shall approve or deny the candidate for funds.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3506, effective April 30, 2002 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 16 A.A.R. 1200, effective February 28, 2008 (Supp. 10-2). Subsection R2-20-105(C) amended by exempt rulemaking at 19 A.A.R. 1688, effective October 6, 2011; Subsection R2-20-105(J) amended by exempt rulemaking at 19 A.A.R. 1688, effective May 23, 2013 (Supp. 13-2). Amended by final exempt rulemaking at 23 A.A.R. 117, effective January 1, 2017 (Supp. 16-4).

**R2-20-106. Distribution of Funds to Certified Candidates**

- A. Before the initial disbursement of funds, the Commission shall review the candidate's funding application and all relevant facts and circumstances and:
1. Verify that the number of signatures on the candidate's nominating petitions equals or exceeds the number required pursuant to A.R.S. § 16-322 as follows:
    - a. If the application is submitted before the March 1 voter registration list is determined, the Commission shall verify that the number of signatures on the candidate's nominating petitions equals or exceeds 115 percent of the number required pursuant to A.R.S. § 16-322 based on the prior election voter registration list as determined by the Secretary of State; or

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- b. If the application is submitted after the current year March 1 voter registration list is determined, the Commission shall verify that the number of signatures on the candidate's nominating petitions is equal to or greater than the number required pursuant to A.R.S. § 16-322.
2. Determine that the required number of qualifying contributions have been received and paid to the Secretary of State for deposit in the Fund; and
  3. Determine whether the candidate is opposed in the election.
- B.** In making the determinations described in subsection (A)(3), the Commission shall consider all relevant facts and circumstances, and it shall not be bound by election formalities such as the filing of nominating petitions by others in determining whether an applicant is opposed. Among other evidence the Commission may consider is the existence of exploratory committees or filings made to organize campaign committees of opponents and other like indicia.
- C.** The Commission may review and affirm or change its determination that the candidate is or is not opposed until the ballot for the election is established.
- D.** Within seven days after a primary election and before the Secretary of State completes the canvass, the Commission shall disburse funds for general election campaigns to the participating candidates who received the greatest number of votes at each primary election, provided that the candidate with the highest number of votes out of the total number of votes, has at least two percentage points greater than the candidate with the next highest votes based on the unofficial results as of that date. In a legislative race for the Arizona House of Representatives, the Commission shall disburse funds for general election campaigns to participating candidates with the highest or second highest number of votes cast, provided such candidate received votes totaling at least two percentage points, of the total ballots cast, larger than the vote total cast for the candidate with the third highest vote total.
- E.** Promptly after the Secretary of State completes the canvass, the Commission shall disburse funds for general election campaigns to all eligible participating candidates to whom payment has not been made. If a participating candidate has received funds from the Commission pursuant to subsection (D) and the canvass or recount determines that the candidate is not eligible to appear on the general election ballot, the participating candidate shall return all unused funds to the Fund within 10 days after such determination is made. That candidate shall make no expenditures from general election funds from the date of the canvass.
- F.** The Commission may refuse to distribute funds to participating candidates in cases in which the Commission finds evidence of fraud or illegal activity committed by the participating candidate.
- G.** Pursuant to A.R.S. § 16-953, a participating candidate shall return to the Fund:
1. All primary election funds not committed to expenditures (1) during the primary election period; and (2) for goods or services directed to the primary election. A candidate shall not be deemed to have violated A.R.S. § 16-953(A) or this subsection on account of failure to use all materials purchased with primary election funds prior to the primary election, provided such candidate exercises good faith and diligent efforts to comply with the requirement that goods and services purchased with primary election funds be directed to the primary election. Subject to A.R.S. § 16-953(A) and this subsection, a candidate may continue to use goods purchased with primary election funds during the general election period.
  2. All general funds not committed to expenditures (1) during the general election period; and (2) for goods or services directed to the general election.
- H.** All funds returned to the Commission pursuant to subsection (G) of this rule, shall be returned to the Fund by a cashier's check drawn on the candidate's campaign bank account. Any fee associated with the issuance of a cashier's check shall be deemed a direct campaign expenditure and reported on the candidate's campaign finance report.
- I.** If a participating candidate does not account for any outstanding expenditures in the amount of the funds returned to the Commission, the participating candidate must reconcile the outstanding expenditures with personal monies. Once funds have been returned to the Commission, no further reimbursements from the Clean Elections Fund shall be permitted. Participating candidates may not exceed the primary or general election spending limits.
- J.** Commission staff may waive the return of funds if:
1. The Commission staff determines the amount to be returned is de minimus;
  2. The Commission staff determines the cost of recovery exceeds the amount of the return;
  3. The funds to be returned shall not exceed \$25; and
  4. The Commission is notified of any waiver of the return of funds.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by final exempt rulemaking at 24 A.A.R. 107, effective December 14, 2017 (Supp. 17-4).

**R2-20-107. Candidate Debates**

- A.** The Commission shall sponsor debates among statewide and legislative office candidates prior to the primary and general elections. Except as set forth in the subsection below, the Commission shall not be required to sponsor a debate if there is no participating candidate in the election for a particular office.
- B.** In the primary election period, the Commission shall sponsor political party primary election debates for every office in which:
1. There are more candidates appearing on the ballot than there are seats available for the political party's nomination for general election candidates, and
  2. At least one of the candidates is a participating candidate.
- C.** The following candidates will not be invited to participate in debates as follows:
1. In the primary election, write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.
  2. In the general election, write-in candidates.
- D.** In the event that there is no participating candidate in a primary or general election but there is an election involving candidates who are not unopposed, a candidate may request that the Commission sponsor a debate pursuant to this rule. If the requesting candidate is the sole participant in the debate the format shall be as prescribed in R2-20-107(K).
1. A nonparticipating candidate who requests a debate pursuant to this rule shall complete and return the invitation form sent to the candidate by the Commission by the

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deadline identified on the form. Forms received by the Commission past the deadline may still be considered at the discretion of the Commission. Commission staff shall notify all invited candidates if a debate will be sponsored by the Commission and which candidates will participate.

2. If a candidate requests that the Commission sponsor a debate and fails or refuses to attend the debate, or a candidate agrees to participate in a debate and subsequently fails or refuses to attend the debate sponsored by the Commission, each candidate who fails or refuses to attend the debate shall reimburse the Commission for the cost of debate preparations not to exceed \$10,000 for a non-participating candidate for the legislature and \$25,000 for a non-participating candidate for statewide office. In the event that a candidate requests a general election debate or agrees to participate in a general election debate but does not advance to the general election, the candidate shall not be liable for the reimbursement.
- E.** Pursuant to A.R.S. § 16-956(A)(2), all participating candidates certified pursuant to A.R.S. § 16-947 shall attend and participate in the debates sponsored by the Commission. No proxies or representatives are permitted to participate for any candidate and no statements may be read on behalf of an absent candidate.
- F.** Unless exempted, if a participating candidate fails to participate in any Commission-sponsored debate, the participating candidate shall be fined \$500.00. For purposes of this Section, each primary or general election shall be considered a separate election.
- G.** A participating candidate may request to be exempt from participating in a required debate by doing the following:
1. Submit a written request to the Commission at least one week prior to the scheduled debate, and
  2. State the reasons and circumstances justifying the request for exemption.
- H.** After examining the request to be exempt, the Commission will exempt a candidate from participating in a debate if at least three Commissioners determine that the circumstances are:
1. Beyond the control of the candidate; or
  2. Of such nature that a reasonable person would find the failure to attend justifiable or excusable.
- I.** A participating candidate who fails to participate in a required debate may submit a request for excused absence to the Commission.
1. The candidate's request for excused absence shall:
    - a. State the reason the candidate failed to participate in the debate, and
    - b. State the reason the candidate failed to request an exemption in advance, and
    - c. Be submitted to the Commission no later than five business days after the date of the debate the candidate failed to attend.
  2. After examining the request for excused absence, the Commission may excuse a candidate from the penalties imposed if at least three Commissioners determine that the circumstances were:
    - a. Beyond the control of the candidate; or
    - b. Of such nature that a reasonable person would find the failure to attend justifiable or excusable.
- J.** When a participating candidate is not opposed in the general election, the candidate shall be exempt from participating in a Commission-sponsored debate for the general election.
- K.** In the event that a participating candidate is opposed in the primary election or general election but is the only candidate taking part in a primary election period or general election period

debate, as applicable, the debate will be held and will consist of a 30-minute question and answer session for the single participating candidate. If more than one candidate takes part in the debate, regardless of participation status, the debate will be held in accordance with the procedures established by the Commission staff.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). New Section made by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 19 A.A.R. 1690, effective October 6, 2011 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 4213, effective November 21, 2013 (Supp. 13-4). Amended by final exempt rulemaking at 21 A.A.R. 1627, effective July 23, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 119, effective December 15, 2016 (Supp. 16-4).

**R2-20-108. Termination of Participating Candidate Status**

- A.** A candidate may voluntarily request termination of his or her participating candidate status at any time prior to notification by the Commission that such candidate has qualified for Clean Elections funding. To withdraw from participating candidate status, a candidate shall send a letter to the Commission stating the candidate's intent to withdraw and the reason for the withdrawal. The candidate shall not accept any private monies until the withdrawal is approved by the Commission. The Commission shall act on the withdrawal request within seven days. If the Commission takes no action within the seven-day time period, the withdrawal is automatic.
- B.** A candidate's participating candidate status shall automatically terminate if:
1. The candidate fails to make such submissions to the Secretary of State as prescribed in R2-20-105(B) within seven days after the end of the qualifying period, or
  2. The candidate is denied Clean Elections funding by the Secretary of State and the candidate is ineligible to make a supplemental filing with the Secretary of State in accordance with R2-20-105(G).
- C.** A candidate whose participating candidate status has been terminated in accordance with this Section shall be ineligible to receive Clean Elections funding for that election cycle unless he/she reapplies for certification and is in compliance with R2-20-104(A) and (C).
- D.** In the event that a candidate who has collected qualifying contributions decides not to seek certification as a participating candidate, the candidate shall return all qualifying contributions received from contributors who have not given written permission to use their qualify contributions as campaign contributions. Written permission may include a check box on the original \$5 form that authorizes a candidate to treat the qualifying contribution as a general campaign contribution if he or she decides not to participate in the Clean Elections system. If a good faith attempt to return the funds to the contributor is unsuccessful, the contributions shall be submitted to the Fund.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section

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repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 17 A.A.R. 1950, effective August 25, 2011 (Supp. 11-3).

**Revised Editor's Note: The Office will not interpret the legality of any actions made by the Commission or the Governor's Regulatory Review Council as to whether the rules in R2-20-109 and R2-20-111 were effective at 23 A.A.R. 1761 or expired at 23 A.A.R. 1757 between the dates of June 7, and December 14, 2017. Those interested in that issue should consult counsel.**

**R2-20-109. Independent Expenditure Reporting Requirements**

- A.** In accordance with A.R.S. § 16-958(E), all persons obligated to file any campaign finance report under any provisions of Chapter 6, Article 2 of the Arizona Revised Statutes shall file such reports using the Secretary of State's Internet-based finance-reporting system, except if:
1. Expressly provided otherwise by another Commission rule; or
  2. That system, or the necessary function on the system, is unavailable, in which case the executive director shall implement a suitable process.
- B.** Independent Expenditure Reporting Requirements.
1. Any person making independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle shall file campaign finance reports in accordance with A.R.S. § 16-958 and Commission rules.
  2. Any person who fails to file a timely campaign finance report pursuant to A.R.S. § 16-941(D), A.R.S. § 16-958, shall be subject to a civil penalty as prescribed in A.R.S. § 16-942(B). Subsection R2-20-109(B)(4) does not apply to reports pursuant to A.R.S. §§ 16-941(D) and -958 or this subsection. Any expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate(s). Penalties shall be assessed as follows:
    - a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
    - b. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
    - c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable adjusted primary election spending limit or adjusted general election spending limit.
    - d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
    - e. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported.
  3. A.R.S. § 16-942(B) applies to any entity including political committees that accepts contributions or makes expenditures on behalf of any candidate regardless of any other contributions taken or expenditures made and fails to timely file a campaign finance report under Chapter 6 of Title 16, Arizona Revised Statutes. Any expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate(s). Penalties shall be assessed as follows:
    - a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.

- b. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
  - c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable adjusted primary election spending limit or adjusted general election spending limit.
  - d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
  - e. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported.
4. For purposes of A.A.C. R2-20-109(B)(3):
- a. An entity shall not be found to have the predominant purpose of influencing elections unless, a preponderance of the evidence establishes that during a two-year legislative election cycle, the total reportable contributions made by the entity, in any combination, in a calendar year exceeds \$1,000 and is more than fifty percent (50%) of the entity's total spending during the election cycle.
    - i. For purposes of this provision, a "reportable contribution" or "reportable expenditure" shall be limited to a contribution or expenditure, as defined in title 16 of the Arizona revised statutes, that must be reported to the Arizona secretary of state, the Arizona citizens clean elections commission, or local filing officer in Arizona. A contribution or expenditure that must be reported to the federal election commission or to the election authority of any other state, but not to the Arizona secretary of state, the Arizona citizens clean elections commission or a local filing officer in Arizona, shall not be considered a reportable contribution or reportable expenditure.
    - ii. For purposes of this provision, "total spending" shall not include volunteer time or fundraising and administrative expenses but shall include all other spending by the organization.
    - iii. For purposes of this provision, grants to other organizations shall be treated as follows:
      - (1) A grant made to a political committee or an organization organized under section 527 of the internal revenue code shall be counted in total spending and as a reportable contribution or reportable expenditure, unless expressly designated for use outside Arizona or for federal elections, in which case such spending shall be counted in total spending but not as a reportable contribution or reportable expenditure.
      - (2) If the entity making a grant takes reasonable steps to ensure that the transferee does not use such funds to make a reportable contribution or reportable expenditure, such a grant shall be counted in total spending but not as a reportable contribution or reportable expenditure.
    - iv. If the entity making a grant earmarks the grant for reportable contributions or reportable expenditures, knows the grant will be used to make reportable contributions or reportable expenditures, knows that a recipient will likely use a portion of the grant to make reportable

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- contributions or reportable expenditures, or responds to a solicitation for reportable contributions or reportable expenditures, the grant shall be counted in total spending and the relevant portion of the grant as set forth in subsection (v) of this section shall count as a reportable contribution or reportable expenditure.
- v. Notwithstanding subsections (iii) and (iv) the amount of a grant counted as a reportable contribution or reportable expenditure shall be limited to the lesser of the grant or the following:
- (1) The amount that the recipient organization spends on reportable contributions and reportable expenditures, plus
  - (2) The amount that the recipient organization gives to third parties but not more than the amount that such third parties fund reportable contributions or reportable expenditures.
- b. Notwithstanding section a above, the commission may nonetheless determine that an entity is not a political committee if, taking into account all the facts and circumstances of grants made by an entity, it is not persuaded that the preponderance of the evidence establishes that the entity is a political committee as defined in title 16 of Arizona Revised Statutes.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 16 A.A.R. 152, effective January 29, 2010 (Supp. 10-1). Subsections R2-20-109(A), (A)(4), and (B) through (E) amended by exempt rulemaking at 19 A.A.R. 2923, effective October 6, 2011; Subsections R2-20-109(A) and (C)(2) amended by exempt rulemaking at 19 A.A.R. 2923, effective August 29, 2013; Subsection R2-20-109(C)(3) amended by exempt rulemaking at 19 A.A.R. 2923, effective January 1, 2014 (Supp. 13-3). Amended by exempt rulemaking at 19 A.A.R. 3519, effective September 27, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1329, effective May 22, 2014 (Supp. 14-2). Amended by exempt rulemaking at 20 A.A.R. 2804, effective September 11, 2014 (Supp. 14-3). Subsection R2-20-109(D) amended by final exempt rulemaking at 21 A.A.R. 3168 effective October 29, 2015; subsection R2-20-109(F) amended by final exempt rulemaking at 21 A.A.R. 3168 effective October 30, 2015 (Supp. 15-4). Amended by exempt rulemaking at 22 A.A.R. 2892, effective January 1, 2017 (Supp. 16-3). Amended by final exempt rulemaking at 23 A.A.R. 121, effective January 1, 2017 (Supp. 16-4). Section retained at the request of the Commission at 23 A.A.R. 1761 (Supp. 17-2, version 2). The Commission adopted and unanimously voted to reenact and republish this Section that was "currently in effect" for

the purpose of public notice and clarity at 24 A.A.R. 109, effective December 14, 2017 (Supp. 17-4).

**R2-20-110. Participating Candidate Reporting Requirements**

- A. All participating candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account as follows:
1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. When appropriate, the Commission may treat such expenditures as though made during the general election period.
  2. If a participating candidate makes an expenditure on behalf of the campaign using personal funds, the candidate's campaign shall reimburse the candidate within seven calendar days of the expenditure. After the 7 day period has passed, the expenditure shall be deemed an in-kind contribution subject to all applicable limits.
  3. A candidate may authorize an agent to purchase goods or services on behalf of such candidate, provided that:
    - a. Expenditures shall be reported as of the date that the agent promises, agrees, contracts or otherwise incurs an obligation to pay for the goods or services;
    - b. The candidate shall have sufficient funds in the candidate's campaign account to pay for the amount of such expenditure at the time it is made and all other outstanding obligations of the candidate's campaign committee; and
    - c. Within seven calendar days of the date upon which the amount of the expenditure is known, the candidate shall pay such amount from the candidate's campaign account to the agent who purchases the goods or services.
  4. A joint expenditure is made when two or more candidates agree to share the cost of goods or services. Candidates may make a joint expenditure on behalf of one or more other campaigns, but must be authorized in advance by the other candidates involved in the expenditure, and must be reimbursed within seven days. Participating candidates may participate in joint expenditures for the cost of goods and services with one or more candidates, subject to the following:
    - a. Joint expenditures must be allocated fairly among candidates. An allocated share of a joint expenditure paid by one candidate pursuant to such an agreement must be reimbursed within seven days.
    - b. Any violator of part (a) shall be liable for a penalty pursuant to R2-20-222, in addition to penalties prescribed by any other law.
    - c. If a fairly allocated share of any joint expenditure is not reimbursed to a candidate, the unreimbursed amount of the joint expenditure fairly allocated to that candidate shall be deemed a contribution to that candidate by the campaign committee of the candidate obligated to reimburse the share.
    - d. If a fairly allocated share of any joint expenditure is not reimbursed to a participating candidate, the candidate obligated to reimburse the share shall reimburse the fund for the unreimbursed amount of the joint expenditure fairly allocated to the obligated candidate, in addition to any penalty specified by law.
    - e. A candidate's payment for an advertisement, literature, material, campaign event or other activity shall

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be considered a joint expenditure including, but not limited to, the following criteria:

- i. The activity includes express advocacy of the election or defeat of more than 2 candidates;
- ii. The purpose of the material or activity is to promote or facilitate the election of a second candidate;
- iii. The use and prominence of a second candidate or his or her name or likeness in the material or activity;
- iv. The material or activity includes an expression by a second candidate of his or her view on issues brought up during the election campaign;
- v. The timing of the material or activity in relation to the election of a second candidate;
- vi. The distribution of the material or the activity is targeted to a second candidate's electorate; or
- vii. The amount of control a second candidate has over the material or activity.

5. For the purposes of the Act and Commission rules, a candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services.

**B. Timing of reporting expenditures.**

1. Except as set forth in subsection (A)(2) above, a participating candidate shall report a contract, promise or agreement to make an expenditure resulting in an extension of credit as an expenditure, in an amount equal to the full future payment obligation, as of the date the contract, promise or agreement is made.
2. In the alternative to reporting in accordance with subsection (A)(1) above, a participating candidate may report a contract, promise or agreement to make an expenditure resulting in an extension of credit as follows:
  - a. For a month-to-month or other such periodic contract or agreement that is terminable by a candidate at will and without any termination penalty or payment, the candidate may report an expenditure, in an amount equal to each future periodic payment, as of the date upon which the candidate's right to terminate the contract or agreement and avoid such future periodic payment elapses.
  - b. For a contract, promise or agreement to provide goods or services during the general election period that is contingent upon a candidate advancing to the general election period, the candidate may report an expenditure, in an amount equal to the general election period payment obligation, as of the date upon which such contingency is satisfied.
  - c. For a contract, promise or agreement to pay rent, utility charges or salaries payable to individuals employed by a candidate's campaign committee as staff, the candidate may report an expenditure, in an amount equal to each periodic payment, as of the date that is the sooner of (i) the date upon which payment is made; or (ii) the date upon which payment is due.

**C. Reports and Refunds of Excess Monies by Participating Candidates.**

1. In addition to any campaign finance report required by Chapter 6 of Title 16, Arizona Revised Statutes, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:
  - a. Prior to filing the application for funding pursuant to A.R.S. § 16-950, participating candidates shall file a

campaign finance report with the names of the persons who have made qualifying contributions to the candidate.

- b. At the end of the qualifying period, a participating candidate shall file a campaign finance report consisting of all early contributions received, including personal monies and the expenditures of such monies.
  - i. The campaign finance report shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.
  - ii. If the campaign finance report shows any amount of unspent monies, the participating candidate, within five days after filing the campaign finance report, shall remit all unspent contributions to the Fund, pursuant to A.R.S. § 16-945(B). Any unspent personal monies shall be returned to the candidate or the candidates' family member within five days.
2. Each participating candidate shall file a campaign finance report consisting of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made to the Clean Elections Fund. If the campaign finance report shows any amount unspent, the participating candidate, within five days after filing the campaign finance report, shall send a check from the candidate's campaign account to the Commission in the amount of all unspent monies to be deposited in the Fund.
  - a. The campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.
  - b. The campaign finance report for the general election shall be filed within five days after the general election day and shall reflect all activity through the general election day.
3. In the event that a participating candidate purchases goods or services from a subcontractor or other vendor through an agent pursuant to subsection (A)(3), the candidate's campaign finance report shall include the same detail as required in A.R.S. § 16-948(C) for each such subcontractor or other vendor. Such detail is also required when petty cash funds are used for such expenditures.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 19 A.A.R. 1693, effective May 23, 2013 (Supp. 13-2). Amended by final exempt rulemaking at 21 A.A.R. 1629, effective July 23, 2015 (Supp. 15-3). Section R2-20-110 renumbered to Section R2-20-114; new Section R2-20-110 made by exempt rulemaking at 22 A.A.R. 2897, effective January 1, 2017 (Supp. 16-3). Amended by final exempt rulemaking at 23 A.A.R. 124, effective January 1, 2017 (Supp. 16-4).

*Revised Editor's Note: The Office will not interpret the legality of any actions made by the Commission or the Governor's Regulatory Review Council as to whether the rules in R2-20-109 and R2-20-111 were effective at 23 A.A.R. 1761 or expired at 23*

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*A.A.R. 1757 between the dates of June 7, and December 14, 2017. Those interested in that issue should consult counsel.*

**R2-20-111. Non-participating Candidate Reporting Requirements and Contribution Limits**

- A.** Any person may file a complaint with the Commission alleging that any non-participating candidate or that candidate's campaign committee has failed to comply with or violated A.R.S. § 16-941(B). Complaints shall be processed as prescribed in Article 2 of these rules. In addition to those penalties outlined in R2-20-222(B), a non-participating candidate or candidate's campaign committee violating A.R.S. § 16-941(B) shall be subject to penalties prescribed in A.R.S. § 16-941(B) and A.R.S. § 16-942(B) and (C) as applicable:
- B.** Penalties under A.R.S. § 16-942(B):
1. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
  2. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
  3. The penalties in (B)(1) and (B)(2) shall be doubled if the amount not reported for a particular election cycle exceeds ten percent (10%) of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.
  4. The dollar amounts in items (B)(1) and (B)(2), and the spending limits in item (B)(3) are subject to adjustment of A.R.S. § 16-959.
- C.** Penalties under A.R.S. § 16-942(C): Where a campaign finance report filed by a non-participating candidate or that candidate's campaign committee indicates a violation of A.R.S. § 16-941(B) that involves an amount in excess of ten percent (10%) of the sum of the adjusted primary election spending limit and the adjusted general election spending limits specified by A.R.S. § 16-961(G) and (H) as adjusted pursuant to A.R.S. § 16-959, that violation shall result in disqualification of a candidate or forfeiture of office.
- D.** Penalties under A.R.S. § 16-941(B): Regardless of whether or not there is a violation of a reporting requirement, a person who violates A.R.S. § 16-941(B) is subject to a civil penalty of three times the amount of money that has been received, expended, or promised in violation of A.R.S. § 16-941(B) or three times the value in money for an equivalent of money or other things of value that have been received, expended, or promised in violation of A.R.S. § 16-941(B).
- E.** The twenty percent reduction in A.R.S. § 16-941(B) applies to all campaign contributions limits on contributions that are permitted to be accepted by nonparticipating candidates.
- F.** Contribution limits as adjusted by A.R.S. § 16-931 shall be the base level contribution limits subject to reduction pursuant to A.R.S. § 16-941(B).

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by final exempt rulemaking at 21 A.A.R. 1631, effective July 23, 2015 (Supp. 15-3). Section R2-20-111 renumbered to R2-20-115 at 22 A.A.R. 2904; new Section R2-20-111 made by exempt rulemaking at 22 A.A.R. 2899

effective January 1, 2017 (Supp. 16-3). Amended by final exempt rulemaking at 23 A.A.R. 126, effective January 1, 2017 (Supp. 16-4). Section retained at the request of the Commission at 23 A.A.R. 1761 (Supp. 17-2, version 2). The Commission unanimously adopted and voted to reenact and republish this Section that was "currently in effect" for the purpose of public notice and clarity, with amendments at 24 A.A.R. 111, effective December 14, 2017 (Supp. 17-4).

**R2-20-112. Political Party Exceptions**

The provisions of A.R.S. § 16-911(B)(4) shall apply to a candidate, whether participating or nonparticipating, who becomes a nominee as defined in A.R.S. § 16-901(38).

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). New Section made by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1423, effective October 22, 2009 (Supp. 09-3). Amended by final exempt rulemaking at 23 A.A.R. 128, effective January 1, 2017 (Supp. 16-4).

**R2-20-113. Candidate Statement Pamphlet**

- A.** The Commission shall publish a candidate statement pamphlet in both the primary and general elections as required by A.R.S. § 16-956(A)(1). Commission staff shall send invitations for submission of a 200 word statement to every statewide and legislative candidate who has qualified for the ballot. Statements submitted for the primary candidate statement pamphlet shall be used for the general candidate statement pamphlet unless otherwise stated by the candidate.
- B.** The following candidates will not be invited to submit a statement for the candidate statement pamphlet:
1. In the primary election: write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.
  2. In the general election: write in candidates.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 15 A.A.R. 1423, effective October 22, 2009 (Supp. 09-3). Amended by exempt rulemaking at 15 A.A.R. 1567, effective September 2, 2009 (Supp. 09-3). Amended by exempt rulemaking at 16 A.A.R. 1200, effective January 8, 2010 (Supp. 10-2). Repealed by exempt rulemaking at 19 A.A.R. 1694, effective October 6, 2011 (Supp. 13-2). New Section made by final exempt rulemaking at 21 A.A.R. 1633, effective July 23, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 2118, effective July 29, 2019 (Supp. 19-3). Amended by final rulemaking at 26 A.A.R. 335, effective February 4, 2020;

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amendments made to subsection (A) were originally codified in Supp. 19-3 at 25 A.A.R. 2118 (Supp. 20-1).

**R2-20-114. Candidate Campaign Bank Account**

- A. Each participating candidate shall designate a single campaign bank account for conducting campaign financial activity. During an election cycle, each participating candidate shall conduct all campaign financial activities through a single, current election campaign bank account and any petty cash accounts as are permitted by law.
- B. A participating candidate may maintain a campaign bank account other than the current election campaign bank account described in subsection (A) if the other campaign bank account is for a campaign in a prior election cycle in which the candidate was not a participating candidate.
- C. During the exploratory period, a candidate may receive debt-retirement contributions for a campaign during a prior election cycle if the funds are deposited in the bank account for that prior campaign. A candidate shall not deposit debt-retirement contributions into the current election campaign bank account.

**Historical Note**

New Section R2-20-114 renumbered from R2-20-110 by exempt rulemaking at 22 A.A.R. 2897 and 22 A.A.R. 2902, effective January 1, 2017 (Supp. 16-3).

**R2-20-115. Books and Records Requirements**

- A. All candidates shall maintain, at a single location within the state, the books and records of financial transactions, and other information required by A.R.S. § 16-904.
- B. All candidates shall ensure that the books and records of accounts and transactions of the candidate are recorded and preserved as follows:
  1. The treasurer of a candidate's campaign committee is the custodian of the candidate's books and records of accounts and transactions, and shall keep a record of all of the following:
    - a. All contributions or other monies received by or on behalf of the candidate.
    - b. The identification of any individual or political committee that makes any contribution together with the date and amount of each contribution and the date of deposit into the candidate's campaign bank account.
    - c. Cumulative totals contributed by each individual or political committee.
    - d. The name and address of every person to whom any expenditure is made, and the date, amount and purpose or reason for the expenditure.
    - e. All periodic bank statements or other statements for the candidate's campaign bank account.
    - f. In the event that the campaign committee uses a petty cash account the candidate's campaign finance report shall include the same detail for each petty cash expenditure as required in A.R.S. § 16-948(C) for each vendor.
  2. No expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his or her designated agent.
  3. Unless specified by the contributor or contributors to the contrary, the treasurer shall record a contribution made by check, money order or other written instrument as a contribution by the person whose signature or name appears on the bottom of the instrument or who endorses the instrument before delivery to the candidate. If a contribution is made by more than one person in a single written instrument, the treasurer shall record the amount to be attributed to each contributor as specified.

4. All contributions other than in-kind contributions and qualifying contributions must be made by a check drawn on the account of the actual contributor or by a money order or a cashier's check containing the name of the actual contributor or must be evidenced by a written receipt with a copy of the receipt given to the contributor and a copy maintained in the records of the candidate.
  5. The treasurer shall preserve all records set forth in subsection (B) and copies of all campaign finance reports required to be filed for three years after the filing of the campaign finance report covering the receipts and disbursements evidenced by the records.
  6. If requested by the attorney general, the county, city or town attorney or the filing officer, the treasurer shall provide any of the records required to be kept pursuant to this Section.
- C. Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be sent to the candidate, with a copy to the Commission, 10 or more days before the proposed date of the inspection. If the request is made within two weeks before the primary or general election, the request shall be delivered at least two days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.
1. The inspection shall occur at a location agreed upon by the candidate and the person making the request. If no agreement can be reached, the inspection shall occur at the Commission office. The inspection shall occur during the Commission's regular business hours and shall be limited to a two-hour time period.
  2. The requesting party may obtain copies of records for a reasonable fee. The Commission shall not be responsible for making copies. The person in possession of the records shall produce copies within a reasonable time of the receipt of the copying request and fees.
  3. The Commission will not permit public inspection of records if it determines that the inspection is for harassment purposes.
  4. If a person who requests to inspect a candidate's records under A.R.S. § 16-958(F) is denied such a request, the requesting party may notify the Commission. The Commission may enforce the public inspection request by issuing a subpoena pursuant to A.R.S. § 16-956(B) for the production of any books, papers, records, or other items sought in the public inspection request. The subpoena shall order the candidate to produce:
    - a. All papers, records, or other items sought in the public inspection request;
    - b. No later than two business days after the date of the subpoena; and
    - c. To the Commission's office during regular business hours.
  5. Any person who believes that a candidate or a candidate's campaign committee has not complied with this Section may appeal to Superior Court.

**Historical Note**

New Section R2-20-115 renumbered from R2-20-111 by exempt rulemaking at 22 A.A.R. 2899 and 22 A.A.R. 2904, effective January 1, 2017 (Supp. 16-3).

**ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES****R2-20-201. Scope**

These rules provide procedures for processing possible violations of the Citizens Clean Elections Act.

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**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-202. Initiation of Compliance Matters**

Compliance matters may be initiated by a complaint or on the basis of information ascertained by the Commission in the normal course of carrying out its statutory responsibilities.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-203. Complaints**

- A. Any person who believes that a violation of any statute or rule over which the Commission has jurisdiction has occurred or is about to occur may file a complaint in writing to the Executive Director.
- B. A complaint shall conform to the following:
  1. Provide the full name and address of the complainant; and
  2. Contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized.
- C. All statements made in a complaint are subject to the statutes governing perjury. The complaint shall differentiate between statements based upon personal knowledge and statements based upon information and belief.
- D. The complaint shall conform to the following provisions:
  1. Clearly identify as a respondent each person or entity who is alleged to have committed a violation;
  2. Statements which are not based upon personal knowledge shall be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of such statements;
  3. Contain a clear and concise recitation of the facts which describe a violation of a statute or rule over which the Commission has jurisdiction; and
  4. Be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-204. Initial Complaint Processing; Notification**

- A. Upon receipt of a complaint, the Administrative Counsel shall review the complaint for substantial compliance with the technical requirements of R2-20-203, and, if it complies with those requirements, shall within five days after receipt notify each respondent that the complaint has been filed, advise each respondent of Commission compliance procedures, and provide each respondent a copy of the complaint.
- B. If a complaint does not comply with the requirements of R2-20-203, the Administrative Counsel shall so notify the complainant and any person or entity identified therein as respondent, within the five-day period specified in subsection (A), that no action should be taken on the basis of that complaint. A copy of the complaint shall be provided with the notification to each respondent.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

Amended by final exempt rulemaking at 21 A.A.R. 1634, effective July 23, 2015 (Supp. 15-3).

**R2-20-205. Opportunity for No Action on Complaint-generated Matters**

- A. A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within 5 days from receipt of a written copy of the complaint, a letter or memorandum setting forth reasons why the Commission should take no action.
- B. The Commission shall not take any action, or make any finding, against a respondent other than action dismissing the complaint, unless it has considered such response or unless no such response has been served upon the Commission within the 5 day period specified in subsection A.
- C. The respondent's response shall be sworn to and signed in the presence of a notary public and shall be notarized. The respondent's failure to respond in accordance with subsection A within 5 days of receiving the written copy of the complaint may be viewed as an admission to the allegations made in the complaint for purposes of the reason to believe finding pursuant to A.A.C. R2-20-206.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by final exempt rulemaking at 21 A.A.R. 1636, effective July 23, 2015 (Supp. 15-3).

**R2-20-206. Executive Director's Recommendation on Complaint-generated Matters**

- A. Following either the expiration of the 5 day period specified by A.A.C. R2-20-205 or the receipt of a response as specified by A.A.C. R2-20-205(A), whichever occurs first, the Executive Director:
  1. May recommend to the Commission whether it should find reason to believe that a respondent has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction;
  2. May recommend that the Commission find that there is no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of A.A.C. R2-20-205(A); or
  3. May close the complaint generated matter without a reason to believe recommendation from the Executive Director based upon Respondent complying with the statute or rule on which the complaint is founded and in such case shall notify the Commission.
- B. Neither the complainant nor the respondent has the right to appeal the Executive Director's recommendation made pursuant to subsection (A) because the recommendation is not an appealable agency action.
- C. If the complaint relates to a violation of A.R.S. § 16-941(B) by a non-participating candidate or that candidate's campaign committee, the Executive Director shall not proceed pursuant to R2-20-206(A) or R2-20-207(A), without first receiving Commission approval to initiate an inquiry.
- D. The respondent shall not have the right to appeal the Commission's decision to authorize an inquiry pursuant to subsection (C) because the Commission's decision whether or not to authorize an inquiry is not an appealable agency action.

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**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 20 A.A.R. 1332, effective May 22, 2014 (Supp. 14-2). Amended by final exempt rulemaking at 21 A.A.R. 1638, effective July 23, 2015 (Supp. 15-3).

**R2-20-207. Internally Generated Matters; Referrals**

- A.** On the basis of information ascertained by the Commission in the normal course of carrying out its statutory responsibilities, or on the basis of a referral from an agency of the state, the Executive Director may recommend in writing that the Commission find reason to believe that a person or entity has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction.
- B.** If the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur, the Executive Director shall notify the respondent of the Commission's decision and shall include a copy of a staff report setting forth the legal basis and the alleged facts which support the Commission's action.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

**R2-20-208. Complaint Processing; Notification**

- A.** If the Commission, either after reviewing a complaint-generated recommendation as described in R2-20-206 and any response of a respondent submitted pursuant to R2-20-205, or after reviewing an internally-generated recommendation as described in R2-20-207, determines by an affirmative vote of at least three of its members that it has reason to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify such respondent of the Commission's finding, setting forth the sections of the statute or rule alleged to have been violated and the alleged factual basis supporting the finding. In accordance with A.R.S. § 16-957(A), the Commission shall serve on the respondent an order requiring compliance within 14 days. During that period, the respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission.
- B.** If the Commission finds no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, or otherwise terminates its proceedings, the Executive Director shall so notify both the complainant and respondent.
- C.** The complainant may bring an action in Superior Court in accordance with A.R.S. § 16-957(C) if the Commission finds there is no reason to believe a violation of a statute or rule over which the Commission has jurisdiction has occurred or otherwise terminates its proceedings.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by

exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

**R2-20-209. Investigation**

- A.** The Executive Director or any other person designated by the Executive Director shall conduct an investigation in any case in which the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.
- B.** The investigation may include, but is not limited to, field investigations, audits, and other methods of information gathering.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section amended by final rulemaking at 26 A.A.R. 111, with a immediate effective of December 12, 2019 (Supp. 19-4). Amended by final rulemaking at 26 A.A.R. 542, effective March 9, 2020; the amendments to subsections (A) and (B) were originally codified in Supp. 19-4 at 26 A.A.R. 1111 (Supp. 20-1).

**R2-20-210. Written Questions Under Order**

The Commission may issue an order requiring any person to submit sworn, written answers to written questions and may specify a date by which such answers must be submitted to the Commission.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

**R2-20-211. Subpoenas and Subpoenas Duces Tecum; Depositions**

- A.** The Commission may authorize its Executive Director or Assistant Attorney General to issue subpoenas requiring the attendance and testimony of any person by deposition and to issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with a deposition or otherwise.
- B.** If the Commission orders oral testimony to be taken by deposition or for documents to be produced, the subpoena shall so state and shall advise the deponent or person subpoenaed that all testimony will be under oath. The Commission may authorize its Executive Director to take a deposition and have the power to administer oaths.
- C.** The deponent shall have the opportunity to review and sign depositions taken pursuant to this rule.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

**R2-20-212. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-213. Motions to Quash or Modify a Subpoena**

- A.** Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than five days after the date of receipt of such subpoena, apply to the Commission to quash or modify such subpoena, accom-

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panying such application with a brief statement of the reasons therefore.

- B. The Commission may deny the application, quash the subpoena or modify the subpoena.
- C. The person subpoenaed and the Executive Director may agree to change the date, time, or place of a deposition or for the production of documents without affecting the force and effect of the subpoena, but such agreements shall be confirmed in writing.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

**R2-20-214. The Probable Cause to Believe Recommendation; Briefing Procedures**

- A. Upon completion of the investigation conducted pursuant to R2-20-209, the Executive Director shall prepare a brief setting forth his or her position on the factual and legal issues of the case and containing a recommendation on whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.
- B. The Executive Director shall notify each respondent of the recommendation and enclose a copy of his or her brief.
- C. Within five days from receipt of the Executive Director's brief, the respondent may file a brief with the Commission setting forth the respondent's position on the factual and legal issues of the case.
- D. After reviewing the respondent's brief, the Executive Director shall promptly advise the Commission in writing whether he or she intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

**R2-20-215. Probable Cause to Believe Finding**

- A. If the Commission, after having found reason to believe and after following the procedures set forth in R2-20-214, determines by an affirmative vote of at least three of its members that there is probable cause to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall authorize the Executive Director to so notify the respondent by an order, that states the nature of the violation, pursuant to A.R.S. § 16-957.
- B. If the Commission finds no probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or otherwise orders a termination of Commission proceedings, it shall authorize the Executive Director to notify both respondent and complainant by letter that the proceeding has ended. The Executive Director's letter also will inform the parties that the Commission is not precluded from taking action on this matter in the future if evidence is discovered which may alter the decision of the Commission.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3). Amended by exempt

rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

**R2-20-216. Conciliation**

- A. Upon a Commission finding of probable cause to believe that the respondent has violated a statute or rule over which the Commission has jurisdiction, the Executive Director shall attempt to settle the matter as authorized by A.R.S. § 16-957(A) by informal methods of administrative settlement or conciliation, and shall attempt to reach a tentative conciliation agreement with the respondent.
- B. A conciliation agreement pursuant to subsection (A) of this Section is not binding upon either party unless and until it is signed by the respondent and by the Executive Director upon approval by the affirmative vote of at least three members of the Commission.
- C. If a conciliation agreement is reached between the Commission and the respondent, the Executive Director shall send a copy of the signed agreement to both complainant and respondent.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

**R2-20-217. Enforcement Proceedings**

- A. Upon a finding of probable cause that the alleged violator remains out of compliance, the Executive Director may recommend to the Commission that the Commission authorize the issuance of an order and assessment of civil penalties pursuant to A.R.S. § 16-957(B).
- B. The Commission may, by an affirmative vote of at least three of its members, authorize the Executive Director to issue an order and assess civil penalties pursuant to A.R.S. § 16-957(B).
- C. Subsections (A) and (B) of this rule shall not preclude the Commission, upon request of a respondent, from entering into a conciliation agreement pursuant to R2-20-216 even after the Commission authorizes the Executive Director to issue an order and assess civil penalties pursuant to subsection (B). Any conciliation agreement reached under this subsection is subject to the provisions of R2-20-216(B) and shall have the same force and effect as a conciliation agreement reached under R2-20-216(D).

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

**R2-20-218. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-219. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section

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repealed by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

**R2-20-220. Ex Parte Communications**

- A.** In order to avoid the possibility of prejudice, real or apparent, to the public interest in enforcement actions pending before the Commission pursuant to its compliance procedures, except to the extent required for the disposition of ex parte matters as required by law (for example, during the normal course of an investigation or a conciliation effort), no interested person outside the agency shall make or cause to be made to any Commissioner or any member of any Commission staff any ex parte communication relative to the factual or legal merits of any enforcement action, nor shall any Commissioner or member of the Commission's staff make or entertain any such ex parte communications.
- B.** This rule shall apply from the time a complaint is filed with the Commission or from the time that the Commission determines on the basis of information ascertained in the normal course of its statutory responsibilities that it has reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or may occur, and remains in force until the Commission has finally concluded all action with respect to the matter in question.
- C.** Nothing in this Section shall be construed to prohibit contact between a respondent or respondent's attorney and any attorney or the Administrative Counsel or the Assistant Attorney General in the course of representing the Commission or the respondent with respect to an enforcement proceeding or civil action. No statement made by a Commission attorney or staff member shall bind or estop the Commission.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-221. Representation by Counsel; Notification**

- A.** If a respondent wishes to be represented by counsel with regard to any matter pending before the Commission, respondent shall so advise the Commission by sending a letter of representation signed by the respondent, which letter shall state the following:
1. The name, address, and telephone number of the counsel; and
  2. A statement authorizing such counsel to receive any and all notifications and other communications from the Commission on behalf of respondent.
- B.** Upon receipt of a letter of representation, the Commission shall have no contact with respondent except through the designated counsel unless authorized in writing by respondent. The Commission will send a copy of this letter to the respondent's attorney.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-222. Civil Penalties**

- A.** If the Commission has reason to believe by a preponderance of the evidence that a participating candidate is not in compliance with the Act or Commission rules, then in addition to other penalties under law, the Commission may decertify a candidate, deny or suspend funding, order repayment of funds, or impose a penalty not to exceed \$1,000 for a participating candidate for the legislature and 5,000 for a participating candidate for statewide office.
- B.** If the Commission has reason to believe by a preponderance of the evidence that a person other than a participating candidate

is not in compliance with the Act or Commission rules, then in addition to other penalties under law, the Commission may impose a penalty not to exceed \$1,000.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R.

588, effective November 27, 2001 (Supp. 02-1).

Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3). Amended by exempt rulemaking at 19 A.A.R. 1697, effective May 23, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3524, effective September 27, 2013 (Supp. 13-4).

**R2-20-223. Notice of Appealable Agency Action**

If the Commission makes a probable cause finding pursuant to R2-20-215 or decides to initiate an enforcement proceeding pursuant to R2-20-217, the Assistant Attorney General (AAG) shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:

1. The statute or rule violated and specific facts constituting the violation;
2. A description of the respondent's right to request a hearing and to request an informal settlement conference; and
3. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R.

588, effective November 27, 2001 (Supp. 02-1).

Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by final exempt rulemaking at 21 A.A.R. 2921, effective July 1, 2011; filed in the Office October 27, 2015 (Supp. 15-4).

**R2-20-224. Request for an Administrative Hearing**

- A.** The respondent must file a request for a hearing with the Commission within 30 days of receipt of the notice prescribed in R2-20-223.
- B.** If the respondent requests a hearing, the AAG shall notify the Office of Administrative Hearings (OAH) of the appeal and shall coordinate a hearing date with the Commission's AAG and Commission staff that may be called as witnesses and OAH. The hearing must be held within 60 days after the notice of appeal is filed with the Commission.
- C.** The AAG shall prepare and serve a notice of hearing on all parties to the appeal at least 30 days before the hearing date, unless and expedited hearing is requested and granted. The notice of hearing shall be drafted in accordance with A.R.S. § 41-1092.05(D).

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R.

588, effective November 27, 2001 (Supp. 02-1).

**R2-20-225. Informal Settlement Conference**

- A.** If the respondent requests an informal settlement conference, the informal settlement conference shall be held within 15 days after the Commission receives the request. A request for an informal settlement conference shall be in writing and must be filed with the Commission no later than 20 days before the hearing date. A person with the authority to act on behalf of the Commission must represent the Commission at the conference. The AAG shall attend the settlement conference, but shall not be the individual authorized to act on behalf of the Commission.
- B.** The Commission representative shall notify the appellant in writing that the statements, either written or oral, made by the

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appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations, are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference waive their right to object to the participation of the agency representative in the final administrative decision.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-226. Administrative Hearing**

- A. If the matter continues to a hearing, the hearing shall be held in accordance with A.R.S. § 41-1092.07. The Administrative Law Judge (ALJ) must issue a written recommended decision within 20 days after the hearing is concluded.
- B. If the enforcement action occurs within six months of the primary or general election, the Commission will request an expedited review of the matter

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-227. Review of Administrative Decision by Commission**

- A. Within 30 days after the date OAH sends a copy of the ALJ's decision to the Commission, the Commission may review the ALJ's decision and accept, reject or modify the decision.
- B. If the Commission declines to review the ALJ's decision, the Commission shall serve a copy of the decision on all parties. If the Commission modifies or rejects the decision, the Commission shall file with OAH and serve on all parties, a copy of the ALJ's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification. If the Commission accepts, rejects or modifies the decision, the Commission's decision will be certified as final.
- C. If the Commission does not accept, reject or modify the decision within 30 days after OAH sends the ALJ's decision to the Commission, the ALJ's decision will be certified as final.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-228. Judicial Review**

A party may appeal a final administrative decision pursuant to A.R.S. § 12-901 et seq. (Judicial Review of Administrative Decisions). A party does not have the right to judicial review unless that party first exhausts its administrative remedies by going through the above steps. After a hearing has been held and a final administrative decision has been entered pursuant to § 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-229. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-230. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-231. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

**ARTICLE 3. STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES****R2-20-301. Purpose and Applicability**

- A. The Commission is committed to implementing the Act in an honest, independent, and impartial fashion and to seeking to uphold public confidence in the integrity of the electoral system. To ensure public trust in the fairness and integrity of the Arizona elections process, all Commissioners and employees must observe the highest standards of conduct. This Article prescribes standards of ethical conduct for Commissioners and employees of the Commission relating to conflicts of interest arising from outside employment, private businesses, professional activities, political activities, and financial interests. The avoidance of misconduct and conflicts of interest on the part of the Commissioners and the employees through informed judgment is indispensable to the maintenance of these prescribed ethical standards. Attainment of these goals necessitates strict and absolute fairness and impartiality in the administration of the law.
- B. This Article applies to all persons included within the terms "employee" and "Commissioner" of the Commission.
- C. These Standards of Conduct shall be construed in accordance with any applicable laws, regulations, and agreements between the Commission and a labor organization.
- D. Pursuant to A.R.S. § 16-955(I), for three years after a Commissioner completes his or her tenure, Commissioners shall not seek or hold any public office, serve as an officer of any political committee, or employ or be employed as a lobbyist.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-302. Definitions**

The following terms apply in all Citizens Clean Elections Act matters:

1. "Commission" means the Citizens Clean Elections Commission of Arizona.
2. "Commissioner" means a voting member of the Commission, appointed pursuant to A.R.S. § 16-955.
3. "Conflict of interest" means a situation in which a Commissioner's or an employee's private interest is or appears to be inconsistent with the efficient and impartial conduct of his or her official duties and responsibilities.
4. "Employee" means an employee or staff member of the Commission.
5. "Former employee" means one who was, and is no longer, an employee of the Commission.
6. "Official responsibility" means the direct administrative or operating authority, whether intermediate or final, to approve, disapprove, or otherwise direct Commission action. Official responsibility may be exercised alone or with others and either personally or through subordinates.

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7. "Outside employment" or "outside activity" means any work, service or other activity performed by a Commissioner or employee other than in the performance of the Commissioner's or employee's official employment duties. It includes such activities as writing and editing, publishing, teaching, lecturing, consulting, self-employment, and other services or work performed, with or without compensation.
8. "Person" means an individual, corporation, company, association, firm, partnership, society, joint stock company, political committee, or other group, organization, or institution.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-303. Notification to Commissioners and Employees**

The Executive Director shall provide to each Commissioner and employee of the Commission, upon commencement of his or her term or employment and at least annually thereafter, a copy of this Article and such other information regarding standards of conduct as the Commission and/or applicable law may prescribe.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 13 A.A.R. 3527, effective January 1, 2008 (Supp. 07-3).

**R2-20-304. Interpretation and Advisory Service**

Commissioners or employees seeking advice and guidance on questions of conflict of interest and on other matters covered by this Article shall consult with the Commission's Chair or Executive Director. The Commission's Chair or Executive Director shall be consulted prior to the undertaking of any action that might violate this Article governing the conduct of Commissioners or employees.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 13 A.A.R. 3527, effective January 1, 2008 (Supp. 07-3).

**R2-20-305. Reporting Suspected Violations**

- A.** Commissioners and employees who have information, which causes them to believe that there has been a violation of a statute or a rule set forth in this Article, shall report promptly, in writing, such incident to the Commission's Chair or Executive Director.
- B.** When information available to the Commission indicates a conflict between the interests of a Commissioner or employee and the performance of his or her Commission duties, the Commissioner or employee shall be provided an opportunity to explain the conflict or appearance of conflict in writing.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-306. Disciplinary and Other Remedial Action**

- A.** A violation of this Article by an employee may be cause for disciplinary action, which may be in addition to any penalty prescribed by law.
- B.** When the Commission's Executive Director determines that an employee may have or appears to have a conflict of interest, the Commission's Executive Director may question the employee in the matter and gather other information. The Commission's Executive Director and the employee's supervisor shall discuss with the employee possible ways of eliminat-

ing the conflict or appearance of conflict. If the Commission's Executive Director, after consultation with the employee's supervisor, concludes that remedial action should be taken, he or she shall refer a statement to the Commission containing his or her recommendation for such action. The Commission, after consideration of the employee's explanation and the results of any investigation, may direct appropriate remedial action as it deems necessary.

- C.** Remedial action pursuant to subsection (B) of this Section may include, but is not limited to:
1. Changes in assigned duties;
  2. Divestment by the employee of his or her conflicting interest;
  3. Disqualification for particular action; or
  4. Disciplinary action.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-307. General Prohibited Conduct**

- A.** A Commissioner or employee shall avoid any action whether or not specifically prohibited by this Section that might result in, or create the appearance of:
1. Using public office for unlawful private gain;
  2. Giving favorable or unfavorable treatment to any person or organization due to any partisan or political consideration;
  3. Impeding Commission efficiency or economy;
  4. Losing impartiality.
  5. Making a Commission decision without Commission approval; or
  6. Adversely affecting the confidence of the public in the integrity of the Commission.
- B.** A Commissioner or employee of the Commission shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:
1. Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;
  2. Conducts operations or activities that are regulated or examined by the Commission; or
  3. Has an interest that may be substantially affected by the performance or nonperformance of the Commissioner or employee's official duty.
- C.** Subsection (B) of this Section shall not apply in the following circumstances:
1. When circumstances make it clear that obvious family or personal relationships, rather than the business of the persons concerned, are the motivating factors;
  2. To the acceptance of food, refreshments, and accompanying entertainment of nominal value in the ordinary course of a social occasion or a luncheon or dinner meeting or other function where a Commissioner or an employee is properly in attendance;
  3. To the acceptance of unsolicited advertising or promotional material or other items of nominal value such as pens, pencils, note pads, calendars; and
  4. To the acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities, such as home mortgage loans.
- D.** A Commissioner or an employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself. However, this subsection does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a spe-

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cial occasion such as birthday, holiday, marriage, illness, or retirement.

- E. This Section does not preclude a Commissioner or employee from receipt of reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this Article for which no state payment or reimbursement is made. However, this Section does not allow a Commissioner or employee to be reimbursed, or payment to be made on his or her behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow a Commissioner or employee to be reimbursed by a person for travel on official business under Commission orders when reimbursement is prescribed by statute.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-308. Outside Employment or Activities**

- A. A Commissioner or employee shall not engage in outside employment that is incompatible with the full discharge of his or her duties as a Commissioner or employee.
- B. Incompatible outside employment or other activities by Commissioners or employees include, but are not limited to:
1. Outside employment or other activities that involve illegal activities;
  2. Outside employment or other activities that would give rise to a real or apparent conflict of interest situation even though no violation of a specific statutory provision was involved;
  3. Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances where acceptance may result in, or create the appearance of, a conflict of interest;
  4. Outside employment or other activities that might bring discredit upon the state or Commission;
  5. Outside employment or other activities that establish relationships or property interests that may result in a conflict between the Commissioner's or the employee's private interests and official duties;
  6. Outside employment or other activities which would involve any contractor or subcontractor connected with any work performed for the Commission or would involve any person or organization in a position to gain advantage in its dealings with the state through the Commissioner's or employee's exercise of his or her official duties;
  7. Outside employment or other activities that may be construed by the public to be the official acts of the Commission. In any permissible outside employment, care shall be taken to ensure that names and titles of Commissioners and employees are not used to give the impression that the activity is officially endorsed or approved by the Commission or is part of the Commission's activities;
  8. Outside employment or other activities which would involve use by a Commissioner or employee of his or her official duty time; use of official facilities, including office space, machines, or supplies, at any time; or use of the services of other employees during their official duty hours;
  9. Outside employment or other activities which impair the Commissioner's or employee's mental or physical capacities to perform Commission duties and responsibilities in an acceptable manner; or
  10. Use of information obtained as a result of state employment that is not freely available to the general public or would not be made available upon request. However,

written authorization for the use of any such information may be given when the Commission determines that such use would be in the public interest.

- C. Commissioners and employees shall not receive any salary or anything of monetary value from a private source as compensation for the Commissioner's or employee's services to the state.
- D. Commissioners and employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law or this Article. However, Commissioners and employees shall not, either with or without compensation, engage in teaching or writing that is dependent on information obtained as a result of his or her Commission employment, except when that information has been made available to the public or will be made available on request, or when the Commission gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.
- E. This Section does not preclude a Commissioner or employee from participating in the activities of or acceptance of an award for meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit, educational, recreational, public service, or civic organization.
- F. An employee who intends to engage in outside employment shall obtain the approval of the Executive Director. The request shall include the name of the person, group, or organization for whom the work is to be performed, the nature of the services to be rendered, the proposed hours of work, or approximate dates of employment, and the employee's certification as to whether the outside employment (including teaching, writing, or lecturing) will depend in any way on information obtained as a result of the employee's official position. The employee will receive, from the Executive Director, written notice of approval or disapproval of any written request. A record of the decision shall be placed in each employee's official personnel folder.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-309. Financial Interests**

- A. Commissioners and employees shall not engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through the Commissioner's or employee's duties or employment.
- B. Commissioners and employees shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with the Commissioner's or employee's official duties and responsibilities, except in cases where the Commissioner or employee makes full disclosure, and disqualifies himself or herself from participating in any decisions, approval, disapproval, recommendation, the rendering of advice, investigation, or in any proceeding of the Commission in which the financial interest is or appears to be affected. Full disclosure by a Commissioner or employee will require that individual to submit a written statement to the Executive Director or Chair disclosing the particular financial interest which conflicts substantially, or appears to conflict substantially, with the Commissioner's or employee's duties and responsibilities.
- C. Commissioners and employees shall disqualify themselves from a proceeding in which the Commissioner's or employee's impartiality might reasonably be questioned, such as in a situation where the Commissioner or employee knows that he or she, or his or her family member, has an interest in the subject matter in controversy or is a party to the proceeding, or has

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any other interest that could be substantially affected by the outcome of the proceeding.

- D. This Section does not preclude a Commissioner or employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Commission, as long as the Commissioner's or employee's financial interest does not conflict with official Commission duties.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-310. Political and Organization Activity**

- A. Due to the Commission's role in the political process, the following restrictions on political activities are required:
1. Commissioners and employees shall not advocate for the election or defeat of a candidate, nor make contributions to a candidate, political party, or political committee subject to the jurisdiction of the Commission. Commissioners and employees, however, are not prohibited from signing candidate nomination petitions;
  2. Commissioners and employees shall not provide volunteer or paid services for a candidate, political party, or political committee subject to the jurisdiction of the Commission; and
  3. Commissioners and employees shall not display partisan buttons, badges, or other insignia on Commission premises.
- B. Employees on leave, leave without pay, or on furlough or terminal leave, even though the employees' resignations have been accepted, are subject to the restrictions of this Section. A separated employee who has received a lump-sum payment for annual leave, however, is not subject to the restrictions during the period covered by the lump-sum payment or thereafter, provided he or she does not return to state employment during that period. An employee is not permitted to take a leave of absence to work with a political candidate, committee, or organization or become a candidate for office despite any understanding that he or she will resign his or her position if nominated or elected.
- C. A Commissioner or employee is accountable for political activity by another person acting as his or her agent or under the Commissioner's or employee's direction or control if the Commissioner or employee is thus accomplishing what he or she may not lawfully do directly and openly.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-311. Membership in Associations**

Commissioners or employees who are members of nongovernmental associations or organizations shall avoid activities on behalf of those associations or organizations that are incompatible with their official positions.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-312. Use of State Property**

A Commissioner or employee shall not directly or indirectly use, or allow the use of, state property of any kind, including property leased to the state, for other than officially approved activities. Commissioners and employees have a positive duty to protect and conserve state property including equipment, supplies, and other property entrusted or issued to him or her.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**ARTICLE 4. AUDITS****R2-20-401. Purpose and Scope**

This article prescribes procedures for conducting examinations and audits of participating candidates' campaign finances.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 19 A.A.R. 1699, effective October 6, 2011 (Supp. 13-2).

**R2-20-402. General**

The Commission may conduct an examination and audit of the receipts, disbursements, debts and obligations of each candidate. In addition, the Commission may conduct other examinations and audits as it deems necessary to carry out the provisions of the Act and regulations. Information obtained pursuant to any audit and examination may be used by the Commission as the basis, or partial basis, for its repayment determinations.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-402.01. Audits of Participating Legislative Candidates**

To ensure compliance with the Act and Commission rules, the Commission shall conduct audits of all participating legislative candidates after each election. Candidates who win their primary election will not be subject to an audit until after the general election. Audits shall include the review of campaign finance reports for the entire election cycle and related documentation in accordance with procedures established by the Commission. The Commission may hire independent accounting firms to carry out the audits.

**Historical Note**

New Section made by exempt rulemaking at 13 A.A.R. 3529, effective January 1, 2008 (Supp. 07-3). Amended by exempt rulemaking at 19 A.A.R. 1700, effective October 6, 2011 (Supp. 13-2). Amended by final exempt rulemaking at 21 A.A.R. 1640, effective July 23, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 130, effective December 15, 2016 (Supp. 16-4). Amended by final exempt rulemaking at 23 A.A.R. 2944, effective September 28, 2017 (Supp. 17-4).

**R2-20-402.02. Audits of Participating Statewide Candidates**

All participating statewide candidates shall be audited after each primary election period and each general election period.

**Historical Note**

New Section made by final exempt rulemaking at 23 A.A.R. 131, effective December 15, 2016 (Supp. 16-4).

**R2-20-403. Conduct of Fieldwork**

- A. The Commission will provide the candidate two days notice of the Commission's intention to commence fieldwork on the audit and examination. The Commission will conduct fieldwork at a site provided by the candidate. During or after fieldwork, the Commission may request additional or updated information, which expands the coverage dates of information previously provided. During or after fieldwork, the Commission may also request additional information that was created by or becomes available to the candidate that is of assistance in the Commission's audit. The candidate shall produce the addi-

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tional or updated information no later than two days after service of the Commission's request.

- B. On the date scheduled for the commencement of fieldwork, the candidate shall facilitate the examination or audit by making records available in one central location, such as the Commission's office space, or shall provide the Commission with office space and records. The candidate shall be present at the site of the fieldwork. The candidate shall be familiar with the candidate's records and shall be available to the Commission to answer questions and to aid in locating records.
- C. If the candidate fails to provide adequate office space, personnel or records, the Commission may seek judicial intervention to enforce the request or assess other penalties.
- D. If, in the course of the examination or audit process, a dispute arises over the documentation sought, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement within five days after the disputed Commission request is made, describing the dispute and indicating the candidate's proposed alternatives.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-404. Preliminary Audit Report**

- A. After the completion of fieldwork, the auditors may prepare a written preliminary audit report, which will be provided to the candidate after it is reviewed by the Executive Director. The preliminary audit report may include:
  1. An evaluation of procedures and systems employed by the candidate to comply with applicable provisions of the Act and Commission rules,
  2. The accuracy of statements and campaign finance reports filed with the Secretary of State by the candidate, and
  3. Preliminary findings.
- B. The candidate may submit in writing within 10 days after receipt of the preliminary audit report, legal and factual materials disputing or commenting on the proposed findings contained in the preliminary audit report. In addition, the candidate shall submit any additional documentation requested by the Commission.
- C. If the preliminary audit report cannot be completed, the Commission shall notify the candidate in writing that the audit report will not be completed.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 16 A.A.R. 1200, effective February 28, 2008 (Supp. 10-2).

**R2-20-405. Final Audit Report**

- A. Before voting on whether to approve and issue a final audit report, the Commission will consider any written legal and factual materials timely submitted by the candidate in accordance with R2-20-404. The Commission-approved final audit report may address issues other than those contained in the preliminary audit report.
- B. The final audit report may identify issues that warrant referral for possible enforcement proceedings.
- C. Addenda to the final audit report may be approved and issued by the Commission from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based on follow-up fieldwork conducted, or information ascertained by the Commission in the normal course of carrying out its responsibilities. The procedures set

forth in R2-20-404 and subsections (A) and (B) will be followed in preparing such addenda.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-406. Release of Audit Report**

- A. The Commission will consider the final audit report specified in R2-20-405 in an open meeting. The Commission will provide the candidate with copies of the final audit report to be considered in an open meeting 24 hours prior to the public meeting.
- B. Following Commission approval of the final audit report, the report will be forwarded to the candidate within five days after the public meeting.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**ARTICLE 5. RULEMAKING****R2-20-501. Purpose and Scope**

This Article prescribes the procedures for the submission, consideration, and disposition of rulemaking petitions filed with the Commission, establishes the conditions under which the Commission may identify and respond to petitions for rulemaking, and informs the public of the procedures the agency follows in response to such petitions.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-502. Procedural Requirements**

- A. Any interested person may file with the Commission a written petition for the issuance, amendment, or repeal of an administrative rule implementing any of the Citizens Clean Elections Act.
- B. The petition shall:
  1. Include the name and address of the petitioner or agent. An authorized agent of the petitioner may submit the petition, but the agent shall disclose the identity of his or her principal;
  2. Identify itself as a petition for the issuance, amendment, or repeal of a rule;
  3. Identify the specific Section of the regulations to be affected;
  4. Set forth the factual and legal grounds on which the petitioner relies, in support of the proposed action; and
  5. Be addressed and submitted to the Commission.
- C. The petition may include draft regulatory language that would effectuate the petitioner's proposal.
- D. The Commission may, in its discretion, treat a document that fails to conform to the format requirements of subsection (B) of this Section as a basis for rulemaking addressing issues raised in a petition.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-503. Processing of Petitions**

- A. Within 10 days of receiving a petition, the Commission shall send a letter to the petitioner acknowledging the receipt of the petition and informing the petitioner that the Commission will review and decide whether to deny or accept the petition. To assist in determining whether a rulemaking proceeding should be initiated, the Commission may publish a Notice of Avail-

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ability on the Commission web site or otherwise post notice, stating that the petition is available for public inspection in the Commission's Office and that statements in support of or in opposition to the petition may be filed within a stated period after publication of the Notice of Availability.

- B. If the Commission decides a public hearing on the petition would help determine whether to commence a rulemaking proceeding, it will publish an appropriate notice of the hearing on the Commission web site or otherwise post notice, to notify interested persons and to invite their participation in the hearing.
- C. The Commission will consider all comments regarding whether rulemaking proceedings should be initiated.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-504. Disposition of Petitions**

- A. After considering the comments and any other information relevant to the subject matter of the petition, the Commission will decide whether to initiate rulemaking based on the filed petition.
- B. If the Commission decides to initiate rulemaking proceedings, it shall file a Notice of Proposed Rulemaking and the proposed rule, in the format prescribed in A.R.S. § 41-1022, with the Secretary of State's office for publication in the Arizona Administrative Register. After the Commission approves the proposed rule, the Commission will accept public comments on the proposed rule for 60 days. After consideration of the comments received in the 60-day comment period, the Commission may adopt the rule in open meeting.
- C. If the Commission decides not to initiate rulemaking, it will give notice of this action by publishing a Notice of Disposition on the Commission web site, or otherwise post notice, and by sending a letter to the petitioner. The Notice of Disposition will include a brief statement of the grounds for the Commission's decision.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-505. Commission Considerations**

The Commission's decision on the petition for rulemaking may include, but will not be limited to, the following considerations:

1. The Commission's statutory authority;
2. Policy considerations;
3. The desirability of proceeding on a case-by-case basis;
4. The necessity or desirability of statutory revision;
5. Available agency resources; and
6. Substantive policy statements.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-506. Administrative Record**

- A. The Commission record for the petition process consists of the following:
  1. The petition, including all attachments on which it relies, filed by the petitioner;
  2. Written comments on the petition that have been circulated to and considered by the Commission, including attachments submitted as a part of the comments;
  3. Agenda documents, in the form they are circulated to and considered by the Commission in the course of the petition process;

4. All notices published on the Commission web site and in the Arizona Administrative Register, including the Notice of Availability and Notice of Disposition;
  5. The transcripts or audiotapes of any public hearing on the petition;
  6. All correspondence between the Commission and the petitioner, other commentators and state agencies pertaining to Commission consideration of the petition; and
  7. The Commission's decision on the petition, including all documents identified or filed by the Commission as part of the record relied on in reaching its final decision.
- B. The administrative record specified in subsection (A) of this Section is the exclusive record for the Commission's decision.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**ARTICLE 6. EX PARTE COMMUNICATIONS****R2-20-601. Purpose and Scope**

This Article prescribes procedures for handling ex parte communications made regarding Commission audits, investigations, and litigation. Rules governing such communications made in connection with Commission enforcement actions are found at R2-20-220.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-602. Definitions**

- A. "Ex parte communication" means any written or oral communication, by any person outside the agency to any Commissioner or any employee, which imparts information or argument regarding prospective Commission action or potential action concerning:
  1. Any ongoing audit;
  2. Any pending investigation; or
  3. Any litigation matter.
- B. "Ex parte communication" does not include the following communications:
  1. Public statements by any person in a public forum; or
  2. Statements or inquiries by any person limited to the procedural status of an open proceeding involving a Commission audit, investigation, or litigation matter.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-603. Audits, Investigations, and Litigation**

- A. In order to avoid the possibility of prejudice, real or apparent, in Commission decision making, no person outside the Commission shall make, or cause to be made, to any Commissioner or employee, any ex parte communication regarding any audit undertaken by the Commission or any pending or prospective Commission decision regarding any investigation or litigation, including whether to initiate, settle, appeal, or any other decision concerning an investigation or litigation matter.
- B. A Commissioner or employee who receives an oral ex parte communication concerning any matters addressed in subsection (A) of this Section shall attempt to prevent the communication. If unsuccessful in preventing the communication, the Commissioner or employee shall advise the person making the communication that he or she will not consider the communication and shall, as soon after the communication as is reasonably possible, but no later than three business days after the communication, or prior to the next Commission discussion of the matter, whichever is earlier, prepare a statement setting forth the substance and circumstances of the communication,

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and deliver the statement to the Executive Director for placement in the applicable case file.

- C. A Commissioner or employee who receives a written ex parte communication concerning any matters addressed in subsection (A) of this Section shall, as soon after the communication as is reasonably possible but no later than three business days after the communication, or prior to the next Commission discussion of the matter, whichever is earlier, deliver a copy of the communication to the Executive Director for placement in the applicable case file.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-604. Sanctions**

Any person who becomes aware of a possible violation of this Article shall notify the Executive Director in writing of the facts and circumstances of the alleged violation. The Executive Director shall recommend to the Commission the appropriate action to be taken. The Commission shall determine the appropriate action by at least three votes.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**ARTICLE 7. USE OF FUNDS AND REPAYMENT****R2-20-701. Purpose and Scope**

Notwithstanding any other provision of the rules to the contrary, a participating candidate shall not make any payment to a private organization that is exempt under section 501(a) of the internal revenue code and that is eligible to engage in activities to influence the outcome of a candidate election, nor make any payment directly or indirectly to a political party; and subject to the foregoing, may spend clean elections monies only for reasonable and necessary expenses that are directly related to the campaign of that participating candidate.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by final rulemaking at 26 A.A.R. 886, with an immediate effective date of February 27, 2020; the same amendments were filed and codified by final rulemaking at 26 A.A.R. 1259, with an immediate effective date of June 4, 2020 (Supp. 20-2).

**R2-20-702. Use of Campaign Funds**

- A. A participating candidate shall use funds in the candidate's current campaign account to pay for goods and services for direct campaign purposes only. Funds shall be disbursed and reported in accordance with A.R.S. § 16-948(C).
- B. Participating candidates may purchase fixed assets with a value not to exceed \$800. Fixed assets, including accessories, purchased with campaign funds that can be used for non-campaign purposes with a value of \$200 or more shall be turned into the Commission no later than 14 days after the primary election or the general election if the candidate was successful in the primary. For purposes of determining whether a fixed asset is valued at \$200 or more, the value shall include any accessories purchased for use with the fixed asset in question. A candidate may elect to keep an item by reimbursing the Commission for 80 percent of the original purchase price including the cost of accessories.

- C. During the primary election period, a participating candidate shall not make any expenditure greater than the difference between:
1. The sum of early contributions received plus public funds disbursed through the primary election period; less
  2. All other expenditures made during and for the exploratory, qualifying and primary election periods.
- D. During the general election period, a participating candidate shall not make any expenditure greater than the difference between:
1. The amount of public funds disbursed during and for the general election period; less
  2. All other expenditures made during and for the general election period.
- E. Transportation expenses.
1. Except as otherwise provided in this subsection (D), the costs of transportation relating to the election of a participating statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.
  2. If a participating candidate travels for campaign purposes in a privately owned automobile, the candidate may:
    - a. Use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure and reported in the reporting period in which the expenditure was incurred. If a candidate chooses to use campaign funds to reimburse, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement was made. This subsection applies to candidate owned automobiles in addition to any other automobile.
    - b. Use campaign funds to pay for direct fuel purchases for the candidate's automobile only and shall be reported. If a candidate chooses to use campaign funds for direct fuel purchases, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement could have been made.
  3. Use of airplanes.
    - a. If a participating candidate travels for campaign purposes in a privately owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of \$150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the participating candidate shall remit to the fund an amount equal to \$150 per hour of flying time.
    - b. If a participating candidate travels for campaign purposes in a state-owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection 3a, above. The portion of the trip attributable to state business shall not be reimbursed. If payment to the State is not possible, the payment shall be remitted to the Clean Elections Fund.

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4. If a participating candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 3606, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1423, effective October 22, 2009 (Supp. 09-3). Amended by exempt rulemaking at 17 A.A.R. 1267, effective April 12, 2011 (Supp. 11-2). Since language in subsections R2-20-702(C)(3)(d)(i) and (ii) and R2-20-702(C)(4) and (5) are substantively identical, the Commission requested to remove the redundant language in R2-20-702(C)(3)(d)(i) and (ii) under A.R.S. § 41-1011(C), Office File No. M11-345, filed October 3, 2011 (Supp. 11-2). Amended by exempt rulemaking at 19 A.A.R. 1702, effective October 6, 2011 (Supp. 13-2). Amended by exempt rulemaking at 22 A.A.R. 2906, effective January 1, 2017 (Supp. 16-3). Amended by exempt rulemaking at 23 A.A.R. 2342, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2120, effective July 29, 2019 (Supp. 19-3). Amended by final rulemaking at 26 A.A.R. 309, with an immediate effective date of January 23, 2020 (Supp. 20-1). Amended by final rulemaking at 26 A.A.R. 1132, with an immediate effective date of May 11, 2020 (Supp. 20-2).

**R2-20-702.01. Use of Assets**

A participating candidate may use assets such as signs, pamphlets, and office equipment from a prior election cycle only after the candidate's current campaign pays for the assets in an amount equal to the fair market value of the assets, which amount shall in no event be less than one-fifth (1/5) the original purchase price of such assets. If the candidate was a participating candidate during the prior election cycle, the cash payment shall be made to the Fund. If the candidate was not a participating candidate during the prior election cycle, the cash payment shall be made to the prior campaign. If the prior campaign account of a nonparticipating candidate is closed, the payment shall be made to the candidate. Notwithstanding any other provision of the rules to the contrary, a participating candidate shall not make any payment to a private organization that is exempt under section 501(a) of the internal revenue code and that is eligible to engage in activities to influence the outcome of a candidate election, nor make any payment directly or indirectly to a political party.

**Historical Note**

New Section made by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 3606, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by final rulemaking at 26 A.A.R. 887, with an immediate effective date of March 9, 2020; the same amendments were filed and codified by final rulemaking at 26 A.A.R. 1261, with an immediate effective date of June 4, 2020 (Supp. 20-2).

**R2-20-703. Documentation for Direct Campaign Expenditures**

- A. In addition to the general books and records requirements prescribed in R2-20-111, participating candidates shall comply with the following requirements:
1. All participating candidates shall have the burden of proving that expenditures made by the candidate were for direct campaign purposes. The candidate shall obtain and furnish to the Commission on request any evidence regarding direct campaign expenses made by the candidate as provided in subsection (A)(2).
  2. All participating candidates shall retain records with respect to each expenditure and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years, and shall present these records to the Commission on request.
  3. All participating candidates shall maintain a list of all fixed assets whose purchase price exceeded \$200 when acquired by the campaign. The list shall include a brief description of each fixed asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition.
- B. Upon written request from a candidate, the Commission shall determine whether a planned campaign expenditure or fundraising activity is permissible under the Act. To make a request, a candidate shall submit a written description of the planned expenditure or activity to the Commission. The Commission shall inform the candidate whether an enforcement action will be necessary if the candidate carries out the planned expenditure or activity. The Commission shall ensure that the candidate can rely on a "no action" letter. A "no action" letter applies only to the candidate who requested it.
- C. Any expenditure made by the candidate or the candidate's committee that cannot be documented as a direct expenditure shall promptly be repaid to the Fund with the candidate's personal monies.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by final exempt rulemaking at 21 A.A.R. 1641, effective July 23, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 133, effective January 1, 2017 (Supp. 16-4).

**R2-20-703.01. Campaign Consultants**

- A. For purposes of this rule "Campaign Consultant" means any person paid by a participating candidate's campaign or who provides services that are ordinarily charged to a person, except services provided for in A.R.S. § 16-911(6)(b).
- B. A participating candidate may engage campaign consultants.
- C. A participating candidate may only advance a campaign consultant for services such as consulting, communications, field employees, canvassers, mailers, auto-dialers, telephone town halls, electronic communications and other advertising purchases and other campaign service if an itemized invoice identifying the value of the services is provided directly to that particular candidate at the time of the advance payment.
1. Providing payment for such services as described in subsection (C) of this rule in the absence of an itemized invoice or advance payment for such services shall be deemed not to be a direct campaign expenditure.

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2. A participating candidate may advance payment for postage upon the receipt of a written estimate and so long as any balance is returned to the candidate if the advance exceeds the actual cost of postage.
  3. A participating candidate may advance payment for advertising that customarily requires pre-payment upon the receipt of a written estimate and so long as any balance is returned to the candidate if the advance exceeds the actual cost of the advertisement.
- D.** The Commission shall be included in the mail batch for all mailers and invitations. The Commission shall also be provided with documentation from the mail house, printer or other original source, showing the number of mailers printed and the number of households to which a mailer was sent. Failure to provide this information within 7 days after the mailer has been mailed may be considered as evidence the mailer was not for direct campaign purposes.
- E.** Notwithstanding any other provision of the rules to the contrary, a participating candidate shall not make any payment to a private organization that is exempt under section 501(a) of the internal revenue code and that is eligible to engage in activities to influence the outcome of a candidate election, nor make any payment directly or indirectly to a political party.

**Historical Note**

New Section made by exempt rulemaking at 23 A.A.R. 2344, effective July 20, 2017 (Supp. 17-3). Amended by final rulemaking at 26 A.A.R. 889, with an immediate effective date of March 16, 2020; the same amendments were filed and codified by final rulemaking at 26 A.A.R. 1263, with an immediate effective date of June 4, 2020 (Supp. 20-2).

**R2-20-704. Repayment**

- A.** In general, the Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund as determined by the Commission.
1. A candidate who has received payments from the Fund shall pay the Fund any amounts that the Commission determines to be repayable. In making repayment determinations, the Commission may utilize information obtained from audits and examinations or otherwise obtained by the Commission in carrying out its responsibilities.
  2. The Commission will notify the candidate of any repayment determinations made under this Section as soon as possible.
  3. Once the candidate receives notice of the Commission's repayment determination, the candidate should give preference to the repayment over all other outstanding obligations of the candidate, except for any taxes owed by the candidate.
  4. Repayments may be made only from the following sources: personal funds of the candidate, funds in the candidate's current election campaign account, and any additional funds raised subject to the limitations and prohibitions of the Act.
  5. The Commission may withhold the portion of funds required to be repaid from future payments to a participating candidate if the Commission has made a repayment determination.
- B.** The Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund under any of the following circumstances:
1. Payments in excess of candidate's entitlement. If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the Fund an amount equal to such portion.
  2. Use of funds not for direct campaign expenses. If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than direct campaign purposes described in R2-20-702, it will notify the candidate of the amount so used, and such candidate shall pay to the Fund an amount equal to such amount.
  3. Expenditures that were not documented in accordance with campaign finance reporting requirements, expended in violation of state or federal law, or used to defray expenses resulting from a violation of state or federal law, such as the payment of fines or penalties.
  4. Surplus. If the Commission determines that a portion of payments from the Fund remains unspent after all direct campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the Fund that portion of surplus funds.
  5. Income on investment or other use of payments from the Fund. If the Commission determines that a candidate received any income as a result of an investment or other use of payments from the Fund, it shall so notify the candidate, and such candidate shall pay to the Fund an amount equal to the amount determined to be income, less any federal, state or local taxes on such income.
  6. Unlawful acceptance of contributions by an eligible candidate. If the Commission determines that a participating candidate accepted contributions, other than early contributions or qualifying contributions, it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the Fund an amount equal to such amount, plus any civil penalties assessed.
- C.** Repayment determination procedures. The Commission's repayment determination will be made in accordance with the following procedures:
1. Repayment determination. The Commission will send a repayment determination pursuant to Article 2, Compliance and Enforcement Procedures, and will set forth the legal and factual reasons for such determination, as well as the evidence upon which any such determination is based. The candidate shall repay, in accordance with subsection (D), the amount that the Commission has determined to be repayable.
  2. Administrative review of repayment determination. If a candidate disputes the Commission's repayment determination, he or she may request an administrative appeal of the determination in accordance with A.R.S. § 41-1092 et. seq.
- D.** Repayment period.
1. Within 30 days of service of the notice of the Commission's repayment determination, the candidate shall repay the amounts the Commission has determined must be repaid. Upon application by the candidate, the Commission may grant an extension of time in which to make repayment.
  2. If the candidate requests an administrative appeal of the Commission's repayment determination of this Section, the time for repayment will be suspended until the Commission has concluded its review of the Administrative Law Judge's (ALJ) decision. Within 30 days after service of the notice of the Commission's review of the ALJ's decision, the candidate shall repay the amounts that the Commission has determined to be repayable. Upon appli-

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cation by the candidate, the Commission may grant an extension of up to 30 days in which to make repayment.

3. Interest shall be assessed on all repayments made after the initial 30-day repayment period or the 30-day repayment period established by this Section. The amount of interest due shall be the greater of:
  - a. An amount calculated in accordance with A.R.S. § 44-1201(A); or
  - b. The amount actually earned on the funds set aside or to be repaid under this Section.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by final exempt rulemaking at 21 A.A.R. 1643, effective July 23, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 2122, effective July 29, 2019 (Supp. 19-3). Amended by final rulemaking at 26 A.A.R. 337, effective February 4, 2020; the amendment to subsection (A)(2) was originally codified in Supp. 19-3 at 25 A.A.R. 2020 (Supp. 20-1).

**R2-20-705. Additional Audits or Repayment Determinations**

- A. The Commission may conduct an additional audit or examination of any candidate in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.
- B. The Commission may make additional repayment determinations after it has made an initial repayment determination pursuant to R2-20-704. The Commission may make additional repayment determinations where there exist facts not used as the basis for any previous determination. Any such additional repayment determination will be made in accordance with the provisions of this Article.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section

repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-706. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-707. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-708. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-709. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-710. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

## 16-956. Voter education and enforcement duties

(Caution: 1998 Prop. 105 applies)

A. The commission shall:

1. Develop a procedure for publishing a document or section of a document having a space of predefined size for a message chosen by each candidate. For the document that is delivered before the primary election, the document shall contain the names of every candidate for every statewide and legislative district office in that primary election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. For the document that is delivered before the general election, the document shall contain the names of every candidate for every statewide and legislative district office in that general election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. The commission shall deliver one copy of each document to every household that contains a registered voter. For the document that is delivered before the primary election, the delivery may be made over a period of days but shall be sent in time to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the primary election. The commission may deliver the second document over a period of days but shall send the second document in order to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the general election. The primary election and general election documents published by the commission shall comply with all of the following:

(a) For any candidate who does not submit a message pursuant to this paragraph, the document shall include with the candidate's listing the words "no statement submitted".

(b) The document shall have printed on its cover the words "citizens clean elections commission voter education guide" and the words "primary election" or "general election" and the applicable year. The document shall also contain at or near the bottom of the document cover in type that is no larger than one-half the size of the type used for "citizens clean elections commission voter education guide" the words "paid for by the citizens clean elections fund".

(c) In order to prevent voter confusion, the document shall be easily distinguishable from the publicity pamphlet that is required to be produced by the secretary of state pursuant to section 19-123.

2. Sponsor debates among candidates, in such manner as determined by the commission. The commission shall require participating candidates to attend and participate in debates and may specify by rule penalties for nonparticipation. The commission shall invite and permit nonparticipating candidates to participate in debates.

3. Prescribe forms for reports, statements, notices and other documents required by this article. The commission shall not require a candidate to use a reporting system other than the reporting system jointly approved by the commission and the office of the secretary of state.

4. Prepare and publish instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with this article and explaining the duties of persons and committees under this article.

5. Produce a yearly report describing the commission's activities and any recommendations for changes of law, administration or funding amounts and accounting for monies in the fund.

6. Adopt rules to implement the reporting requirements of section 16-958, subsections D and E.

7. Enforce this article, ensure that money from the fund is placed in candidate campaign accounts or otherwise spent as specified in this article and not otherwise, monitor reports filed pursuant to this chapter and financial records of candidates as needed and ensure that money required by this article to be paid to the fund is deposited in the fund. The commission shall not take action on any external complaint that is filed more than ninety days

after the postelection report is filed or ninety days after the completion of the canvass of the election to which the complaint relates, whichever is later.

B. The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the commission's duties or the exercise of its powers.

C. The commission may adopt rules to carry out the purposes of this article and to govern procedures of the commission. The commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed. The commission shall also file the proposed rule in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. After consideration of the comments received in the sixty day comment period, the commission may adopt the rule in an open meeting. Any rules given final approval in an open meeting shall be filed in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. Any rules adopted by the commission shall only be applied prospectively from the date the rule was adopted.

D. Rules adopted by the commission are not effective until January 1 in the year following the adoption of the rule, except that rules adopted by unanimous vote of the commission may be made immediately effective and enforceable.

E. If, in the view of the commission, the action of a particular candidate or committee requires immediate change to a commission rule, a unanimous vote of the commission is required. Any rule change made pursuant to this subsection that is enacted with less than a unanimous vote takes effect for the next election cycle.

F. Based on the results of the elections in any quadrennial election after 2002, and within six months after such election, the commission may adopt rules changing the number of qualifying contributions required for any office from those listed in section 16-950, subsection D by no more than twenty percent of the number applicable for the preceding election.

**DEPARTMENT OF CHILD SAFETY (F20-0902)**

Title 21, Chapter 5, Article 5, Adoption Subsidy



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** September 1, 2020

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

**FROM:** Council Staff

**DATE:** August 11, 2020

**SUBJECT: DEPARTMENT OF CHILD SAFETY**  
Title 21, Chapter 5, Article 5, Adoption Subsidy

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### **Summary**

This Five-Year Review Report (5YRR) from the Department of Child Safety (Department) relates to all rules in Title 21, Chapter 5, Article 5 related to the adoption subsidy program provided by the Department. This Article provides information and guidelines on the requirements on who is eligible to receive adoption subsidy services, as well as the criteria for continuing to receive adoption subsidy services and the circumstances for when to terminate adoption subsidy services.

This is the first 5YRR for these rules which were made by final exempt rulemaking and became effective on January 24, 2016.

### **Proposed Action**

For reasons outlined in more detail below, the Department intends to amend the following three rules:

- R21-5-502
- R21-5-510
- R21-5-511

The Department plans to request a moratorium exemption from the Governor's Office in accordance with Executive Order 2020-02 and plans to complete and submit rulemaking for Council's review by December 2020.

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

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

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

These rules were made by final exempt rulemaking in 2016, and thus, an economic, small business and consumer impact statement was not prepared. This is the first review of these rules.

Stakeholders are identified as the Department, adoptive parents, and adopted children.

The rules cover the eligibility and guidelines for adoption subsidy services. In calendar year 2019, approximately 34,202 children received adoption subsidy services. This number includes an additional 1,975 children who were adopted and began receiving adoption subsidy services. Also in 2019, approximately 1,473 children exited the adoption subsidy program primary due to reaching the maximum age for receiving adoption subsidy services.

**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?**

Due to the organization's structure, costs associated with the adoption subsidy programs are not readily quantifiable. However, the Department believes that the current rules pose the minimum cost and burden to those regulated by these rules.

The Department bears the cost associated with the rules of this Article. The rules support better outcomes for youth by establishing permanent connections, support through early adulthood, and lasting support that reduces impacts to other systemic issues. The benefit of these rules is to provide better outcomes for children and to ensure that they do not languish in the child welfare system, which could have potential negative impact to their well-being if permanency is not achieved.

**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?**

The Department indicates that the rules are generally clear, concise, and understandable except for the following rules:

- R21-5-502: The Department plans to amend rules in R21-5-502(C)(1) to include statutory updates. In 2019, A.R.S. § 8-144 changed to expand eligibility criteria for adoption subsidy.
- R21-5-510: The Department plans to amend the section title and R21-5-510(A) from an “Annual Review” to a “Periodic Review” to reflect the 2018 statutory change to A.R.S. § 8-144.
- R21-5-511: In 2019, A.R.S. § 8-144 changed eligibility and allows children to continue receiving adoption subsidy past high school graduation if they were adopted at age 16 or 17 and meet the criteria established in statute. This section needs to be amended to include the statutory changes.

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

The Department indicates that the rules are generally consistent with other rules and statutes except for the following rules:

- R21-5-502: In 2019, A.R.S. § 8-144 changed to expand eligibility criteria for adoption subsidy. Eligibility Criteria in R21-5-502(C)(1) needs to be expanded to include children who may now meet the eligibility criteria to receive adoption subsidy services.
- R21-5-510: In 2018, A.R.S. § 8-144 changed the review requirement of adoption subsidy from annual to periodic reviews. The section title and R21-5-510(A) need to be updated to reflect the statutory change.
- R21-5-511: In 2019, A.R.S. § 8-144 changed eligibility and allows children to continue receiving adoption subsidy past high school graduation if they were adopted at age 16 or 17 and meet the criteria established in statute. This section needs to be amended to include the statutory changes

**7. Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department indicates the rules are effective in achieving their underlying regulatory objectives.

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

The Department indicates that the rules are enforced as written except for R21-5-510 and R21-5-511 due to inconsistency with A.R.S. § 8-144 as outlined above. The Department indicates that it currently follows statutory requirements and proposes to conduct rulemaking to update the rules.

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

The Department indicates that the rules are not more stringent than corresponding federal laws, including 42 U.S.C. § 473 and 42 U.S.C. § 673.

**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?**

The Department has determined that A.R.S. § 41-1037 does not apply to these rules because these rules do not require the issuance of a regulatory permit, license, or agency authorization. Council staff agrees with this determination.

**11. Conclusion**

The Department indicates that the rules are generally clear, concise, effective, consistent, and effective. However, the Department indicates that R21-5-502, R21-5-510, and R21-5-511 must be updated to reflect 2018 and 2019 amendments to A.R.S. § 8-144. The Department plans to request a moratorium exemption from the Governor's Office in accordance with Executive Order 2020-02 and plans to complete and submit rulemaking to address these changes for Council's review by December 2020. Council staff recommends approval of this report.



**ARIZONA**  
DEPARTMENT  
*of* CHILD SAFETY

Mike Faust, Director  
Douglas A. Ducey, Governor

June 24, 2020

**VIA EMAIL:** [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Ms. Nicole Sornsin Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

**RE: Arizona Department of Child Safety, A.A.C. Title 21, Chapter 5,  
Article 5, Five Year Review Report**

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of the Arizona Department of Child Safety (DCS) for A.A.C. Title 21, Chapter 5, Article 5 which is due on June 30, 2020.

DCS hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Angie Trevino, Rules Development and Policy Specialist, at 602-255-2569 or [angelica.trevino@azdcs.gov](mailto:angelica.trevino@azdcs.gov) or Magdalena Jorquez, Senior Legislative Counsel at 602-255-2527 or [magdalena.jorquez@azdcs.gov](mailto:magdalena.jorquez@azdcs.gov).

Sincerely,

Mike Faust  
Director

Enclosure

**ARIZONA DEPARTMENT OF CHILD SAFETY**

**Five-Year-Review Report**

**Title 21. Child Safety**

**Chapter 5. Department of Child Safety - Permanency and Support Services**

**Article 5. Adoption Subsidy**

**June 2020**

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

General Statutory Authority: A.R.S. § 8-453(A)(5)

Specific Statutory Authority: A.R.S. §§ 8-141 through 8-145 and §§ 8-161 through 8-166

**2. The objective of each rule:**

Rule	Objective
R21-5-501. Definitions	The objective of this rule is to provide definitions for terms used throughout the rules.
R21-5-502. Eligibility Criteria	The objective of this rule is detail the eligibility criteria in order for a child to receive adoption subsidy.
R21-5-503. Application for Adoption Subsidy	The objective of this rule is to establish that an adoptive parent must complete an application for adoption subsidy. It also details the information required on the application.
R21-5-504. Eligibility Determination	The objective of this rule is to address the Department's process for approving or denying an adoption subsidy application.
R21-5-505. Adoption Subsidy Agreement	The objective of this rule is to require an adoption subsidy agreement.
R21-5-506. Medical, Dental, and Mental Health Subsidy	The objective of this rule is to indicate the health services that are provided through subsidy.
R21-5-507. Maintenance Subsidy	The objective of this rule is to explain and detail what consists of maintenance subsidy.
R21-5-508. Special Services Subsidy	The purpose of this rule is to set the criteria and process for requesting subsidy for special circumstances.
R21-5-509. Nonrecurring Adoption Expenses	The purpose of this rule is to describe considerations for one-time expenses for adoption assistance.
R21-5-510. Annual	The purpose of this rule is to indicate that adoption subsidy recipients must cooperate

Review; Reporting Change	with an annual review and reporting changes.
R21-5-511. Termination of Adoption Subsidy	The purpose of this rule is to establish circumstances under which subsidy is terminated.
R21-5-512. New or Amended Adoption Subsidy Agreement	The purpose of this rule is to establish the process for requesting and amending the adoption subsidy agreement.
R21-5-513. Appeals	The purpose of this rule is to advise that the appeal process is located in Title 21, Chapter 1, Article 3.
R21-5-514. Confidentiality	The purpose of this rule is to inform that the Department follows federal and state confidentiality laws.

3. **Are the rules effective in achieving their objectives?** Yes X No    

4. **Are the rules consistent with other rules and statutes?** Yes     No X

Rule	Explanation
R21-5-502. Eligibility Criteria	In 2019, A.R.S. § 8-144 changed to expand eligibility criteria for adoption subsidy. Eligibility Criteria in R21-5-502(C)(1) needs to be expanded to include children who may now meet the eligibility criteria to receive adoption subsidy services.
R21-5-510. Annual Review; Reporting Change	In 2018, A.R.S. § 8-144 changed the review requirement of adoption subsidy from annual to periodic reviews. The section title and R21-5-510(A) need to be updated to reflect the statutory change.
R21-5-511. Termination of Adoption Subsidy	In 2019, A.R.S. § 8-144 changed eligibility and allows children to continue receiving adoption subsidy past high school graduation if they were adopted at age 16 or 17 and meet the criteria established in statute. This section needs to be amended to include the statutory changes.

5. **Are the rules enforced as written?** Yes     No X

Rule	Explanation
R21-5-510. Annual Review; Reporting Change	As mentioned in #4 above, Arizona Revised Statute changed in 2018. The Department currently follows statutory requirements and proposes to conduct rulemaking to update the rules.
R21-5-511. Termination of Adoption Subsidy	As mentioned in #4 above, Arizona Revised Statute changed in 2019. The Department currently follows statutory requirements and proposes to conduct rulemaking to update the rules.

6. **Are the rules clear, concise, and understandable?** Yes \_\_\_ No X

Rule	Explanation
R21-5-502. Eligibility Criteria	The Department plans to amend rules in R21-5-502 C.1. to include statutory updates. As mentioned in #4 of this report, in 2019 Arizona Revised Statute § 8-144 changed to expand eligibility criteria for adoption subsidy.
R21-5-510. Annual Review; Reporting Change	The Department plans to amend the section title and R21-5-510(A) to reflect the statutory change from an “Annual Review” to a “Periodic Review”. As mentioned in #4 of this report, in 2018 Arizona Revised Statute changed this requirement.
R21-5-511. Termination of Adoption Subsidy	The Department plans to amend this section by adding language to reflect statutory change in which the eligibility criteria changed to allow children to continue receiving adoption subsidy past high school graduation if they were adopted at age 16 or 17 and meet the eligibility criteria set in statute.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes \_\_\_ No X

8. **Economic, small business, and consumer impact comparison:**

The Department adopted the rules in Title 21, Chapter 5, Article 5 under its own title (Title 21. Child Safety) on January 24, 2016. There was no economic, small business and consumer impact statements prepared as part of the exempt rulemaking.

Adoption Assistance in Arizona is provided for special needs children, as defined by A.R.S. § 8-141(A)(14), who are adopted in the State of Arizona. Adoption assistance services provide the following:

- Medical coverage through AHCCCS or the state’s Medicaid plan when child resides in another state.
- Nonrecurring expenses (one-time expenses) to cover necessary legal expenses related to adoption of the child.
- Monthly maintenance payments to adoptive parents to assist with covering expenses related to child’s special needs.
- Special services subsidy to cover medically necessary services that are not available through any other community resource.
- Case management and advocacy for children receiving adoption subsidy.

In calendar year 2019, approximately 34,202 children received adoption subsidy services. This number includes an additional 1,975 children who were adopted and began receiving adoption subsidy services. Also in 2019, approximately 1,473 children exited the adoption subsidy program primarily due to reaching the maximum age for receiving adoption subsidy services.

The Department's Subsidy Unit is responsible for processing, reviewing, and monitoring the adoption subsidy program as well as the guardian subsidy program, which is not subject to the rules of this report. Due to the Department's organizational structure, costs associated with the adoption subsidy program is not readily quantifiable. The program is administered by the Assistant Director for Foster Care and Post Permanency Supports. The Subsidy Program is staffed with 37 full-time employees, consisting of one (1) Manager, four (4) Supervisors, 21 Subsidy Specialists, six (6) support staff, two (2) Behavioral Health Specialists, and three (3) Eligibility Specialists. This staff is responsible for the following adoption subsidy functions:

- Processes applications for adoption subsidy and work with DCS Specialists and clients when applications are incomplete or may include inaccurate information.
- Reviews applications to determine eligibility.
- Notifies applicants of approval or denial of application.
- Creates and enters information onto the DCS electronic database system.
- Processes referrals to the Arizona Health Care Cost Containment System (AHCCCS) when child lives in Arizona and the child is eligible.
- Processes referrals to Interstate Compact on Adoption and Medical Assistance (ICAMA) when the adopted child lives in another state and may be eligible for Medicaid in that state.
- Assists families and children who are also receiving services through other state or federal programs, such as the Arizona Long Term Care System (ALTCS), DES Division of Developmental Disability (DDD), private insurance, and the educational system.
- Advocates for the child when managing the Behavioral Health services, as necessary.
- Coordinates payment for non-recurring expenses.
- Conducts periodic reviews of adoption subsidy cases based on a questionnaire mailed to parents.
- Reviews reports and determines if any updates to services are necessary.
- Coordinates with the educational system when the child receiving services has reached 18 years of age and continues to receive services from the educational system.
- Ensures continuity of adoption subsidy and services when status of care with the adoptive parent changes.
- Reviews and closes adoption subsidy and services as appropriate.
- Provides technical assistance to DCS staff, attorneys, adoptive parents, and external stakeholders to ensure children achieve permanency.

#### Funding for adoption subsidy

The funding source for adoption subsidy services is provided through Title IV-E Adoption, Adoption Incentive, TANF and from General State Funds for children who are not Title IV-E eligible. The funding sources for Non-

recurring Adoption Expenses and Home Recruitment Expenses are a combination of Title IV-E Adoption, Promoting Safe and Stable Families: Title IV-B, Subpart 2, and General State funds.

**FY 19 Adoption Expenses**

Maintenance Subsidy	\$	232,347,262
Special Services Subsidy	\$	676,484
Non-Recurring Expenses	\$	4,413,073
Home Recruitment Expenses	\$	1,210,160

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?**

This is the first review of the rules in Title 21, Chapter 5 Article 5. The rules in this Article were made by final exempt rulemaking, published in 21 A.A.R. 3255 on December 18, 2015 and became effective on January 24, 2016.

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 current rules pose the minimum cost and burden to the persons regulated by these rules. This Article pertains to the adoption subsidy program provided by the Department. This Article provides information and guidelines on the requirements on who is eligible to receive adoption subsidy services, as well as the criteria for continuing to receive adoption subsidy services and the circumstances for when to terminate adoption subsidy services. The Department bears the cost associated with the rules in this Article. However, as mentioned in #8 of this report, the Department also receives Federal Funds for the provision of adoption subsidy services for children who are Title IV-E eligible. Additionally, the rules support better outcomes for youth by establishing permanent connections, supports through early adulthood, and lasting supports that reduce impacts to other systemic issues is a cost benefit. The benefit of these rules is to provide better outcomes for children and to ensure that they do not languish in the child welfare system, which could have potential negative impact to their well-being if permanency is not achieved. In addition, the State is able to draw down federal dollars based on their federal participation through the IV-E program to ensure that children are able to achieve permanency in safe homes.

12. **Are the rules more stringent than corresponding federal laws?** Yes  No

The rules are not more stringent than corresponding federal laws. Federal laws that apply to these rules are: 42 U.S.C. § 473 and 42 U.S.C. § 673.

**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 A.R.S. § 41-1037 does not apply to these rules because these rules do not require the issuance of a regulatory permit, license, or agency authorization.

**14. Proposed course of action**

The Department plans to request a moratorium exemption from the Governor's Office in accordance with Executive Order 2020-02 and to amend rules to address the concerns identified in this five-year-review report. The Department plans to complete and submit rulemaking for Council's review by December 2020.

## CHAPTER 5. DEPARTMENT OF CHILD SAFETY - PERMANENCY AND SUPPORT SERVICES

- B.** An adoption entity shall have and follow written procedures for an adoptive placement disruption. The procedures shall include:
1. Provision of counseling services to the adoptive parent, his or her family, and the child as needed; and
  2. Provision for placement of the child in another adoptive home or other developmentally appropriate living arrangement.
- C.** The adoptive entity shall document the reasons for the disruption and shall take such information into account when making future placements for the adoptive parent and the child.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-423. Confidentiality**

Any person or entity who participates in an adoption or provides adoption services shall comply with the confidentiality requirements under A.R.S. §§ 8-120, 8-121, and 36-2903.01.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**ARTICLE 5. ADOPTION SUBSIDY****R21-5-501. Definitions**

In addition to the definitions in A.R.S. §§ 8-141 and 8-501, the following definitions apply in this Article.

1. "Adoption agency" means an individual or entity, including a corporation, company, partnership, firm, association, or society, other than the Department, licensed by the Department to place a child for adoption.
2. "Adoption Specialist" means the Department of Child Safety Specialist, or adoption agency staff person, who is responsible for managing the child's case prior to the adoption finalization.
3. "Adoption subsidy" means the same as A.R.S. § 8-141, and includes nonrecurring adoption expenses under A.R.S. § 8-161 et seq. If the child qualifies, the adoption subsidy may include one or more of the following:
  - a. Medical, dental, and mental health subsidy;
  - b. Maintenance subsidy;
  - c. Special services subsidy; and
  - d. Reimbursement of nonrecurring adoption expenses.
4. "Adoption subsidy agreement" means the agreement in A.R.S. § 8-144 concerning the Adoption Subsidy Program and includes the agreement in A.R.S. § 8-162 concerning the nonrecurring adoption expense program.
5. "Adoption Subsidy Program" means a unit within the Department of Child Safety that administers the adoption subsidy.
6. "Adoption Subsidy Supervisor" means a Department employee who is responsible for the Adoption Subsidy Program within a defined geographic area, and that the Department has authorized to approve an adoption subsidy agreement.
7. "Adoptive parent" means an adult who the court has certified or approved to adopt a child, or an adult who has adopted a child.
8. "AHCCCS" means the Arizona Health Care Cost Containment System, which is the state's program for medical assistance available under Title XIX of the Social Security Act and state public insurance statutes, A.R.S. Title 36, Chapter 29.
9. "AHCCCS hospital reimbursement system" means the payment structure that AHCCCS uses to pay for inpatient and outpatient hospital services.
10. "Complete adoption subsidy application" means a packet containing the following:
  - a. An "Adoptive Family Subsidy Application" form provided by the Department that the adoptive parent, the Adoption Specialist, and Adoption Specialist supervisor have completed and signed; and
  - b. The supporting documentation and information requested in the "Adoptive Family Subsidy Application."
11. "Debilitating" means a lifelong, progressive, or fatal condition characterized by physical, mental, or developmental impairment that impedes an individual's ability to function independently.
12. "Department" or "DCS" means the Arizona Department of Child Safety.
13. "Developmental disability" means the same as A.R.S. § 8-141.
14. "Diagnose" means to identify a physical, psychological, social, learning, or developmental condition or disability according to the accepted standards of the medical, mental health, or educational professions.
15. "Emergency situation" means a circumstance that, if unaddressed, would be detrimental to a child's life, health, or safety.
16. "Emotional disturbance" means the same as A.R.S. § 8-141.
17. "Lawfully present in the United States" means the child is a U.S. citizen, national, or an alien authorized by an appropriate federal entity or court to be present in the United States.
18. "Legally free" means the parental rights of a child's birth or legal parents have been terminated.
19. "Maintenance subsidy" means a monthly payment paid to a custodial adoptive parent to assist with the costs directly related to meeting some of the adopted child's needs, including child care, health insurance co-payments and deductibles, and supplemental educational services for the adopted child.
20. "Mental disability" means the same as A.R.S. § 8-141.
21. "Nonrecurring adoption expenses" means the same as A.R.S. § 8-161, and are reasonable and necessary expenses directly related to the legal process of adopting a child with special needs. Allowable expenses include adoption fees, court costs, attorney's fees, fingerprinting fees, home study fees, costs for physical and psychological examinations, costs for placement supervision, and travel expenses necessary to complete the adoption.
22. "Physical disability" means the same as A.R.S. § 8-141.
23. "Qualified professional" means a practitioner licensed or certified by the state of Arizona or another state to evaluate and diagnose a condition or disability, or provide medical, dental, mental health services, or approved by the Department to provide educational or respite services.
24. "Sibling relationship" means two or more brothers or sisters who are related by blood or by law, and who are being adopted by the same family.
25. "Special allowance" means funds provided for clothing or personal expenses, therapeutic or personal attendant care, and other specialized payments such as emergency clothing, education, and gift allowances.
26. "Special needs" means one or more of the following conditions which existed before the finalization of adoption:
  - a. Physical, mental or developmental disability.
  - b. Emotional disturbance.
  - c. High risk of physical or mental disease.
  - d. High risk of developmental disability.

## CHAPTER 5. DEPARTMENT OF CHILD SAFETY - PERMANENCY AND SUPPORT SERVICES

- e. Age of six or more years at the time of application for an adoption subsidy.
  - f. Sibling relationship.
  - g. Racial or ethnic factors.
  - h. High risk of severe emotional disturbance if removed from the care of his foster parents.
  - i. Any combination of the special needs described in this paragraph. A.R.S. § 8-141.
27. "Special services subsidy" means financial assistance for extraordinary, infrequent, or uncommon needs related to a special needs condition specified in the adoption subsidy agreement.
28. "Standard of care" means a medical or psychological procedure or process that is accepted as treatment for a specific illness, injury, medical, dental, learning, or psychological condition through custom, peer review, or consensus by the professional medical, dental, educational, or mental health community.
29. "Title IV-E" means section 473 of Title IV of the Social Security Act, 42 U.S.C. 673, which establishes the federal adoption assistance program.
30. "Title XIX" means Medicaid, as defined by Section 1900, Title XIX, of the Social Security Act, 42 U.S.C. 1396.
31. "Title XX" means the Social Services Block Grant, as defined by Section 2001, Title XX, of the Social Security Act, 42 U.S.C. 1397.
32. "Undiagnosed pre-existing special need condition" means a physical, mental or developmental disability or emotional disturbance that existed before a court finalized the child's adoption, and that a qualified professional did not confirm before the child's adoption.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-502. Eligibility Criteria**

- A. The Department shall determine if a child qualifies for the Title IV-E adoption assistance program prior to determining whether the child qualifies for the Adoption Subsidy Program.
- B. A child shall qualify for Title IV-E adoption assistance if the child meets the additional eligibility criteria required in 42 U.S.C. 673(a)(2). If the child does not meet the additional criteria in Title IV-E, the child may still be eligible to receive adoption subsidy under subsection (C).
- C. An Arizona child shall be eligible for adoption subsidy when the child is:
  - 1. In the care, custody, and control of the Department, or an adoption agency licensed in Arizona, or was previously adopted and received Title IV-E or Arizona adoption subsidy;
  - 2. Legally free for adoption;
  - 3. Lawfully present in the United States; and
  - 4. Determined to be a child with special needs as defined by Title IV-E of the Social Security Act, and A.R.S. Title 8, Chapter 1, Articles 2 and 3 as follows:
    - a. The child cannot or should not be returned to the parent's home;
    - b. The child cannot be placed with adoptive parents without an adoption subsidy due to a special need of the child; and
    - c. A reasonable but unsuccessful effort was made to place the child without an adoption subsidy, unless the Department determined that it was not in the child's best interest to place the child with another family because of the child's significant emotional

ties with the prospective adoptive parent while in their care as a foster child.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-503. Application for Adoption Subsidy**

- A. The adoptive parent shall submit a complete adoption subsidy application to the Department Adoption Subsidy Program prior to the finalization of the adoption. A complete adoption subsidy application shall include the following:
  - 1. The child's:
    - a. Name;
    - b. Date of birth;
    - c. Social Security Number; and
    - d. Ethnicity;
  - 2. The adoptive parents':
    - a. Name;
    - b. Date of birth;
    - c. Social Security Number;
    - d. Ethnicity;
    - e. Marital status;
    - f. Occupation;
    - g. Relationship to the child;
    - h. Adoption certification status;
  - 3. Information about:
    - a. The child's special needs;
    - b. Whether the child is lawfully present in the U.S.;
    - c. The Department or the adoption agency that has custody of the child;
    - d. Whether the child is free for adoption;
    - e. Efforts to place the child for adoption without adoption subsidy;
    - f. Resources for which the child is eligible; and
    - g. Financial benefits for which the child is eligible; and
  - 4. Description of:
    - a. The child's pre-existing special need conditions;
    - b. The need for maintenance payments; and
    - c. Nonrecurring expenses.
  - 5. The adoptive parent shall include the following documentation:
    - a. The child's specific special need identified by a qualified professional;
    - b. The child's need for a maintenance subsidy from:
      - i. The adoptive parent,
      - ii. Adoption Specialist, and
      - iii. A qualified professional;
    - c. The child's lawful presence in the United States if the child is not a U.S. citizen;
    - d. The child's pre-existing medical, dental, and mental health conditions as documented by a qualified professional:
      - i. Current within one year, or
      - ii. Provided in birth records; and
  - 6. Assurances that the following information is available in the adoption case record:
    - a. The Department or adoption agency that has custody of the child,
    - b. That the child is free for adoption, and
    - c. Efforts to place the child for adoption without adoption subsidy.
- B. An adoption subsidy application is complete when the Adoption Subsidy Program receives the application and all supporting documentation. Documentation may vary according to the conditions of the child, and may include the recommendations of qualified professionals.

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**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-504. Eligibility Determination**

The Department shall review the adoption subsidy application and determine eligibility according to the following:

1. The Department shall approve eligibility for adoption subsidy if a child meets the eligibility criteria listed in R21-5-502 and the adoptive parent submits a complete application. If the Department approves eligibility, the Department shall create an adoption subsidy agreement that the adoptive parent and the Adoption Subsidy Supervisor or designee shall sign before the court enters the final order of adoption.
2. The Department shall deny eligibility for an adoption subsidy if a child does not meet the eligibility criteria listed in R21-5-502. If the Department denies an adoption subsidy, the Department shall send a notice to the adoptive parent that explains the reason for denial, the applicant's right to appeal, and the time-frame to file an appeal.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-505. Adoption Subsidy Agreement**

- A. The Department shall create an adoption subsidy agreement that lists the scope and nature of the subsidies provided, including:
  1. The child's documented pre-existing special needs condition,
  2. The types of subsidy approved,
  3. The amount or rates as applicable to the types of subsidy approved, and
  4. The specific terms and conditions of the agreement.
- B. The adoption subsidy agreement shall become effective if the following occurs prior to the finalization of the adoption:
  1. The adoptive parent signs the agreement and returns it to the Department Adoption Subsidy Program, and
  2. The Adoption Subsidy Supervisor or designee signs the agreement.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-506. Medical, Dental, and Mental Health Subsidy**

Adoption subsidy provides medical, dental, and mental health subsidies in the form of federal Medicaid coverage to a child in the Adoption Subsidy Program.

1. If the child resides in Arizona, AHCCCS determines eligibility; or
2. If the child resides in another state, the relevant state agency in that state determines Medicaid eligibility.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-507. Maintenance Subsidy**

- A. The maintenance subsidy may not cover all the daily living expenses of the adopted child. The Department and the adoptive parent shall negotiate the amount of maintenance subsidy based on a child's current special needs and the family's circumstances.
  1. Under A.R.S. § 8-144(B), the amount of the maintenance subsidy shall not exceed the payments allowable for foster care, not including foster care special allowances.

2. The Department shall deduct private or public monetary benefits, such as benefits received through Title II of the Social Security Act, paid to the child from the monthly maintenance subsidy, as allowed under state or federal law. The adoptive parent shall report the receipt of any private or public monetary benefits for the child to the Adoption Subsidy Program as soon as the benefits are received.

**B. Payment of Maintenance Subsidy**

1. The Department shall not begin maintenance subsidy payments prior to the effective date of the adoption subsidy agreement.
2. The Department shall issue maintenance subsidy payments monthly to the adoptive parent as specified in the adoption subsidy agreement.

**C. Renegotiation of the Maintenance Rate**

1. The Department or the adoptive parent may initiate a change in the maintenance subsidy rate if there are changes in the child's needs.
2. The Department may renegotiate the amount of the adoption subsidy; however, the rate shall not exceed the payments allowable for foster care, not including foster care special allowances.
3. The adoptive parent shall provide the Department with documentation supporting the requested change in the maintenance subsidy rate.
4. If the child is in the care or custody of a state agency in Arizona or any other state, an adoption agency, or an individual other than the adoptive parent, the Department shall request, and the adoptive parent shall provide, documentation that the adoptive parent continues to be legally and financially responsible for the child.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-508. Special Services Subsidy**

- A. Special services subsidy shall be:
  1. Related to a special needs condition listed in the adoption subsidy agreement; and
  2. Necessary to improve or maintain the adopted child's functioning as documented by an appropriate qualified professional. The Adoption Subsidy Program shall review the documentation at least annually.
- B. Services approved for the payment of special services subsidy shall be:
  1. Provided by a qualified professional;
  2. Provided in the least restrictive environment and as close as possible to the adoptive parent's residence;
  3. In accordance with the "Standard of Care"; and
  4. Not otherwise covered by or provided through maintenance subsidy, medical subsidy, dental subsidy, mental health subsidy, or other resources for which the adopted child is eligible.
- C. The adoptive parent shall submit the special services request to the Adoption Subsidy Program and receive approval from the Adoption Subsidy Program prior to the adoptive parent's incurring the specified expense. The request shall include:
  1. Documentation from a qualified professional that the service is necessary; and
  2. Documentation that the adoptive parent had requested the service and the service provider had denied the request or documentation that the service is not available from other potential funding sources, such as AHCCCS/Medicaid, private insurance, school district, or other community resources.

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- D.** Special services subsidy shall not include:
1. Payment for services to meet needs other than the pre-existing special needs conditions specifically listed in the adoption subsidy agreement;
  2. Payment for medical or dental services usually considered to be routine, such as well-child checkups, immunizations, and other services not related to the child's special needs conditions in the adoption subsidy agreement;
  3. Payment for health-related services that are not medically necessary, as determined by a qualified professional;
  4. Payment for social or recreational services such as routine child care, dance lessons, sports fees, camps, and similar services; and
  5. Payment for educational services that are not necessary to meet the special needs conditions specifically listed in the adoption subsidy agreement, or the services for which the school district is responsible.
- E.** The Department may request an independent review by a qualified professional of a special services request to determine the necessity for medical, dental, psychological, or psychiatric testing or services, or to evaluate the appropriateness of the treatment plan or placement.
- F.** The Department may issue reimbursements to the adoptive parent for approved special services, or the Department may pay the service provider directly.
- G.** Special services subsidy reimbursement is limited as follows:
1. The Department shall reimburse in-state and out-of-state inpatient and outpatient hospital services according to the AHCCCS hospital reimbursement system, as required by A.R.S. § 8-142.01(A), if the adoptive parent has obtained prior approval for the service from the Department. Prior approval is not required in an emergency situation.
  2. The Department shall not reimburse special services subsidy amounts in excess of the rates allowed by the Department or AHCCCS. The Department shall use the lowest applicable rates as established by AHCCCS, the Department's Comprehensive Medical and Dental Program (CMDP), or rates established by the Adoption Subsidy Program to be customary and reasonable.
  3. The Department shall not pay for requests that the adoptive parent or provider submits more than nine months after the date of service for which the adoptive parent or provider requests payment.
3. Information on any change in circumstances, including changes in residence, marital status, educational status, or other similar changes; and
  4. A description of any changes in the child's special needs conditions that are listed in the adoption subsidy agreement.
- B.** The adoptive parent shall provide the Department with the requested information within 30 days of the adoptive parent's receipt of the review form.
- C.** The adoptive parent shall notify the Department in writing within five calendar days when any of the following occurs:
1. The adoptive parent is no longer legally responsible for the child;
  2. The adoptive parent is no longer providing support to the child;
  3. The child is no longer residing in the adoptive parent's home;
  4. The child has graduated from high school or obtained a general equivalency degree (GED);
  5. The child has married;
  6. The child has joined the military; or
  7. The child dies.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-511. Termination of Adoption Subsidy**

The Department shall terminate an adoption subsidy when any of the following occurs:

1. The child turns 18 years old and is not enrolled in and attending high school or a program leading to a high school diploma or general equivalency degree (GED);
2. The child is aged 18 through 21 years, has been continuously enrolled in school, and either drops out of school, graduates from high school, or obtains a general equivalency degree (GED);
3. The child turns 22 years old;
4. The adoptive parent is no longer legally responsible for the child;
5. The adoptive parent is no longer providing support to the child;
6. The child marries;
7. The child joins the military;
8. The special needs conditions of the child no longer exist;
9. The child dies;
10. The adoptive single parent or both adoptive parents die; or
11. The adoptive parent requests termination.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-512. New or Amended Adoption Subsidy Agreement**

An adoptive parent may apply for a new or amended adoption subsidy agreement after the adoption is final, only upon documentation of an undiagnosed pre-existing special needs condition that existed before the finalization of the adoption.

1. The adoptive parent shall send the Department a written request for adoption subsidy with documentation from a qualified professional diagnosing the special needs condition and confirming that it existed before the final order of adoption.
2. The adoptive parent and the Department shall follow the procedures in this Article for processing applications and determining eligibility.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-509. Nonrecurring Adoption Expenses**

- A.** Nonrecurring adoption expenses shall not cover expenses related to visiting and placing the child.
- B.** Reimbursement of nonrecurring adoption expenses is subject to the limitations in A.R.S. § 8-164.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-510. Annual Review; Reporting Change**

- A.** Each year, the Department shall send a review form to the adoptive parent requesting that the adoptive parent provide:
1. Information indicating that the parent remains legally and financially responsible for the child;
  2. Information on any change in benefits for the child, such as benefits received through Title II of the Social Security Act;

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3. If the Department finds that the child has an undiagnosed pre-existing special needs condition that, if diagnosed prior to the adoption, would have met the eligibility criteria listed in R21-5-502, the Department shall grant a new subsidy or amend the adoption subsidy agreement to cover this special needs condition.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-513. Appeals**

Appeals for the Adoption Subsidy Program shall follow the process in 21 A.A.C. 1, Article 3.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

**R21-5-514. Confidentiality**

The Department shall maintain the confidentiality of all information used in the Adoption Subsidy Program according to all applicable federal and state laws.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

8-453. Powers and duties

A. The director shall:

1. Carry out the purposes of the department prescribed in section 8-451.
2. Provide transparency by being open and accountable to the public for the actions of the department.
3. Develop a data system that enables persons and entities that are charged with a responsibility relating to child safety to access all relevant information relating to an abused, neglected or abandoned child as provided by law.
4. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ deputy directors and other key personnel based on qualifications that are prescribed by the director.
5. Adopt rules to implement the purposes of the department and the duties and powers of the director.
6. Petition, as necessary to implement the case plan established under section 8-824 or 8-845, for the appointment of a guardian or a temporary guardian under title 14, chapter 5 for children who are in custody of the department pursuant to court order. Persons applying to be guardians or temporary guardians under this section shall be fingerprinted. A foster parent or certified adoptive parent already fingerprinted is not required to be fingerprinted again, if the foster parent or certified adoptive parent is the person applying to be the guardian or temporary guardian.
7. Cooperate with other agencies of this state, county and municipal agencies, faith-based organizations and community social services agencies, if available, to achieve the purposes of this chapter.
8. Exchange information, including case specific information, and cooperate with the department of economic security for the administration of the department of economic security's programs.
9. Administer child welfare activities, including:
  - (a) Cross-jurisdictional placements pursuant to section 8-548.
  - (b) Providing the cost of care of:
    - (i) Children who are in temporary custody, are the subject of a dependency petition or are adjudicated by the court as dependent and who are in out-of-home placement, except state institutions.
    - (ii) Children who are voluntarily placed in out-of-home placement pursuant to section 8-806.

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(iii) Children who are the subject of a dependency petition or are adjudicated dependent and who are in the custody of the department and ordered by the court pursuant to section 8-845 to reside in an independent living program pursuant to section 8-521.

(c) Providing services for children placed in adoption.

10. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

11. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.

12. Coordinate with, contract with or assist other departments, agencies and institutions of this state and local and federal governments in the furtherance of the department's purposes, objectives and programs.

13. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

14. Collect monies owed to the department.

15. Act as an agent of the federal government in furtherance of any functions of the department.

16. Carry on research and compile statistics relating to the child welfare program throughout this state, including all phases of dependency.

17. Cooperate with the superior court in all matters related to this title and title 13.

18. Provide the cost of care and transitional independent living services for a person under twenty-one years of age pursuant to section 8-521.01.

19. Ensure that all criminal conduct allegations and reports of imminent risk of harm are investigated.

20. Ensure the department's compliance with the Indian child welfare act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901 through 1963).

21. Strengthen relationships with tribal child protection agencies or programs.

B. The director may:

1. Take administrative action to improve the efficiency of the department.

2. Contract with a private entity to provide any functions or services pursuant to this title.

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3. Apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this title.

4. Reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business. Volunteers reimbursed for expenses are not eligible for workers' compensation under title 23, chapter 6.

C. The department shall administer individual and family services, including sections on services to children and youth and other related functions in furtherance of social service programs under the social security act, as amended, title IV, parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services and other related federal acts and titles.

D. If the department has responsibility for the care, custody or control of a child or is paying the cost of care for a child, the department may serve as representative payee to receive and administer social security and veterans administration benefits and other benefits payable to the child. Notwithstanding any law to the contrary, the department:

1. Shall deposit, pursuant to sections 35-146 and 35-147, any monies it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use these monies to defray the cost of care and services expended by the department for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.

3. Shall maintain separate records to account for the receipt, investment and disposition of monies received for each child.

4. On termination of the department's responsibility for the child, shall release any monies remaining to the child's credit pursuant to the requirements of the funding source or, in the absence of any requirements, shall release the remaining monies to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person who is responsible for the child if the child is a minor and not emancipated.

E. Subsection D of this section does not apply to benefits that are payable to or for the benefit of a child receiving services under title 36.

F. Notwithstanding any other law, a state or local governmental agency or a private entity is not subject to civil liability for the disclosure of information that is made in good faith to the department pursuant to this section.

G. Notwithstanding section 41-192, the department may employ legal counsel to provide legal advice to the director. The attorney general shall represent the department in any administrative or judicial proceeding pursuant to title 41, chapter 1, article 5.

H. The total amount of state monies that may be spent in any fiscal year by the department for foster care as provided in subsection A, paragraph 9, subdivision (b) of this section may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This section does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

8-141. Definitions; exception

A. In this article, unless the context otherwise requires:

1. "Adoption subsidy" means a grant that is provided to a child with special needs and that has been applied for through the department.
2. "Agency" means the department or a child welfare agency that is authorized in its license issued by the department to place or care for children in foster care.
3. "Application" means the completion of the department application form with documentation of the child's special needs.
4. "Child" means any person who is under the age of eighteen years, who is legally free for adoption and who otherwise may not be adopted because the person has special needs.
5. "Developmental disability" has the same meaning as provided in section 36-551.
6. "Emotional disturbance" means a condition which impedes the child's ordinary developmental progress as defined by accepted psychiatric or psychological standards and as diagnosed by one or more psychiatrists or psychologists approved by the department.
7. "Emotional ties" includes:
  - (a) Identification of the child as a member of the foster family.
  - (b) Identification by the foster family of the child as belonging to that family.
  - (c) The likelihood that the child will not establish significant emotional ties to another family if he is denied permanent placement with the foster family.
8. "High risk of physical or mental disease" means a potentially debilitating condition as defined by accepted standards of the health service profession and as certified by one or more health service providers approved by the department.

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9. "High risk of severe emotional disturbance if removed from the care of his foster parents" means the development of significant emotional ties to the foster family as documented by the child's case manager and as diagnosed by a psychiatrist or psychologist approved by the department.

10. "Mental disability" means a lifelong condition which is characterized by impaired intellectual development and impedes the ability to function independently as defined by accepted national standards and as certified by a psychologist, physician or child development specialist approved by the department.

11. "Physical disability" means one of the following conditions:

(a) A chronically debilitating, progressive or fatal disease which requires assistance for the child in activities of daily living.

(b) The requirement of assistance of another person or mechanical device for movement from place to place.

12. "Racial or ethnic factors" means Black, Hispanic, Native American, Asian or other heritage which may prevent a child from being adopted by a family of similar racial or ethnic origin.

13. "Special needs" means one or more of the following conditions which existed before the finalization of adoption:

(a) Physical, mental or developmental disability.

(b) Emotional disturbance.

(c) High risk of physical or mental disease.

(d) High risk of developmental disability.

(e) Age of six or more years at the time of application for an adoption subsidy.

(f) Sibling relationship.

(g) Racial or ethnic factors.

(h) High risk of severe emotional disturbance if removed from the care of his foster parents or permanent guardian.

(i) Any combination of the special needs described in this paragraph.

B. The condition described in subsection A, paragraph 13, subdivision (h), is not a special need unless the foster care or permanent guardian relationship existed before the adoption placement was made.

8-142. Adoption subsidy program; funding; claims; limitation

A. The department shall establish and administer an ongoing program of subsidized adoption. Adoption subsidies shall be provided from monies appropriated to the department or made available to it from other sources.

B. The department shall not pay claims for a special services subsidy that are submitted more than nine months after the date of the service for which payment is claimed except as authorized by rules of the department.

C. The department shall not consider an applicant for a state adoption subsidy until the applicant has applied for all existing federal eligibility categories under the title IV-E program.

D. The total amount that may be expended in any fiscal year by the department for the adoption subsidy program shall not exceed the amount appropriated in the general appropriations act for the program and any monies granted by the federal government, together with additional amounts appropriated for the program by any special legislative appropriation. Transfers of monies between and among classes and programs shall continue to be permitted in accordance with the provisions of section 35-173.

8-142.01. Adoption subsidy program; hospital reimbursement

A. Notwithstanding section 8-144, subsection B, for inpatient hospital admissions and outpatient hospital services on or after March 1, 1993, the department shall reimburse a hospital according to the rates established by the Arizona health care cost containment system pursuant to section 36-2903.01, subsection G.

B. The department shall use the Arizona health care cost containment system rates as identified in subsection A of this section for any child enrolled in the adoption subsidy program. This requirement shall not be construed to expand the liability of the adoption subsidy program beyond eligible preexisting conditions on an adoption subsidy agreement entered into between the department and the adoptive parent.

C. A hospital bill is considered received for purposes of subsection E of this section on initial receipt of the legible, error-free claim form by the department if the claim includes the following error-free documentation in legible form:

1. An admission face sheet.
2. An itemized statement.
3. An admission history and physical.
4. A discharge summary or an interim summary if the claim is split.
5. An emergency record, if admission was through the emergency room.

6. Operative reports, if applicable.

7. A labor and delivery room report, if applicable.

D. The department shall require that the hospital pursue other third party payors before submitting a claim to the department. Payment received by a hospital from the department pursuant to this section is considered payment by the department of the department's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third party payors or in situations covered by title 33, chapter 7, article 3.

E. For inpatient hospital admissions and outpatient hospital services rendered on and after October 1, 1997, if the department receives the claim directly from the hospital for services rendered, the department shall pay a hospital's rate established according to this section subject to the following:

1. If the hospital's bill is paid within thirty days of the date the bill was received, the department shall pay ninety-nine per cent of the rate.

2. If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the department shall pay one hundred per cent of the rate.

3. If the hospital's bill is paid any time after sixty days of the date the bill was received, the department shall pay one hundred per cent of the rate plus a fee of one per cent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

F. For medical services other than those for which a rate has been established pursuant to section 36-2903.01, subsection G, the department shall pay according to the Arizona health care cost containment system capped fee-for-service schedule adopted pursuant to section 36-2904, subsection K.

G. For any hospital or medical claims not covered under subsection A or F of this section, the department shall establish and adopt a schedule setting out maximum allowable fees that the department deems reasonable for such services after appropriate study and analysis of usual and customary fees charged by providers.

**8-143. Eligibility for subsidies; rate**

A. The following persons may apply to the department to have the adoption of a child subsidized:

1. Foster parents who are interested in adopting a child in their home.

2. Permanent guardians who are appointed for a child pursuant to chapter 4, article 12 of this title.

3. Other persons who are interested in adopting a child under public or private agency care, whether the adoption is through a public or private agency.

B. All persons approved for the program as adoptive parents shall meet adoption agency standards except for the financial ability to support the child. A subsidy shall not be denied solely on the grounds that the child is placed for adoption through a private agency.

C. The child who the permanent guardian seeks to adopt shall be eligible for the adoption subsidy at the permanent guardianship subsidy rate established by the department.

**8-144. Subsidy agreement; duration; amount; periodic review; confidentiality**

A. The family entering into subsidized adoption and the department shall sign a subsidy agreement that contains a provision for periodic review as provided in subsection D of this section before the final decree of adoption is issued, except as provided in subsection B of this section. Adoption subsidies may commence with the adoption placement or after the adoption decree, and will vary with the needs due to the special circumstances of the adopted child as well as the availability of other resources.

B. The adoption subsidy may continue either:

1. Through the age of twenty-one if the individual is enrolled in and regularly attending school unless the person has received a high school diploma or certificate of equivalency.

2. Through the age of twenty, if the individual is adopted at sixteen or seventeen years of age and is one or more of the following:

(a) Completing secondary education or an educational program that leads to an equivalent credential or is enrolled in an institution that provides postsecondary or vocational education.

(b) Employed at least eighty hours a month.

(c) Participating in a program or activity that promotes employment or removes barriers to employment.

(d) Unable to be a full-time student or to be employed because of a documented medical condition.

C. The subsidy may be for special services only or for money payments, and either for a limited period or for a long term, or for any combination thereof. The amount of the subsidy shall not exceed the payments allowable under foster family care. A special service subsidy shall not exceed the reasonable fee for the service rendered in accordance with costs and procedures for authorization of services as determined by the department.

ARIZONA REVISED STATUTES

D. There shall be a periodic review as defined by the department to determine the appropriateness and reasonableness of all subsidies and to ascertain the need for continuing or adjusting the subsidy.

E. Notwithstanding subsection A of this section, an application may be made and granted on behalf of a child adopted pursuant to the laws of this state at any time for a new or increased adoption subsidy on documentation of an undiagnosed condition that existed before the finalization of the adoption.

F. All records regarding subsidized adoption shall be confidential and may be disclosed only in accordance with the rules of the department.

8-145. [Appeals](#)

An order denying, reducing or terminating a subsidy shall be appealable pursuant to title 41, chapter 6, article 6 and chapter 14, article 3.

**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

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**MEETING DATE:** September 1, 2020

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

**FROM:** Council Staff

**DATE:** August 11, 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) from the Department of Economic Security (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**

The Department indicates it plans to submit a rulemaking package to the Council for Article 4 by September 2020.

The Department indicates it plans to submit a rulemaking package to the Council for Articles 9, 10, 11, 15, and 21 by August 2021.

The Department indicates it plans to submit a rulemaking package to the Council for Articles 6, 8, 12, 13, 16, and 23 by December 2024.

As outlined in the Department's report, the Department has identified proposed revisions to Sections in Articles 1, 20 and 22. However, the Department has not indicated the proposed course of action to address the issues identified in the report. After follow-up from Council staff, it is still unclear whether the Department intends to amend Articles 1, 20 and 22 to address the issues identified in the Department's report and Council staff encourages the Council to discuss the proposed course of action for the Articles with the Department.

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

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The DDD provides high-quality supports and services for eligible people who have autism, cerebral palsy, epilepsy, or intellectual disability. As of June 1, 2019, the Department was serving 42,504 clients and had contracted with 566 Home and Community-Based Service (HCBS) providers. Overall, the Department believes that the rules have had a positive economic impact as they explain the public requirements and procedures for accessing DDD services, interacting with DDD as a contractor, and serving as a licensed provider. The Department attempts to mitigate negative economic impact by providing supplemental information to its clients through its website, public meetings, workgroups, publications, and other forms of communication.

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 indicates that most of the rules are out of date and require revision; therefore, the Department communicates regularly with all of its stakeholders and provides comprehensive information to supplement these rules on its website. The Department attempts to provide ample documentation to ensure stakeholders are adequately informed of current activities. The Department has done an analysis of the rules and believes 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 regulatory objectives.

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?**

As outlined in more detail in Section 6 of the Department's report, the Department finds that Sections in the following Articles are not clear, concise, and understandable:

- Articles: 1, 4, 6, 8, 9, 10, 11, 12, 13, 15, 16, 20, 21, and 22.

The Department indicates an intention to amend all of these Articles except Articles 1, 20, and 22 in their proposed course of action.

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

As outlined in more detail in Section 4 of the Department's report, the Department finds that Sections in the following Articles are not consistent with other rules and statutes:

- Articles: 1, 4, 8, 9, 12, 13, 16, 22, and 23.

The Department indicates an intention to amend all of the Articles except Articles 1 and 22.

Council staff has specific concerns with regards to the inconsistencies identified in Article 1, including Sections R6-6-105 and 106. The Department states that these rules are inconsistent with federal law and need 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. However, as outlined above, it does not appear the Department has a proposed course of action to address this inconsistency. Council staff encourages the Council to inquire as to the Department's plan to address the inconsistencies identified in R6-6-105 and 106.

Council staff also has specific concerns regarding inconsistencies identified in Article 12, including R6-6-1204 and Appendix A. The Department states that R6-6-1204 is inconsistent with A.R.S. § 36-562(M) because the rule only allows a client to retain a minimum of 12% of the client's income or benefits for personal use whereas the statute allows the client to retain a minimum of 30%. Appendix A shows the percentage of the cost of services that a client is responsible for paying as well as the percentage of the cost of services that the parent of a minor client is responsible for paying. However, the Department indicates those percentages are inconsistent because they are based on the federal poverty guidelines from 2009 and do not conform to the new federal poverty guidelines. The current proposed course of action for amendments to Article 12 is to submit a rulemaking to the Council by December 2024, over four years from consideration of this report. Council staff is concerned that the inconsistency in R6-6-1204 would remain in the rules for another four years given that it directly impacts the amount of income or benefits a client can retain. Council staff is also concerned that by the time the Department intends to amend the cost of care portions in Appendix A, they will be out-of-date by 15 years. Given that Appendix A directly impacts the cost responsibilities of clients and parents of minor clients are responsible for, it is concerning that the numbers used to determine the percentages would be 15 years out-of-date. Council staff encourages the Council to discuss with the Department if these proposed amendments can be accomplished sooner.

**7. Has the agency analyzed the rules' effectiveness in achieving its objectives?**

As outlined in more detail in Section 3 of the Department's report, the Department finds that Section in the following Articles are not effective in achieving their objectives:

- Articles: 1, 4, 8, 9, 10, 11, 12, 13, 15, 16, 21, 22, and 23.

The Department indicates an intention to amend all of the Articles except Articles 1 and 22. Council staff again encourages the Council to discuss with the Department how it intends to address the issues identified in Articles 1 and 22 as outlined in the report.

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

The Department did not identify any enforcement issues with the rules. The Department indicates that, while the rules are outdated, the Department communicates regularly with all of its stakeholders and provides comprehensive information to supplement the rules on its website. The Department does admit that 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 indicates it communicates regularly with stakeholders and provides ample documentation to ensure stakeholders are adequately informed of current activities.

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

The Department determined that R6-6-401 and R6-6-1305 are more stringent than, and in conflict with, corresponding federal statutes and regulations. Specifically, the federal Privacy Act of 1974, 5 U.S.C. § 552a does not permit the use of members' SSNs by service providers when notifying DDD of third-party liens or by applicants for DDD services. However, both R6-6-401 and R6-6-1305 require disclosure of a SSN. The Department did not indicate any statutory authority to exceed the requirements of federal law.

The Department intends to amend both R6-6-401 and R6-6-1305 to remove this requirement. The Department indicates Article 4 will be amended in a rulemaking package that will be submitted to the Council by September 2020. However, the Department indicates in its proposed course of action that it does not anticipate amending Article 13 until December 2024. Council staff has concerns with allowing an inconsistency of this nature to remain in the rules for such an extended period of time and would encourage the Council to discuss whether the time frame to amend R6-6-1305 can be shortened significantly.

**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?**

The Department indicates that the rules require licenses which are issued under Articles 8, 10, and 11. The Department states that these licenses are issued pursuant to A.R.S. §§ 36-592, 36-594.01, 36-595, and 36-595.03. As such, these licenses are authorized under the exception found in A.R.S. § 41-1037(A)(5) and the Department is in compliance with A.R.S. § 41-1037.

**11. Conclusion**

The Department has identified issues related to clarity, conciseness, understandability, consistency, or effectiveness in all Articles in Title 6, Chapter 6. The Department indicates it

plans to submit a rulemaking package to the Council for Article 4 by September 2020. The Department indicates it plans to submit a rulemaking package to the Council for Articles 9, 10, 11, 15, and 21 by August 2021. The Department indicates it plans to submit a rulemaking package to the Council for Articles 6, 8, 12, 13, 16, and 23 by December 2024.

Council staff has concerns regarding the proposed course of action time frame of December 2024, especially when those Articles contain rules that are inconsistent with state statute, as is the case with Article 12, and more stringent than federal law, as is the case with Article 13. Additionally, the Department's report identified issues with Sections in Articles 1, 20 and 22, but has not indicated the proposed course of action to address them.

Council staff believes the Department's review and analysis was thorough and the report meets the requirements found in A.R.S. § 41-1056(A)(1)-(11). Therefore, Council staff recommends approval of the report. However, given Council staff's concerns regarding the Department's proposed course of action to address issues identified as a result of the review and analysis of its rules, Council staff encourages the Council to discuss with the Department whether the time frame to amend the rules could be significantly shortened. This is especially important given that the Department's analysis appears to demonstrate that some of the rules are materially flawed pursuant to A.R.S. § 41-1056(E).



DEPARTMENT OF ECONOMIC SECURITY

*Your Partner For A Stronger Arizona*

Douglas A. Ducey  
Governor

Michael Wisehart  
Director

July 16, 2020

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

Dear Ms. Sornsin:

Enclosed is the Arizona Department of Economic Security (Department) Five-Year Review Report on A.A.C. Title 6, Chapter 6, Developmental Disabilities. Included with the report are copies of the authorizing statutes and rules.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091.

The Department will be present at the Council meetings to respond to any questions the Council members may have about the report.

If you have any questions, please contact Christian Eide, Rules Analyst, Policy and Planning Administration, at (602) 542-9199.

Sincerely,

Michael Wisehart  
Director

Enclosure

*-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.

**Department of Economic Security  
Title 6, Chapter 6  
Five-Year Review Report**

**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 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 require DDD to determine eligibility of any child assigned to DDD by a Juvenile Court pursuant to A.R.S. § 8-242.
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; to only provide emergency services until ALTCS determination has been completed; and convey that an applicant who voluntarily refuses to cooperate in the ALTCS eligibility determination process is not eligible for DDD services.
R6-6-405	The objective of this rule is to identify the required documents for residency and age as well as other required information such as health insurance and income while applying for admission to services.
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.
R6-6-401	R6-6-401 is ineffective because the requirement to disclose a Social Security Number (SSN) is prohibited by the Federal Privacy Act of 1974, 5 U.S.C. 552a.
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.*

<b>Rule</b>	<b>Explanation</b>
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.
R6-6-401	In R6-6-401, the requirement to disclose a SSN is inconsistent with the Federal Privacy Act of 1974, 5 U.S.C. § 552a.
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)(6) 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 4	The Department proposes the rules in Article 4 be amended to improve clarity and conciseness by providing more comprehensive information relevant to current requirements for applications. In addition, the Department proposes to update language and remove the provisions in R6-6-402 and R6-6-403 that are duplicative of statute.
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:

<u>Arizona Long Term Care System</u>	<b>General Fund</b>	<b>Long Term Care System Fund</b>	<b>Total</b>
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
<b>State Only</b>			
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
<b>Total FY 2020 FTE Allocation</b>			
	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
<b>Total</b>	<b>42,504</b>

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 Fiscal Year 2020 Full Time Employee 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. The Department published a Notice of Proposed Rulemaking in the Arizona Administrative Register for Article 4 on January 3, 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.

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 submit the Notices of Final Rulemaking to the Governor's Regulatory Council for Article 4 by September 2020 and for Articles 9, 10, 11, 15, and 21 by August 2021. The Department plans to submit the Notices of Final Rulemaking to the Governor's Regulatory Council for Articles 6, 8, 12, 13, 16, and 23 by December 2024.

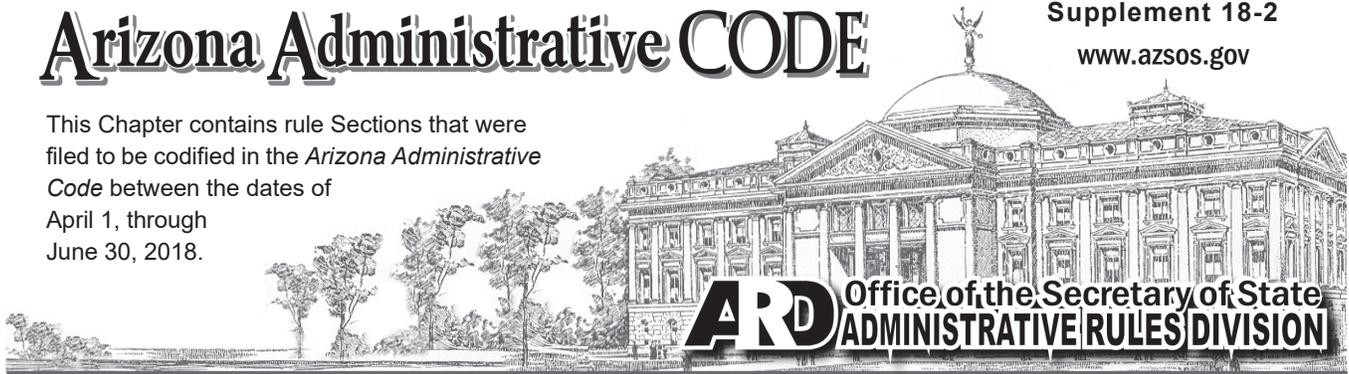
Apart from the rules reviewed in this Report, the Department received a Moratorium exception from the Governor's Office on September 17, 2019 to promulgate new rules to implement A.R.S. § 36-568 (Group homes; intermediate care facilities; electronic monitoring; definition). The Department is drafting the Notice of Proposed Rulemaking for the new rules.

# Arizona Administrative CODE

Supplement 18-2

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of April 1, through June 30, 2018.



## TITLE 6. ECONOMIC SECURITY

### CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY - DEVELOPMENTAL DISABILITIES

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

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

<a href="#">R6-6-301.</a>	<a href="#">Definitions .....</a>	<a href="#">13</a>	<a href="#">R6-6-307.</a>	<a href="#">Eligibility Redeterminations for the Program ....</a>	<a href="#">16</a>
<a href="#">R6-6-302.</a>	<a href="#">Eligibility for Program .....</a>	<a href="#">13</a>	<a href="#">R6-6-308.</a>	<a href="#">Member Responsibilities .....</a>	<a href="#">16</a>
<a href="#">R6-6-303.</a>	<a href="#">Requirements for Determining Eligibility for the Division of Developmental Disabilities .....</a>	<a href="#">14</a>	<a href="#">R6-6-309.</a>	<a href="#">Termination of Eligibility for the Program .....</a>	<a href="#">16</a>
<a href="#">R6-6-304.</a>	<a href="#">Eligibility under Arizona Long-term Care System .....</a>	<a href="#">16</a>	<a href="#">R6-6-501.</a>	<a href="#">Repealed .....</a>	<a href="#">18</a>
<a href="#">R6-6-305.</a>	<a href="#">Admission to Program .....</a>	<a href="#">16</a>	<a href="#">R6-6-502.</a>	<a href="#">Repealed .....</a>	<a href="#">18</a>
<a href="#">R6-6-306.</a>	<a href="#">Emergency Services .....</a>	<a href="#">16</a>	<a href="#">R6-6-503.</a>	<a href="#">Repealed .....</a>	<a href="#">18</a>
			<a href="#">R6-6-504.</a>	<a href="#">Repealed .....</a>	<a href="#">18</a>
			<a href="#">R6-6-505.</a>	<a href="#">Repealed .....</a>	<a href="#">18</a>

#### Questions about these rules? Contact:

Name: Christian J. Eide  
Address: Department of Economic Security  
P.O. Box 6123, Mail Drop 1292  
Phoenix, AZ 85005  
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Telephone: (602) 542-9199  
Fax: (602) 542-6000  
E-mail: [ceide@azdes.gov](mailto:ceide@azdes.gov)

**The release of this Chapter in supplement 18-2 replaces supplement 17-4, 76 pages**

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

## PREFACE

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

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION

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### RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

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

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2018 is cited as Supp. 18-1.

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

### AUTHENTICATION OF PDF CODE CHAPTERS

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

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

### HOW TO USE THE CODE

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

### ARIZONA REVISED STATUTE REFERENCES

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

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

### SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

### EXEMPTIONS FROM THE APA

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

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

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

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

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

### EXEMPTIONS AND PAPER COLOR

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

### PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

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



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

TITLE 6. ECONOMIC SECURITY

CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY - DEVELOPMENTAL DISABILITIES

(Authority: A.R.S. § 41-1954 et seq.)

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-4).

Editor's Note: Sections R6-6-1004.01 through R6-6-1004.05, R6-6-1104.01 through R6-6-1104.05, and R6-6-1504.01 through R6-6-1504.05 were published with incorrect effective dates in Supp. 97-4. They have been corrected to reflect the effective date as established by the Department (Supp. 98-1).

Sections of this Chapter were amended, adopted, repealed, and renumbered under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 355, § 9 and Laws 1994, Ch. 214, § 7. Exemption from A.R.S. Title 41, Chapter 6 means that the Department did not submit these rules to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit the rules to the Governor's Regulatory Review Council for review; the Department was not required to hold public hearings; and the Attorney General has not certified these rules. Because these rules are exempt from the regular rulemaking process, the Chapter is printed on blue paper.

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R6-6-101 through R6-6-107, adopted effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2).

Article 1, consisting of Sections R6-6-101 through R6-6-121, renumbered to Article 2, Sections R6-6-201 through R6-6-221, effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2).

Article 1 consisting of Sections R6-6-101 through R6-6-121 adopted as permanent rules effective September 18, 1987.

New Article 1 consisting of Sections R6-6-101 through R6-6-121 adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.

Former Article 1 consisting of Sections R6-6-101 through R6-6-115 repealed effective May 2, 1983.

Table listing sections R6-6-101 through R6-6-121 with corresponding page numbers.

ARTICLE 2. REPEALED

Article 2, consisting of Sections R6-6-201 through R6-6-221, repealed effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

Article 2, consisting of Sections R6-6-201 through R6-6-221, renumbered from Article 1, Sections R6-6-101 through R6-6-121, effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2).

Article 2, consisting of Sections R6-6-201 through R6-6-204, repealed effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2).

Article 2, consisting of Sections R6-6-201 through R6-6-204, adopted effective May 2, 1983.

Table listing sections R6-6-201 through R6-6-221 with corresponding page numbers.

ARTICLE 3. ELIGIBILITY FOR DEVELOPMENTAL DISABILITIES SERVICES

New Article 3 consisting of Sections R6-6-301 and R6-6-302 adopted effective March 30, 1983.

Former Article 3 consisting of Sections R6-6-301 through R6-6-303 repealed effective March 30, 1983.

Table listing sections R6-6-301 through R6-6-304 with corresponding page numbers.

Department of Economic Security - Developmental Disabilities

R6-6-305.	Admission to Program .....	16
R6-6-306.	Emergency Services .....	16
R6-6-307.	Eligibility Redeterminations for the Program ...	16
R6-6-308.	Member Responsibilities .....	16
R6-6-309.	Termination of Eligibility for the Program .....	16

**ARTICLE 4. APPLICATION**

Article 4, consisting of Sections R6-6-401 through R6-6-405, adopted effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2).

Article 4, consisting of Sections R6-6-401 through R6-6-414 repealed effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2).

New Article 4, consisting of Sections R6-6-401 through R6-6-414, adopted effective February 2, 1989.

Former Article 4, consisting of Sections R6-6-401 through R6-6-408, repealed effective March 7, 1983.

Section		
R6-6-401.	Application for Admission to Services .....	16
R6-6-402.	Expired .....	17
R6-6-403.	Referrals from Juvenile Court .....	17
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R6-6-405.	Documentation and Verification .....	17
R6-6-406.	Repealed .....	18
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R6-6-409.	Repealed .....	18
R6-6-410.	Repealed .....	18
R6-6-411.	Repealed .....	18
R6-6-412.	Repealed .....	18
R6-6-413.	Repealed .....	18
R6-6-414.	Repealed .....	18

**ARTICLE 5. REPEALED**

Article 5, consisting of Sections R6-6-501 through R6-6-505, adopted effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2).

Former Article 5 consisting of Sections R6-6-501 through R6-6-503 repealed effective February 2, 1989.

Article 5 consisting of Sections R6-6-501 through R6-6-503 adopted effective December 14, 1984.

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Former Article 7 consisting of Sections R6-6-701 and R6-6-702 repealed effective February 2, 1989.

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*Former Article 11 consisting of Sections R6-6-1101 through R6-6-1103 repealed effective September 18, 1987.*

*Article 11 consisting of Sections R6-6-1101 through R6-6-1104 repealed as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.*

*Section R6-6-1104 repealed effective February 3, 1983.*

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*Article 15, consisting of Sections R6-6-1501 and R6-6-1502, repealed effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2).*

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*Article 18, consisting of Sections R6-6-1801 through R6-6-1804 repealed effective August 29, 1991 (Supp. 91-3).*

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*Article 19, consisting of Sections R6-6-1901 through R6-6-1912, adopted effective April 17, 1996 (Supp. 96-2).*

*Article 19, consisting of Sections R6-6-1901 through R6-6-1911, adopted again as emergency rules effective March 12, 1996 (Supp. 96-1).*

*Article 19, consisting of Sections R6-6-1901 through R6-6-1911, adopted as emergency rules effective September 13, 1995 (Supp. 95-3).*

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Article 19, consisting of Sections R6-6-1901 and R6-6-1902 repealed effective August 29, 1991 (Supp. 91-3).

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Article 20 consisting of Sections R6-6-2001 through R6-6-2010 adopted effective March 7, 1983.

Article 20, consisting of Sections R6-6-2001 through R6-6-2010, repealed effective August 29, 1991 (Supp. 91-3).

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**ARTICLE 1. GENERAL PROVISIONS****R6-6-101. Definitions**

In addition to the definitions found in A.R.S. §§ 36-551 and 36-596.51, the following definitions apply to this Chapter, unless otherwise provided in a specific Article of this Chapter:

1. "Administrative Review" means a mechanism of informal review for decisions made by the Division of Developmental Disabilities.
2. "Adult" means a person aged 18 years or above.
3. "Agency" means any organization, funded by the Division, which provides services to individuals with developmental disabilities.
4. "Agency administrator" means the Chief Executive Officer or designee of an agency.
5. "AHCCCS" means the Arizona Health Care Cost Containment System.
6. "ALTCS" means the Arizona Long-term Care System.
7. "ALTCS service provider" means those service providers through whom health care services are delivered to DD/ALTCS clients.
8. "Appeals Board" means the Department of Economic Security Appeals Board.
9. "Appellant" means any person or the Department who appeals an action under R6-6-1801 *et seq.*
10. "Appellate Services Administration/Long-term Care" means the Appellate Services Administration/Long-term Care within the Department of Economic Security.
11. "Applicant" means the responsible person as defined in A.R.S. § 36-551 who has applied for Division services.
12. "Assignment of benefits" means the insurer is entitled to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment.
13. "Behavior management" means procedures designed to increase a client's appropriate behaviors and decrease inappropriate behaviors which are a problem to the client or others.
14. "Behavior-modifying medications" means drugs which are prescribed, administered, and directed for the purpose of reducing or eliminating certain behaviors.
15. "Benefits" means, for the purpose of determining cost of care portion under Article 12, monies received from SSI, SSA, or other governmental funds which may be subject to a cost of care portion for residential and other services provided by the Division.
16. "Case plan" means a written document used by child welfare staff which is a separate and distinct part of the case record. It identifies the case plan goal and target date, objectives, tasks, time-frames, responsible parties, consequences, and barriers. The child welfare care manager is responsible for the development and implementation of the case plan in consultation with the family and service team.
17. "Child" means a person under the age of 18 years.
18. "Community residential setting resident" or "resident" means any person placed for care in a community residential setting whether or not the person is a client of the Department.
19. "Cost of care" means the dollar value of services listed in R6-6-1201(B) provided to a client through the Division.
20. "Cost of care portion" means the percentage of a client's cost of care that a parent, client, or responsible person may be required to pay to the Division to help offset the cost of the client's care.
21. "DD/ALTCS client" means an individual with developmental disabilities who has met the eligibility criteria of both the Division of Developmental Disabilities and the Arizona Long-term Care System (ALTCS).
22. "DD/non-ALTCS client" means an individual who has met the eligibility criteria of the Division but who does not meet the eligibility criteria of ALTCS.
23. "Direct care staff" means a person who is employed or contracted to provide direct services to clients by either a community residential setting licensee or license applicant, or by an agency applying for or certified to provide Home and Community-based Services.
24. "District Program Manager" or "DPM" means the Division of Developmental Disabilities' administrator or designee in each of the Department's six planning districts.
25. "Emergency measures" means physical management techniques used in an emergency to manage a sudden, intense, or out-of-control behavior.
26. "Evacuation device" means equipment used to facilitate the evacuation of a community residential setting in the event of an emergency.
27. "Exclusion time-out" means a time-out procedure in which an individual is removed from a reinforcing environment to an environment which is less reinforcing or in which there is less opportunity to earn reinforcement.
28. "Family support services" means those services and supports provided by the division and are designed to strengthen the family's role as a primary care giver, prevent inappropriate out-of-home placement, maintain family unity, and reunite families with members who have been placed out of the home."
29. "Family support voucher" means a written authorization provided to a client or responsible person to purchase family support services.
30. "Fee for service" means the costs that are assessed pursuant to R6-6-1201 *et seq.* for services received from or through the Division.
31. "Fire Risk Profile" means an instrument prescribed by the Division that yields a score for a facility based on the ability of the resident to evacuate the community residential setting.
32. "Forced Compliance" means a procedure in which an individual is physically forced to follow a direction or command.
33. "Grievant" means any person who is aggrieved by a decision of the Department.
34. "Health insurance payments" means the assignment of rights to medical support or other third-party payments for medical care.
35. "Health Plan" means a service provider of health-related services.
36. "Hearing Officer" means any person selected to hear and render a decision in an appeal under Article 22 of this Chapter.
37. "Human Rights Committee" or "HRC" means a committee established by the Director to provide independent oversight and review as described in R6-6-1701 *et seq.*
38. "IEP" or "Individualized Education Plan" means a written statement for providing special education services to a child with a disability that includes the pupil's present levels of educational performance, the annual goals, and the short-term measurable objectives for evaluating progress toward those goals and the specific special education and related services to be provided.
39. "Income" means, as used in Article 12, net taxable income as reported on the person's last tax return.
40. "Individual service and program plan" or "ISPP" means a written statement of services to be provided to an individ-

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- ual with developmental disabilities including habilitation goals and objectives and determinations as to which services, if any, the client may be assigned. The ISPP incorporates and replaces the Individual Program Plan and the placement evaluation, both as defined in A.R.S. § 36-551, and the service plan as defined in A.R.S. § 36-2938.
41. "Individual service and program plan team" or "ISPP team" means a group of persons assembled by the Division and coordinated by the client's case manager in compliance with A.R.S. §§ 36-551 and 36-560 to develop an ISPP for each client.
  42. "Insured" means the party to an insurance arrangement to whom, or on behalf of whom, the insurance company agrees to indemnify for losses, provide benefits, or render services.
  43. "Insurer" means the insurance company assuming risk and agreeing to pay claims or provide services.
  44. "Least intrusive" or "least obtrusive" means the level of intervention necessary, reasonable, and humanely appropriate to the client's needs, which is provided in the least disruptive or invasive manner possible.
  45. "License applicant" means a person or business entity which submits an application to the Division for an initial or a renewal license to operate a community residential setting.
  46. "Licensee" means a person or entity licensed as a community residential setting, or a person designated by such person or entity to be responsible for carrying out the requirements under these rules.
  47. "Lives independently" means a client who lives in a primary residence in which the Division does not fund, in whole or in part, daily habilitation or room and board and for which the client secures the residence and is the principle signatory on the lease or rental agreement; makes decisions regarding roommates, furnishings, and arrangements for on-site services; makes the payments relating to the residence; and makes decisions to terminate such arrangements or lease or rental agreement.
  48. "Main provider record" means a record maintained by a service provider which contains all pertinent information concerning the evaluations of, and the services provided to, a client, and which is located in a designated place.
  49. "Mechanical restraint" means any mechanical device used to restrict the movement or normal function of a portion of the client's body, excluding only those devices necessary to provide support for the achievement of functional body position or proper balance.
  50. "Medically necessary services" means those covered services provided by a physician or other licensed practitioner of the healing arts within the scope of their practice under state law to prevent disease, disability, and other adverse health conditions or their progression or to prolong life.
  51. "Medication error" means that one or more of the following has occurred: a client is given the wrong medication or the wrong dosage, the medication is given at the wrong time or not given at all, or the medication is given via the wrong route or to the wrong person.
  52. "Monitoring" means the process of reviewing licensed adult and child developmental homes and community residential settings for compliance with licensing, contractual, or programmatic requirements.
  53. "Office of Appeals" means the Office of Appeals of the Department of Economic Security.
  54. "Overcorrection" means a group of procedures designed to reduce inappropriate behavior, in specifically:
    - a. Requiring a client to restore the environment to a state vastly improved from that which existed prior to the inappropriate behavior; or
    - b. Requiring a client to repeatedly practice a behavior.
  55. "Party" means any person appealing an action under R6-6-1801 et seq. or the Department.
  56. "Physical restraint" means a procedure whereby one or more persons restrict a client's freedom of movement for the purpose of managing the client's behavior.
  57. "Policy" in Article 13 means the written contract effecting insurance or the certificate thereof by whatever name called, and papers attached thereto and made a part thereof.
  58. "Program contractor" means the Division of Developmental Disabilities in its position as program contractor to AHCCCS.
  59. "Program Review Committee" or "PRC" means a group of persons designated by the District Program manager to review and approve or disapprove all behavior management programs before such programs may be implemented or sent to the Human Rights Committee.
  60. "Program Unit" means a location where services are provided.
  61. "Protective device" means an appliance used to prevent a client from engaging in self-injurious behavior, used by a medical practitioner to restrain an individual while a treatment or procedure is being performed, or authorized by a medical practitioner for use in response to a medical condition.
  62. "Residential service" means a residential living arrangement operated by the Division or by providers funded by the Division, in which clients live with varied degrees of appropriate supervision.
  63. "Reinforcer" means any consequence that maintains or increases the future probability of the response it follows.
  64. "Response cost" means a procedure designed to decrease inappropriate behaviors by removing earned reinforcers or possessions as a consequence of an inappropriate behavior.
  65. "Responsible party" means a client or a person or entity that is obligated or liable to pay the cost of care for a client, including the parent of a minor client, representative payee, guardian, or conservator, and the personal representative of an estate, or the trustee of a trust of which the client is a beneficiary.
  66. "Seclusion" or "locked time-out room" means the placement of a client in a room or other area from which the client cannot leave.
  67. "Service provider" means an agency or individual operating under a contract or service agreement with the Department to provide services to Division clients.
  68. "Services" means developmental disability programs and activities consistent with family support philosophy and operated by or contracted for the Department directly or indirectly, including residential services, family and child services, family and adult services, and case management and resource services.
  69. "Standards" means Arizona Revised Statutes, administrative rules, the Code of Federal Regulations, interagency and intergovernmental agreements, and contract provisions that apply to licensing and monitoring community residential settings.
  70. "Tardive Dyskinesia" means a slow, rhythmic, automatic stereotyped movement which occasionally occurs, either generalized or in single muscle groups, as an undesired side effect of therapy with certain psychotropic drugs.

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71. "Third-party liability" means the resources available from a person or entity that is or may be, by agreement, circumstances, or otherwise, liable to pay all or part of the medical expenses incurred by a Division client.
72. "Third-party payor" means any individual, entity, or program that is or may be liable to pay all or part of the medical cost of injury, disease, or disability of a Division client.
73. "Time-out device" means a secured room or area used to enforce a "time-out procedure."
74. "Time-out procedure" means a procedure in which the client's access to sources of various forms of reinforcement is removed for the purpose of decreasing a client's inappropriate behavior.
75. "Vulnerable adult" means an individual who is 18 years of age or older and who is unable to protect himself from abuse, neglect, or exploitation by others because of a mental or physical impairment according to A.R.S. § 13-3623.

**Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Amended paragraph (19) and adopted as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-101 renumbered to R6-6-201, new Section R6-6-101 adopted effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2). Amended effective September 30, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-3). Amended effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Amended effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, effective December 1, 1996; filed in the Office of the Secretary of State November 22, 1996 (Supp. 96-4). Amended by exempt rulemaking at 10 A.A.R. 205, effective January 1, 2004 (Supp. 03-4). R6-6-101(36) reference to Article 20 corrected to Article 22 at request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1).

**R6-6-102. Rights of Individuals with Developmental Disabilities**

The Division and its service providers shall guarantee the rights of individuals with developmental disabilities in the provision of services in compliance with applicable federal and state laws.

**Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-102 renumbered to R6-6-202, new Section R6-6-102 adopted effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-102 renumbered to R6-6-103, new Section R6-6-102 adopted effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). R6-6-102 Section heading corrected at the request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1).

**R6-6-103. Confidentiality Officer**

- A. Each district shall designate one Division staff person to act as a confidentiality officer.
- B. Confidentiality officers shall completely administer and supervise the maintenance and use of all personally identifiable information in the Division including storage, disclosure, retention, and destruction of this information in accordance with procedures of the Division and applicable state law.
- C. At the time of eligibility determination reviews, confidentiality officers or their designees shall notify responsible persons of their rights pursuant to A.R.S. § 36-568.01 regarding disclosure of personally identifiable information.

**Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-103 renumbered to R6-6-203, new Section R6-6-103 adopted effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-103 renumbered to R6-6-104, new Section R6-6-103 renumbered from R6-6-102 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-104. Access to Personally Identifiable Information**

- A. The Division and its service providers shall each maintain a list of persons or titles who are authorized to have access to personally identifiable information in their files.
- B. The service provider shall maintain a main provider record for each client; the file shall be available to responsible persons upon request.
- C. Where a service provider uses a centralized recordkeeping system, the service provider shall also make available appropriate records in the program unit.
- D. Where particular professional services require the maintenance of separate records, a summary of the information contained therein shall be entered in the main provider record maintained by the client's service provider.

**Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Corrected subsection (B) and adopted as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-104 renumbered to R6-6-204, new Section R6-6-104 adopted effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-104 renumbered to R6-6-105, new Section R6-6-104 renumbered from R6-6-103 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Amended effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-105. Consent for Release of Information**

- A. Consent for the release of personally identifiable information shall be:
  1. Obtained from the client or responsible person in writing and dated;
  2. Maintained in the main record.
- B. Consents for release of information obtained during intake shall expire within 90 days.
- C. Subsequent consents shall be obtained as needed and shall be valid for six months from the date of execution.

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**Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-105 renumbered to R6-6-205, new Section R6-6-105 adopted effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-105 renumbered to R6-6-106, new Section R6-6-105 renumbered from R6-6-104 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-106. Violations and Penalties**

- A. An employee of the Division or service provider shall not disclose personally identifiable client information unless a consent to release has been given as provided in this Section.
- B. An employee of the Division who makes an unlawful disclosure of personally identifiable information is subject to disciplinary action or dismissal. Anyone who has knowledge of an employee's violation of R6-6-106 must report the violation to the employee's supervisor.
- C. Violators are subject to penalties pursuant to applicable statute.

**Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-106 renumbered to R6-6-206, new Section R6-6-106 adopted effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-106 renumbered to R6-6-107, new Section R6-6-106 renumbered from R6-6-105 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-107. Least Restrictive Environment**

- A. Every client has a right to the least restrictive, appropriate alternative in connection with the provision of services or placement in a program.
- B. Every client has the right to a semi-annual review of services or programs funded by the Division and received by the client in order to ensure that the client's needs are met.

**Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-107 renumbered to R6-6-207, new Section R6-6-107 adopted effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-107 renumbered to R6-6-108, new Section R6-6-107 renumbered from R6-6-106 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-108. Safe and Humane Environment**

- A. This Section does not apply to community residential settings that are governed by the provisions of Article 7, 8, 10, or 11 of this Chapter.
- B. Service providers shall have a written and posted plan for meeting potential emergencies and disasters.

- C. The plan shall be reviewed annually by the Division and shall include, but shall not be limited to:
  1. The assignment of staff to specified duties and responsibilities;
  2. A system for notification of appropriate persons;
  3. Specification of evacuation routes and procedures including provisions for clients who are incapable of taking action for self-preservation; and
  4. Provision for at least one rehearsal per year to evaluate the effectiveness of the plan.
- D. Programs operated by the Division, or by a profit or nonprofit agency supervised or financially supported by the Division, shall have an active safety program, which shall include, but shall not be limited to:
  1. Staff training for meeting potential emergencies and disasters such as fire, severe weather, and missing persons;
  2. Staff training in the use of alarm systems and signals, firefighting, and equipment and evacuation devices;
  3. Staff training in administering first aid, including cardiopulmonary resuscitation (CPR) and the Heimlich maneuver, in the presence of accident or illness;
  4. Provisions for the avoidance of hazards such as accessibility to dangerous substances, sharp objects, and unprotected electrical outlets;
  5. Provisions for the use of glass or other glazing material appropriate to the safety of the individuals served;
  6. The use of clean, nonabrasive, slip-resistant, and safe surfaces on floors and stairs;
  7. Provisions for the avoidance of heating apparatus and hot water temperatures that constitute a burn hazard to the individuals served; and
  8. The use of lead-free paint in areas to which clients have access.
- E. Programs operated by the Division, or by a profit or nonprofit agency supervised or financially supported by the Division, shall conform to local fire safety standards and the fire safety standards as approved and promulgated by the Arizona State Fire Marshal's office or by tribal fire department standards, whichever is appropriate.
- F. Programs operated by the Division, or by a profit or nonprofit agency supervised or financially supported by the Division, shall provide adequate heating and cooling.
- G. Service providers shall keep copies of all licenses, certificates, and correspondence in a separate file to document compliance with sanitation, health, and environmental codes of state and local authorities having primary jurisdiction in these matters. The file shall be available for inspection by the Division employees during regular business hours.
- H. Service provider staff shall:
  1. Always give clients the least amount of physical assistance necessary to accomplish a task;
  2. Ensure that clients be accorded privacy during treatment and care of personal needs;
  3. Care for the client's personal needs and, except in cases of emergency, ensure that each client is afforded the right to have care for personal needs provided by a staff member of the gender chosen by the client/responsible person. This choice needs to be specified in the ISPP;
  4. Ensure that clients are afforded privacy with regard to written correspondence, telephone communication, and visitations; and
  5. Uphold respect for the dignity of individuals with developmental disabilities during tours of client residences, work areas, or classrooms.

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**Historical Note**

Section R6-6-108 adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-108 renumbered to R6-6-208 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Section R6-6-108 renumbered from Section R6-6-107 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Amended effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-109. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Deleted subsection (O); corrected subsections (E), (H), and (I); amended subsections (J) and (M); and adopted as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-208 renumbered from R6-6-108 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-110. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Amended subsection (B) and adopted as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-210 renumbered from R6-6-110 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-111. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Amended subsection (B) and adopted as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-210 renumbered from R6-6-110 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-112. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-212 renumbered from R6-6-112 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-113. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Amended subsection (C) and adopted as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-213 renumbered

from R6-6-113 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-114. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-214 renumbered from R6-6-114 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-115. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-215 renumbered from R6-6-115 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-116. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-216 renumbered from R6-6-116 effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-117. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Amended subsections (C), (D), and (F) and adopted as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-217 renumbered from R6-6-117 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-118. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-218 renumbered from R6-6-118 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-119. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-219 renumbered from R6-6-119 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

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**R6-6-120. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-220 renumbered from R6-6-120 effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-121. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-213 renumbered from R6-6-113 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**ARTICLE 2. REPEALED****R6-6-201. Repealed****Historical Note**

Former R6-6-201 repealed, new Section R6-6-201 renumbered from R6-6-101 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-201 repealed, new Section R6-6-201 renumbered from R6-6-202 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Repealed effective August 30, 1994, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-202. Repealed****Historical Note**

Former R6-6-202 repealed, new Section R6-6-202 renumbered from R6-6-102 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-202 renumbered to R6-6-201, new Section R6-6-202 renumbered from R6-6-203 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Repealed effective August 30, 1994, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-203. Repealed****Historical Note**

Former R6-6-203 repealed, new Section R6-6-203 renumbered from R6-6-103 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-203 renumbered to R6-6-202, new Section R6-6-203 renumbered from R6-6-204 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Repealed effective August 30, 1994, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-204. Repealed****Historical Note**

Former R6-6-204 repealed, new Section R6-6-204 renumbered from R6-6-104 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-204

renumbered to R6-6-203, new Section R6-6-204 renumbered from R6-6-205 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Repealed effective August 30, 1994, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-205. Repealed****Historical Note**

Section R6-6-205 renumbered from R6-6-105 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-205 renumbered to R6-6-204, new Section R6-6-205 renumbered from R6-6-206 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Repealed effective August 30, 1994, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-206. Repealed****Historical Note**

Section R6-6-206 renumbered from R6-6-106 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-206 renumbered to R6-6-205, new Section R6-6-206 renumbered from R6-6-207 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Repealed effective August 30, 1994, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-207. Repealed****Historical Note**

Section R6-6-207 renumbered from R6-6-107 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-207 renumbered to R6-6-206, new Section R6-6-207 renumbered from R6-6-208 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Repealed effective August 30, 1994, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-208. Repealed****Historical Note**

Section R6-6-208 renumbered from R6-6-108 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-208 renumbered to R6-6-207, new Section R6-6-208 renumbered from R6-6-209 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Repealed effective August 30, 1994, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-209. Repealed****Historical Note**

Section R6-6-208 renumbered from R6-6-108 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-209 renumbered to R6-6-208, new Section R6-6-209 renumbered from R6-6-210 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Repealed effective August 30, 1994, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 94-3).



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**R6-6-221. Renumbered****Historical Note**

Section R6-6-213 renumbered from R6-6-113 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-221 renumbered to R6-6-220 effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**ARTICLE 3. ELIGIBILITY FOR DEVELOPMENTAL DISABILITIES PROGRAM****R6-6-301. Definitions**

In addition to the definitions in Article 1 of this Chapter, the following definitions apply to this Article:

1. "ALTCS" means Arizona Long-Term Care System under the Arizona Health Care Cost Containment System (AHCCCS).
2. "Autism" means the same as in A.R.S. § 36-551.
3. "Cerebral palsy" means the same as in A.R.S. § 36-551.
4. "Cognitive disability" means a condition that involves subaverage general intellectual functioning, that exists concurrently with deficits in adaptive behavior manifested before the age of eighteen and that is sometimes referred to as intellectual disability.
5. "Department" means the Arizona Department of Economic Security.
6. "Division" means the Division of Developmental Disabilities within the Department.
7. "Epilepsy" means the same as in A.R.S. § 36-551.
8. "Guardian" means the same as in A.R.S. § 36-551.
9. "Individualized education program (IEP)" means a written statement, as defined in 20 U.S.C. 1401 and 1412, for providing special education and related services to a child with a disability.
10. "Lawful Presence" means that an individual is a citizen or permanent legal resident of the United States or that the individual's presence in the United States is otherwise authorized under federal law.
11. "Member" means an individual enrolled with the Division.
12. "Personal information" means facts regarding an individual that may include:
  - a. Address,
  - b. Phone number,
  - c. Changes in physical or behavioral health status, or
  - d. Other health care insurance coverage.
13. "Planning Document" means the same as "Individual program plan" defined in A.R.S. § 36-551, and incorporates:
  - a. The Individual Support Plan (ISP), which serves the same purpose as the individual program plan, the placement evaluation, and the individualized service program plan used in A.R.S. § 36-557;
  - b. The Individual Family Service Plan (IFSP); or
  - c. The Person Centered Plan.
14. "Planning Team" means a placement evaluation team referenced in A.R.S. § 36-560(G)(1), and includes:
  - a. The member;
  - b. The responsible person, if applicable;

- c. The Support Coordinator;
- d. Other Department staff, as necessary; and
- e. Any service provider selected by the member, responsible person, or the Department.

15. "Program" means the developmental disabilities program as outlined in A.R.S. § 36-558.
16. "Resident" means an individual who physically resides within the State of Arizona with the intent to remain, except in the case of minors whose residency is deemed to be the same as that of the guardian.
17. "Responsible person" means the same as in A.R.S. § 36-551.
18. "Services" means child, adult, residential, and resource services provided by the Department, as listed in A.R.S. § 36-558(C).
19. "Support Coordinator" means a "case manager" as defined in A.R.S. § 36-551.

**Historical Note**

Adopted effective October 31, 1978 (Supp. 78-5). Former Section R6-6-301 repealed, new Section R6-6-301 adopted effective March 30, 1983 (Supp. 83-2). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Section R6-6-301 renumbered to R6-6-302; new Section R6-6-301 made by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-302. Eligibility for Program**

- A. In order to be eligible for the program, an individual shall:
  1. Demonstrate lawful presence in the United States;
  2. Be a resident of the state of Arizona;
  3. Have a developmental disability as defined in A.R.S. § 36-551 and this Article; and
  4. Complete the application process.
- B. Notwithstanding the provisions of subsection (A), the requirement of state residency does not apply to federal programs that are not subject to residency rules.
- C. As a condition of eligibility, applicants shall assign rights to insurance benefits under this Chapter.
- D. The Department shall make the final determination of eligibility.
- E. The Division's Assistant Director or designee may review a member's eligibility at any time.
- F. Even though an individual may have at one time met the requirements contained in this Article, effective interventions may later reduce substantial functional limitations to the extent that the individual no longer meets the eligibility requirements. When the Department, after a review pursuant to Article 18 of this Chapter, determines that it is necessary for a member to receive continued services to maintain skills or to prevent regression, the member shall remain eligible for the program.
- G. The Department shall determine eligibility for children under the age of six years as follows:
  1. A child under the age of six years may be eligible for the program if there is a strongly demonstrated potential that the child is or will be diagnosed with a developmental disability as determined by developmentally appropriate evaluations.
  2. To be eligible for the program, a child under the age of six years shall:

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- a. Have a diagnosis of cerebral palsy, epilepsy, autism, or cognitive/intellectual disability; or
  - b. Be at risk for being diagnosed with a developmental disability based on:
    - i. An identified delay in one or more areas of development, or
    - ii. The likelihood that without services the child will be diagnosed with a developmental delay or disability.
  - c. Have demonstrated a significant developmental delay as determined in one or more areas of development as measured on a culturally appropriate and recognized developmental assessment tool. Eligibility is exclusive of cultural or environmental factors.
3. For a child under the age of six years, a licensed physician, licensed psychologist, or an individual formally trained in early childhood development who evaluates the child through the use of culturally appropriate and recognized developmental tools and informed clinical opinion shall determine the developmental delay or disability.
- H.** To be eligible for the program, an individual, age six and older shall:
1. Have a diagnosis of cerebral palsy, epilepsy, autism, or cognitive/intellectual disability; and
  2. Have functional limitations in three or more areas of major life activities as described in R6-6-303(C).
- I.** If the Department determines an individual to be ineligible for the program, the Department shall send the applicant a written notice of ineligibility by registered mail with return receipt requested. The notice shall include information regarding the opportunity for administrative review.
- Historical Note**
- Adopted effective October 31, 1978 (Supp. 78-5). Former Section R6-6-302 repealed, new Section R6-6-302 adopted effective March 30, 1983 (Supp. 83-2). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Section R6-6-302 renumbered to R6-6-303; new Section R6-6-302 renumbered from R6-6-301 and amended by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).
- R6-6-303. Requirements for Determining Eligibility for the Division of Developmental Disabilities**
- A.** For the purpose of eligibility determination, the Department shall accept the diagnoses of autism, cerebral palsy, epilepsy, and cognitive/intellectual disability as follows:
1. Autism. A psychiatrist, neurologist, licensed psychologist, or developmental pediatrician who has expertise in diagnosing autism shall make an autism diagnosis. A pediatrician who has completed specialized training approved by the Department in the diagnosis of autism may also make an autism diagnosis. The psychiatrist, neurologist, licensed psychologist, developmental pediatrician, or pediatrician with specialized training shall submit a diagnostic report regarding the individual documenting the presence of diagnostic criteria for autism, including the presence of the required number of symptoms of autism based on current guidelines established by the American Psychiatric Association.
  2. Cerebral palsy. A licensed physician with expertise in diagnosing neurological disorders, such as a neurologist, or specialist in rehabilitation medicine, shall diagnose cerebral palsy. The physician shall submit a report to the Department documenting the diagnosis of cerebral palsy and include available medical records supporting the diagnosis.
3. Epilepsy. A physician specializing in neurology shall diagnose epilepsy.
    - a. The physician specializing in neurology shall submit a report to the Department documenting the active diagnosis of epilepsy and include the following:
      - i. Electroencephalogram (EEG) report;
      - ii. A description of the nature and frequency of the seizures, including current anti-seizure medication; and
      - iii. Confirmation of the ongoing nature of the disorder.
    - b. If the records of a neurological evaluation cannot be obtained or a diagnosis is not made by a physician specializing in neurology, the Division Medical Director shall review the available medical records to confirm a diagnosis of epilepsy.
4. Cognitive/Intellectual Disability.
    - a. A licensed psychologist trained to perform psychological evaluations utilizing standardized, culturally appropriate, and psychometrically sound measures shall diagnose cognitive/intellectual disability by considering the following:
      - i. Other mental disorders identified in current guidelines established by the American Psychiatric Association, including Schizophrenia, Bipolar Disorder, Attention Deficit Hyperactivity Disorder, and Substance Abuse;
      - ii. Significant disorders related to language or language differences;
      - iii. Physical factors, including sensory impairments, motor impairments, acute illness, chronic illness, and chronic pain;
      - iv. Testing performed during an acute inpatient hospitalization;
      - v. Educational or environmental deprivation; and
      - vi. Psychosocial factors.
    - b. To be eligible for the program, in the presence of co-existing mental illness, an individual's cognitive/intellectual disability shall not be the result of the onset of mental illness.
    - c. If an existing psychological evaluation cannot be obtained, or an initial psychological evaluation cannot be completed, the Division's Assistant Director or designee shall review the available records to confirm eligibility.
- B.** An individual, who acquires an impairment or condition after age six as a result of illness or traumatic brain injury, is not eligible in the absence of a qualifying diagnosis.
- C.** The Department shall determine substantial functional limitations in three or more areas of the major life activities as documented in records provided to the Department. These limitations are defined as follows:
1. Self-care. Self-care means the performance of personal activities that sustain the health and hygiene of the individual appropriate to the individual's age and culture. This includes bathing, toileting, tooth brushing, dressing, and grooming. A functional limitation regarding self-care occurs when an individual requires significant assistance with eating, hygiene, grooming, or health care skills or when the time required for an individual to complete these tasks is so excessive as to impede the ability to retain employment, attend school, or to conduct other

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- activities of daily living. Documentation of substantial functional limitations for self-care may include recent:
- a. Medical or behavioral records;
  - b. IEP that addresses limitations of self-care goals and objectives;
  - c. Relevant comments in a psychological or psychoeducational evaluation;
  - d. Relevant scores on the ALTCS assessment, Preadmission Screening (PAS) tool;
  - e. Relevant scores on the Vineland Adaptive Behavior Scales; or
  - f. Other structured standardized tests of adaptive functioning.
2. Receptive and expressive language. Receptive and expressive language means the process of understanding and participating in conversations in the individual's primary language, and expressing needs and ideas that can be understood by another individual who may not know the individual. A functional limitation regarding receptive and expressive language occurs when an individual is unable to communicate with others, or is unable to communicate effectively without the aid of a mechanical device, a third person, or a person with special skills. Documentation of substantial functional limitations for receptive and expressive language may include recent:
    - a. Psychological, psychoeducational, or speech evaluation records;
    - b. IEP references of severe communication deficits;
    - c. Use of sign language, a communication board, or an electronic communication device; or
    - d. Relevant scores on the ALTCS assessment, PAS tool.
  3. Learning. Learning means the ability to acquire, retain, and apply information and skills. A functional limitation regarding learning occurs when an individual's cognitive factors, or other factors related to the acquisition and processing of new information are impaired to the extent that the individual is unable to participate in age-appropriate learning activities without utilization of additional resources. Documentation of limitations for learning may include verification of placement in a special education program.
  4. Mobility. Mobility means the skill necessary to move safely and efficiently from one location to another within the individual's residence, neighborhood, and community. A functional limitation regarding mobility occurs when an individual's fine or gross motor skills are impaired to the extent that the assistance of another individual or mechanical device is required to move from place to place or when the effort required to move from place to place is so excessive as to impede ability to retain employment and conduct other activities of daily living. Documentation of limitations for mobility may include:
    - a. Relevant scores on the ALTCS assessment, PAS tool; or
    - b. Medical or educational records indicating the need to regularly use a wheelchair, walker, crutches, or other assistive devices, or to be physically supported by another person when ambulating.
  5. Self-direction.
    - a. Self-direction means the ability to manage one's life, including:
      - i. Setting goals,
      - ii. Making and implementing plans to achieve those goals,
      - iii. Making decisions and understanding the consequences of those decisions,
      - iv. Managing personal finances,
      - v. Recognizing the need for medical assistance,
      - vi. Behaving in a way that does not cause injury to self or others, and
      - vii. Recognizing and avoiding safety hazards.
    - b. A functional limitation regarding self-direction occurs when an individual requires assistance in managing personal finances, protecting self-interest, or making independent decisions that may affect well-being. For children under the age of 18, the Department shall compare the child's abilities in this area with age and developmentally appropriate abilities based on the current guidelines of Centers for Disease Control and Prevention and American Academy of Pediatrics.
    - c. Documentation of limitations for self-direction may include:
      - i. Court records appointing a legal guardian or conservator,
      - ii. Relevant comments in medical or behavioral records,
      - iii. Relevant comments in psychoeducational or psychological evaluation,
      - iv. Relevant objectives in the IEP, or
      - v. Relevant scores on the ALTCS assessment, PAS tool.
  6. Capacity for independent living.
    - a. Capacity for independent living means the performance of necessary daily activities in one's own residence and community, including:
      - i. Completing household chores;
      - ii. Preparing simple meals;
      - iii. Operating household equipment such as washing machines, vacuums, and microwaves;
      - iv. Using public transportation; and
      - v. Shopping for food, clothing, and other essentials.
    - b. A functional limitation regarding the capacity for independent living occurs when an individual needs supervision or assistance for the individual's safety or well-being, on at least daily basis in the performance of health maintenance and housekeeping. For children under the age of 18, the Department shall compare the child's abilities in this area with age and developmentally appropriate abilities based on the current guidelines of Centers for Disease Control and Prevention and American Academy of Pediatrics, including:
      - i. Age of the child,
      - ii. Culture,
      - iii. Language,
      - iv. Length of time to complete task,
      - v. Level and type of supervision or assistance needed,
      - vi. Quality of task performance,
      - vii. Effort expended to complete the task performance,
      - viii. Consistency and frequency of task performance, and
      - ix. Impact of other health conditions.
    - c. Documentation of limitations for the capacity for independent living may include:
      - i. Relevant comments in a psychoeducational or psychological evaluation,

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- ii. Related objectives on the IEP, or
  - iii. Relevant comments in medical records.
7. Economic self-sufficiency. Economic Self-Sufficiency means when an individual is unable to perform the tasks necessary for regular employment or is limited in productive capacity to the extent that earned annual income, after extraordinary expenses occasioned by the disability, is below the poverty level. For children under the age of 18, the Department shall compare the child's abilities in this area with age and developmentally appropriate abilities based on the current guidelines of Centers for Disease Control and Prevention and American Academy of Pediatrics. Documentation of limitations for economic self-sufficiency may include:
- a. The receipt of Supplemental Security Income (SSI) or Social Security Disability Income (SSDI) benefits, or
  - b. Eligibility for Vocational Rehabilitation Services.

**Historical Note**

Adopted effective October 31, 1978 (Supp. 78-5).  
 Repealed effective March 30, 1983 (Supp. 83-2). New Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Section R6-6-303 repealed; new Section R6-6-303 renumbered from R6-6-302 and amended by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-304. Eligibility under Arizona Long-term Care System**

- A. The Department shall refer an individual with a developmental disability who may be eligible for the ALTCS to the Arizona Health Care Cost Containment System Administration (AHC-CCS) to determine eligibility under ALTCS.
- B. The Department shall not provide services, other than emergency services as provided in this Chapter, to an individual who has been referred for ALTCS eligibility determination until that determination has been completed.
- C. Applicants who are determined eligible and enrolled in the program, but knowingly refuse to cooperate in the ALTCS eligibility process, are not eligible for services pursuant to A.R.S. § 36-559.

**Historical Note**

New Section R6-6-304 made by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-305. Admission to Program**

When the Department determines an individual to be eligible and enrolls the individual in the program, the Support Coordinator, with the Planning Team, shall complete a Planning Document to document any necessary supports and services.

**Historical Note**

New Section R6-6-305 made by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-306. Emergency Services**

In an emergency, the Department may provide services without a Planning Document to an individual who has been enrolled in the program. The Planning Team shall complete a Planning Document for emergency services within 10 days of the enrollment.

**Historical Note**

New Section R6-6-306 made by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-307. Eligibility Redeterminations for the Program**

The Department may redetermine eligibility for the program:

- 1. As a result of periodic evaluations in accordance with A.R.S. § 36-565; or
- 2. At any time, as authorized by the Division's Assistant Director or designee.

**Historical Note**

New Section R6-6-307 made by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-308. Member Responsibilities**

Members shall:

- 1. Inform the Support Coordinator of any change in personal information;
- 2. Participate in the development of the Planning Document and signify agreement or disagreement by signing the Planning Document;
- 3. Uphold all local, state, and federal laws and regulations; and
- 4. Cooperate and comply with the ALTCS redetermination process.

**Historical Note**

New Section R6-6-308 made by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-309. Termination of Eligibility for the Program**

- A. Pursuant to A.R.S. § 36-566(A) and (B), the Department may terminate eligibility following a 35-day written notice period to the member or the responsible person when:
  - 1. The Department determines that the member no longer meets the conditions of eligibility for services;
  - 2. The member reaches the age of 18, unless an application for eligibility has been filed with the Department; or
  - 3. The member fails to comply with R6-6-308.
- B. The 35-day written notice shall include the proposed termination date and information regarding the opportunity for administrative review under Article 18 of this Chapter.
- C. The Department shall terminate the member's eligibility for the program if the member or responsible person provides a written request for withdrawal from the program.

**Historical Note**

New Section R6-6-309 made by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**ARTICLE 4. APPLICATION****R6-6-401. Application for Admission to Services**

- A. To apply for Division services, an applicant shall:
  - 1. Participate in a face-to-face interview with a designated Department employee; and
  - 2. File with the Division a written application on a form prescribed by and available from the Division at no charge.
- B. The application form shall contain the following information:
  - 1. With respect to the person to receive services:
    - a. Name, address, and telephone number;
    - b. Personal information including date of birth, place of birth, age, social security number, sex, primary language, marital status, and citizenship;
    - c. Monthly income;
    - d. Medical insurance coverage;
    - e. Educational background, including current or planned enrollment in a special education program within a school district;

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- f. Information documenting the existence of a developmental disability, including professional assessments and evaluations;
  - g. A description of any other disabling conditions or special considerations;
  - h. If under 18 years of age, total number of persons in the household;
  - i. Identification of any adults who regularly live in the home by name, date of birth, and relationship to the person to receive services;
  - j. Identification of natural parents, regardless of whether living in the home, by name, social security number, and business and home telephone numbers; and
  - k. Identification of two adult persons living outside the home who are familiar with the person to receive services, by name, address, relationship to the person to receive services, and business and home telephone numbers; and
2. With respect to the responsible person, if other than the person to whom services would be provided:
- a. Name, business and home addresses, business and home telephone numbers, and social security number;
  - b. Relationship to person to whom services would be provided; and
  - c. If a guardianship or conservatorship has been established, a copy of the court order shall accompany the application;
- C. The applicant shall provide a description of programs and services requested.
- D. The applicant shall provide information regarding prior applications for admission to Division services or services received.
- E. The applicant shall provide documentation of application information as defined in R6-6-405.
- F. The Division shall not consider an incomplete application.
- 1. If the Division receives an application that is not complete, the Division shall send written notification of deficiencies to the applicant.
  - 2. If the applicant does not provide the specified information within 15 working days of receipt of notification of deficiencies, or cannot demonstrate a good faith effort to collect the information, the Division shall close the applicant's file and send a letter denying admission.
- G. An applicant whose file has been closed and who subsequently desires admission shall submit a new application.

**Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed, new Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-402. Expired****Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed, new Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 465, effective January 11, 2017 (Supp. 17-1).

**R6-6-403. Referrals from Juvenile Court**

The Division shall determine eligibility of any child assigned to the Division by a juvenile court pursuant to A.R.S. § 8-242. If deter-

mined ineligible, the Division shall immediately refer the matter to the Department's Administration for Children, Youth, and Families.

**Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed, new Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-404. Eligibility under ALTCS**

- A. The Division shall refer individuals with developmental disabilities who may be eligible for the Arizona Long-term Care System (ALTCS) to the Arizona Health Care Cost Containment System Administration (AHCCCS) to determine eligibility under ALTCS.
- B. The Division shall not provide services, other than emergency services as provided under R6-6-502, to an individual who has been referred for ALTCS eligibility determination until that determination has been completed.
- C. Applicants who voluntarily refuse to cooperate in the ALTCS eligibility process are not eligible for Division services pursuant to A.R.S. § 36-559.

**Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed, new Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-405. Documentation and Verification**

The applicant shall provide documentation of the following:

- 1. Residency.
  - a. All applicants shall sign an affidavit stating current residency and intent to remain in Arizona.
  - b. An applicant shall show written proof of Arizona residency by providing one of the following types of documents:
    - i. Rent or mortgage receipt, or lease in the applicant's name showing the residential address;
    - ii. Non-relative landlord statement indicating the applicant's name and address as well as the landlord's name and address and telephone, if available;
    - iii. Applicant's Arizona driver's license;
    - iv. Applicant's Arizona motor vehicle registration;
    - v. Signed employment statement from applicant's non-relative employer;
    - vi. Utility bill in the applicant's name indicating the applicant's address;
    - vii. Current phone directory showing applicant's name and address;
    - viii. United States Post Office records which show the applicant's name and address;
    - ix. A current city directory showing the applicant's name and address;
    - x. Certified copy of a church membership or enrollment record which indicates the applicant's current name and address; or
    - xi. Certified copy of a school record which indicates the applicant's current address; or
  - c. If an applicant has made all reasonable efforts to obtain documented verification as described in subsection (1)(b) and has been unsuccessful, the affidavit signed by the applicant attesting to the applicant's present residence and intent to remain in Arizona shall be sufficient.
- 2. Age.

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- a. An applicant shall provide proof of age of the person to receive services by the following:
- Alien documents;
  - Federal or state census records;
  - Hospital records of birth;
  - Copy of birth certificate;
  - Military records;
  - Notification of birth registration;
  - Religious records showing age or date of birth;
  - Dated school records showing age or school records showing date of birth;
  - Affidavit signed by the licensed physician, licensed midwife or other health care professional who was in attendance at the time of the birth, attesting to the date of birth; or
  - U.S. Passport.
- b. If an applicant has made all reasonable efforts to obtain documented verification as described in subsection (2)(a) and has been unsuccessful, an affidavit signed by the applicant shall be sufficient to verify age of person to receive services.
3. Health Insurance Coverage. An applicant shall provide information regarding current health insurance which relates to the individual for whom application is being made as provided in R6-6-1301 *et seq.*
4. Income. The Division shall require documentation of income as provided in R6-6-1201 *et seq.*

**Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed, new Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-406. Repealed****Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-407. Repealed****Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-408. Repealed****Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-409. Repealed****Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-410. Repealed****Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-411. Repealed****Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-412. Repealed****Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-413. Repealed****Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-414. Repealed****Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**ARTICLE 5. REPEALED****R6-6-501. Repealed****Historical Note**

Repealed effective February 2, 1989 (Supp. 89-1). New Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Section R6-6-501 repealed by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-502. Repealed****Historical Note**

Repealed effective February 2, 1989 (Supp. 89-1). New Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Section R6-6-502 repealed by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-503. Repealed****Historical Note**

Repealed effective February 2, 1989 (Supp. 89-1). New Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Section R6-6-503 repealed by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-504. Repealed****Historical Note**

Adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Section R6-6-504 repealed by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-505. Repealed****Historical Note**

Adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Section R6-6-505 repealed by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

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**ARTICLE 6. PROGRAM SERVICES****R6-6-601. Case Management**

Upon the filing of an application for admission to services, the Division shall assign a case manager to assist the applicant. Upon admission, the case manager shall assist the client and the client's family in all aspects of the developmental disabilities service delivery system as follows:

1. The pursuit of evaluations and professional assessments necessary to substantiate the need for services;
2. The collection and analysis of information regarding eligibility and the prioritization of service needs;
3. The provision of information on available services and referral to appropriate service alternatives; and
4. The development of individual habilitation goals and objectives for the client through the ISPP.

**Historical Note**

Adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-601 repealed, new Section R6-6-601 renumbered from R6-6-602 effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-602. Individual Service and Program Plan**

- A. Within 30 days following determination of eligibility, the ISPP team shall conduct an evaluation to determine the appropriate services for the client and shall develop an ISPP based on the evaluation.
- B. The ISPP team shall recommend specific services based upon:
  1. The best interests of the client and factors listed in A.R.S. § 36-560(H);
  2. The potential for family support; and
  3. The extent to which the services:
    - a. Promote family competence and independence;
    - b. Preserve the integrity of the family;
    - c. Maximize the client's independent living;
    - d. Involve the family in problem-solving and decision-making;
    - e. Meet the needs and desires of the family;
    - f. Prevent the deterioration of the family structure and functioning and improve the quality of life for the client and family;
    - g. Can be provided in the least obtrusive manner;
    - h. Provide uninterrupted and orderly transition from one stage of development to another based upon client and family ages;
    - i. Alleviate abuse or neglect or eliminate conditions that hinder the client's development;
    - j. Prevent the client from being a danger to himself or to others; and
    - k. Support a client or family who is experiencing a temporary but remedial crisis including hospitalization, loss of a job, incapacitating illness, or death.
  4. In the case of a DD/ALTCS client, the ISPP team shall ensure that the client obtain medically necessary and other necessary medically related remedial and social services.
- C. The ISPP shall contain an assessment addressing each consideration listed in R6-6-603(B) and:
  1. The service needs of the client, both direct and indirect, irrespective of the Division's resource availability;
  2. Individual habilitation goals and objectives, both long-term and short-term;

3. Methods or strategies by which objectives shall be implemented;
4. The financial contributions, if any, which the Department shall require the responsible person to make on behalf of the client pursuant to A.R.S. § 36-562 et seq. and R6-6-1201 et seq.; and
5. Any special considerations.

**Historical Note**

Adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-602 renumbered to R6-6-601, new Section R6-6-602 renumbered from R6-6-603 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-603. Assignment to Services**

- A. The case manager shall assign a DD/ALTCS client to appropriate services within 30 days of the Division's receipt of notification from AHCCCS of the client's eligibility under ALTCS.
- B. In the case of a DD/non-ALTCS client, the case manager shall, within 30 days of the completion of the ISPP:
  1. Assign the client to one or more appropriate services; or
  2. Provide written notice of non-assignment, and reason for non-assignment, subject to the right of the responsible person and any joint applicant to request administrative review pursuant to A.R.S. § 36-563 and R6-6-1801 et seq.
- C. If an assignment for a DD/non-ALTCS client cannot be made at the time of review:
  1. And the reason for non-assignment is lack of space or lack of legislatively appropriated or other funding, the case manager shall place the client's name on a waiting list.
  2. The case manager may refer the client to programs, services or other resources available in the community.
  3. Unless waived by the responsible person, the case manager shall review the waiting list and referrals at least every six months with the responsible person to determine continuing need for services.

**Historical Note**

Adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-603 renumbered to R6-6-602, new Section R6-6-603 renumbered from R6-6-604 effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-604. Periodic Evaluations**

- A. Pursuant to A.R.S. § 36-565, the case manager and members of the ISPP team as appropriate shall conduct periodic reviews in six-month intervals, or more frequently as identified in the client's ISPP, and shall either:
  1. Determine that no change in services is needed;
  2. Determine that services should be terminated;
  3. Determine that the client should be transferred to another service; or
  4. Determine that other substantial changes in service are required.
- B. The findings of the periodic evaluations shall be incorporated into the ISPP.

**Historical Note**

Adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-604 renumbered to R6-6-603, new Section R6-6-604 renumbered from R6-6-605 effective September 30,

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1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-605. Transfer to Another Service or Changes in Service**

- A.** In addition to a transfer or change which results from a periodic review, a responsible person may request in writing to the Division a transfer or change at any time.
- B.** The request shall be considered by the ISPP team. The recommendation and review shall be made in the same manner established for recommended periodic reviews of the ISPP.

**Historical Note**

Adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-605 renumbered to R6-6-604, new Section R6-6-605 renumbered from R6-6-606 effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-606. Consent of the Responsible Person**

- A.** Pursuant to A.R.S. § 36-560(D), no admission or assignment of any client to a program, service, or facility may be made by the Division without the written consent of the responsible person.
- B.** The signature of the responsible person on the appropriate report or ISPP shall serve as the consent to treatment or services required by A.R.S. § 36-560.
- C.** In the event consent for any or all services is withheld, those services shall be terminated.

**Historical Note**

Adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-606 renumbered to R6-6-605, new Section R6-6-606 renumbered from R6-6-607 effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-607. Renumbered****Historical Note**

Adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-607 renumbered to R6-6-606 effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**ARTICLE 7. EXPIRED****R6-6-701. Expired****Historical Note**

Former Section R6-6-701 repealed effective February 2, 1989. New Section R6-6-701 adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-702. Expired****Historical Note**

Former Section R6-6-702 repealed effective February 2, 1989. New Section R6-6-702 adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-703. Expired****Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-704. Expired****Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-705. Expired****Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-706. Expired****Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-707. Expired****Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-708. Expired****Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-709. Expired****Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-710. Expired****Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-711. Expired**

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**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-712. Expired****Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-713. Expired****Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-714. Expired****Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-715. Expired****Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-716. Expired****Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-717. Expired****Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-718. Expired****Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-719. Expired****Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**ARTICLE 8. PROGRAMMATIC STANDARDS AND CONTRACT MONITORING FOR COMMUNITY RESIDENTIAL SETTINGS****R6-6-801. Applicability**

This Article applies to services provided in community residential settings except those licensed as child developmental foster homes according to Article 10 of this Chapter and those licensed as adult developmental homes according to Article 11 of this Chapter.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-802. Compliance**

- A. The licensee shall ensure that the community residential setting is operated in compliance with this Chapter.
- B. The licensee shall cooperate with the Division in assessing compliance with this Chapter.
- C. If the Division identifies areas of noncompliance with this Chapter in the operation of a community residential setting, the licensee shall take action to achieve or restore compliance with these rules.
- D. If the Division identifies areas of noncompliance with A.R.S. Title 36, Chapter 5 in the operation of a community residential setting, the Division may enforce corrective action through licensing, programmatic, or contractual remedies.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-803. General Responsibilities of the Licensee**

- A. The licensee shall immediately report at least the following types of incidents via telephone or telefax to the Division:
  1. The death of a client;
  2. Alleged neglect or abuse of a resident;
  3. A missing client. The licensee shall report such incident to law enforcement officials and the Division as soon as it determines that a client is missing;
  4. An incident related to a resident that involves law enforcement personnel, emergency services, or the media;
  5. Suicide attempts by a client;
  6. Hospitalization, the intervention of a medical practitioner, or emergency medical care in response to a serious illness, injury, medication errors, or suicidal behavior of a client; and
  7. Community complaints about a resident or the setting.
- B. The licensee shall cooperate in obtaining and providing any information the Department or a law enforcement agency deems necessary to investigate an incident.
- C. The licensee shall maintain staff-to-client ratios which at least conform to the contract.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-804. Rights of Clients**

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In addition to the rights required in R6-6-102, the licensee shall uphold and safeguard the rights of residents consistent with applicable federal and state laws, including A.R.S. § 36-551.01, unless legally restricted or addressed in the ISPP in accordance with R6-6-901 et seq. In addition to those rights specifically stated in statute, rights shall include, at a minimum:

1. The right to be free from personal and financial exploitation;
2. The right to a safe, clean, and humane physical environment;
3. The right to own and have free access to personal property;
4. The right to associate with persons of the client's own choosing;
5. The right to participate in social, religious, educational, cultural, and community activities;
6. The right to manage personal financial affairs and to be taught to do so;
7. The right to the least amount of physical assistance necessary to accomplish a task;
8. The right to privacy including during treatment and care of personal needs and with regard to written correspondence, telephone communication, and visitations;
9. The right to have care for personal needs provided, except in cases of emergency, by a direct care staff of the gender chosen by the responsible person. This choice shall be specified in the ISPP;
10. The right to be treated with dignity and respect; and
11. The right to be provided choices and to express preferences which will be respected and accepted.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-805. Program Plans**

- A. Except in cases of emergency, the licensee shall notify the Division and obtain ISPP team approval prior to a client's move from one community residential setting to another setting and prior to relocation of a community residential setting. If the move requires contract modification, the administrator shall also obtain Division approval prior to the move.
- B. In cases of emergency, the licensee shall coordinate with the Division regarding the notification of the responsible person when a client moves from one community residential setting to another.
- C. The ISPP team shall convene to develop or revise the ISPP within 30 days following either a client's admission to a community residential setting or a change in community residential licensee.
- D. The ISPP team shall meet at least annually to develop or amend the complete ISPP for a client, using forms prescribed by the Division.
- E. The ISPP team for any client residing in a community residential setting shall include a representative of the community residential setting. The representative shall have direct knowledge of the client.
- F. The licensee shall develop a teaching plan or strategy for each objective assigned to the community residential setting by the ISPP team.
  1. The teaching plan shall be consistent with any guidelines provided by the ISPP team.
  2. The teaching plan shall include:
    - a. How, when, and by whom objectives will be implemented;

- b. The method to be used to record data relative to progress; and
  - c. The procedure that will be followed should the objective be completed or should progress not be made as planned.
3. The licensee shall provide the teaching plan to the case manager.
- G. The licensee shall provide, for the annual ISPP team meeting, complete and accurate information on periodic evaluations and medical care received since the last ISPP.
  - H. The ISPP for any client residing in a community residential setting shall specify the duration and conditions for the time that the client may spend without supervision provided by the licensee.
  - I. The licensee shall carry out the objectives, agreements, and assignments specified in the ISPP.
  - J. The licensee shall provide monthly reports to the case manager summarizing the client's progress toward residential habilitation objectives and the status of agreements and assignments specified in the ISPP.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-806. Health**

- A. At least annually and on forms prescribed by the Division, the licensee shall obtain written informed consent of the guardian, if applicable, for the provision of emergency medical care, routine medical care, and special procedures.
- B. Within 30 calendar days of a client's initial admission to a community residential setting, the licensee shall obtain documentation of the following:
  1. A physical examination by a medical practitioner;
  2. A tuberculosis screening and results;
  3. A hepatitis B screening and results;
  4. Type of developmental disability;
  5. Medication history;
  6. Immunization history;
  7. History of significant injuries, illnesses, surgeries, and hospitalizations;
  8. History of allergies;
  9. Dental history;
  10. Seizure history;
  11. Developmental history; and
  12. Family medical history.
- C. The licensee shall maintain records in the place of residence sufficient to document the current health status of the resident. These records shall include, at a minimum:
  1. The name, address, and telephone numbers of the health care provider for each resident;
  2. The name and telephone numbers of the health plan and insurance carrier for each resident and the process for authorization of health care for each resident;
  3. Guardianship status for each resident;
  4. The name and telephone number of the responsible party and the person to be contacted in case of emergency for each resident;
  5. Reports of accidents, illness, current treatments, and follow-up for at least one year for each resident;
  6. A description of the client's individualized health care and safety needs, including, at a minimum:
    - a. Allergies;
    - b. Nutritional needs, whether a regular or special diet;
    - c. Special fluid intake needs;
    - d. Seizure activity and recommended response;

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- e. Adaptive equipment, protective devices, and facility adaptations;
  - f. Required medical monitoring;
  - g. References to the behavior treatment plan or the ISPP if there are health care-related issues contained therein;
  - h. Special instructions for carrying, lifting, positioning, bathing, feeding, or other aspects of personal health care; and
  - i. Other individualized health care routines.
7. The client's medical history, which includes updated information on all components identified in subsection (B);
  8. Current medication log for each client;
  9. Current health care consents for each client, including:
    - a. Consent for the use of sedation, mechanical restraint, or protective devices in the course of planned medical or dental procedures or for follow-up;
    - b. Consent for the ongoing or recurring use of a protective device in response to a medical condition; and
    - c. Consent for emergency medical care, routine medical care, and special procedures, if applicable;
  10. A copy of "do not resuscitate" orders, for each client, signed by the responsible person, if such an order has been effected.
- D.** The licensee shall maintain medical records in their entirety.
- E.** The licensee shall maintain documentation of medical consultations which include, at a minimum:
1. The date of the medical consultation;
  2. The name and title of the medical professional consulted;
  3. The purpose of the consultation;
  4. A description of the service or treatment provided; and
  5. Instructions for follow-up, if applicable.
- F.** For medications administered by or under the supervision of the direct care staff, the licensee shall ensure that any prescription or nonprescription medications are administered:
1. To a client only with the written or verbal orders of a medical practitioner; and
  2. Only to the person for whom it is prescribed or indicated.
- G.** The licensee shall maintain a log of all prescribed and nonprescribed medications administered to a client by or under the supervision of direct care staff. The medication log shall contain, at a minimum:
1. The name of the client who received the medication;
  2. The name of the medication;
  3. The medication dosage;
  4. The date and time of administration;
  5. The route of administration;
  6. Special instructions for administration of the medication; and
  7. Signature and initials of the direct care staff who administered or supervised the administration of the medication.
- H.** The licensee shall maintain, in a location which is readily accessible to direct care staff who are responsible for medication administration, resource information regarding all medications prescribed for clients living in the setting. The resource information shall include, at a minimum:
1. Name of the medication;
  2. Common side effects and adverse reactions;
  3. Indications for use;
  4. Medication interactions; and
  5. Recommended monitoring.
- I.** The licensee shall store medications in the following manner:
1. Under sanitary conditions;
  2. Consistent with label instructions;
  3. In containers with legible and accurate labels which specify the name of the client for whom the medication is prescribed and the current dosage; and
  4. In locked storage, unless otherwise specified in the client's ISPP.
- J.** The licensee shall remove or dispose of medications which are expired or for which the prescription has been discontinued.
- K.** When a medication error or reaction is detected, the licensee shall ensure that staff:
1. Immediately consult medical personnel,
  2. Notify appropriate persons, and
  3. Document the error or reaction and the action taken in response.
- L.** The licensee shall monitor on an ongoing basis the condition for which any medications have been prescribed and the response to the medications, in accordance with any recommendations of the medical practitioner. The licensee shall report the client's response to the medical practitioner based on the monitoring. The licensee shall document any medication change made by the medical practitioner and share results with agency staff.
- M.** When a medication is prescribed for the purpose of behavior modification, the licensee shall:
1. Document the behavior for which the medication is prescribed;
  2. Monitor the client's response to the medication on an ongoing basis consistent with the client's needs and the recommendations of the ISPP team;
  3. Document the client's response to the medication, including the frequency and intensity of target behaviors and the occurrence of side effects;
  4. Report to the client's physician regarding the client's response to the medication; and
  5. Document the results of any change made by the physician and share that information with direct care staff.
- N.** Except for treatment of medical emergencies, the licensee shall obtain written informed consent from the responsible person and authorization by a medical practitioner for the use of sedation, mechanical restraint, or protective devices in the course of planned medical or dental procedures or in the course of follow-up to such procedures. The licensee shall not use physical restraints, including mechanical restraints as a negative consequence to a behavior, for the convenience of the licensee, or in lieu of a behavior management plan.
- O.** The licensee shall ensure that the following conditions are met prior to ongoing or recurring use of a protective device in response to a medical condition:
1. Authorization for use of the protective device is obtained from a medical practitioner;
  2. Written informed consent is obtained from the responsible person; and
  3. The plan for use of the protective device is reviewed by the ISPP team and reassessed at least annually.
- P.** The licensee shall ensure that individualized health care instructions for the client are followed.
- Q.** The licensee shall plan for and prepare nutritional meals in accordance with the client's needs and consistent with the client's preferences. If the client is responsible for planning and preparing meals, the licensee shall assist, monitor, and educate the person regarding preparation of nutritionally adequate meals.
- R.** The licensee shall keep insecticides, poisonous materials, corrosives, and other hazardous substances in locked storage, unless otherwise specified in the client's ISPP, and in areas away from food and areas where medications are stored or administered.

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- S. The licensee shall ensure that bodies of water are fenced. Unsupervised access to bodies of water by the client is prohibited unless specifically allowed by the client's ISPP. The ISPP cannot supersede any local ordinance or state law pertaining to the safety of bodies of water or swimming pools.
- Historical Note**  
Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).
- R6-6-807. Records**
- A. In addition to health care records as required by R6-6-806, the licensee shall maintain the following programmatic records in the client's place of residence:
1. A copy of the client's most current annual ISPP which is placed into the records within 15 calendar days of receipt by the licensee;
  2. The teaching plan or strategy for each objective specified in the client's ISPP;
  3. A copy of monthly progress reports for the client, as submitted to the case manager;
  4. Documentation of incidents involving the client;
  5. Behavior treatment plan, if applicable;
  6. All required consents, including, as applicable, consent for use of behavior-modifying medications and consent for release of personally identifiable information, unless these consents are maintained in the main provider record; and
  7. Reference to the location of other pertinent records.
- B. The licensee shall ensure that documents and entries made by agency personnel identify the person making the entry and that all are:
1. Legible;
  2. Typed or written in ink;
  3. Dated; and
  4. Properly corrected, as necessary.
- Historical Note**  
Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).
- R6-6-808. Staff Qualifications, Training, and Responsibilities**
- A. The licensee shall maintain documentation of the following for each direct care staff:
1. Age 18 years or older;
  2. References from persons other than family members;
  3. Knowledge, skills, and experience sufficient to carry out the requirements of the position;
  4. Fingerprinting, fingerprint clearance, and a statement by the direct care staff regarding criminal record; and
  5. Current licenses, certifications, or registrations required for the position or required by Arizona statute.
- B. The licensee shall maintain documentation of the fingerprinting, fingerprint clearance for a license renewal, and employee's statement regarding criminal record for each person required to be fingerprinted according to this Article.
- C. The licensee shall maintain documentation of successful completion of required training by each direct care staff.
- D. The licensee shall have and implement a written training curriculum which lists required training topics and which includes for each topic, at a minimum:
1. Course outline,
  2. Timeliness for completion, and
  3. Criteria for successful completion.
- E. When a community residential service is delivered, and unless a client is utilizing ISPP-authorized unsupervised time, a direct care staff shall be present who has completed the following required training, at a minimum:
1. Orientation to the specific needs of clients living in the community residential setting, including their ISPPs and individualized health and safety needs;
  2. Cardiopulmonary resuscitation (CPR), provided by a certified instructor;
  3. First aid, provided by a certified instructor;
  4. Agency health and safety policies and procedures as required by this Article including, at a minimum:
    - a. Client behaviors;
    - b. Incidents;
    - c. Neglect and abuse;
    - d. Medications;
    - e. Detection of signs of injury, illness, infectious diseases, and changes in health status;
    - f. Response to non-emergency conditions requiring prompt medical attention; and
    - g. Procedures to be followed in medical emergencies and in rendering emergency medical care.
  5. Safety procedures, including the agency plan for meeting potential emergencies and disasters, as required by R6-6-713;
  6. Provisions of R6-6-902 related to prohibited practices;
  7. Client intervention techniques, if relevant to the needs of clients in the community residential setting, provided by a certified instructor;
  8. Medication administration, if relevant to the needs of clients in the community residential setting; and
  9. Seizures, if relevant to the needs of clients in the community residential setting.
- F. Within 14 calendar days of the date the person begins employment at a community residential setting, each direct care staff shall complete an orientation to specific needs of clients living in the community residential setting, including their ISPPs and individualized health and safety needs.
- G. Within 90 calendar days of the date that the person begins employment at the community residential setting, each direct care staff shall complete the following required training:
1. Techniques for meeting the individualized health and safety needs of clients living in the community residential setting;
  2. Health and safety, including:
    - a. Cardiopulmonary resuscitation (CPR), provided by a certified instructor;
    - b. First aid, provided by a certified instructor;
    - c. Safety procedures, including the agency plan for meeting potential emergencies and disasters, as required by R6-6-713;
    - d. Medication administration; and
    - e. Seizures.
  3. Mission and values of the Division and the community residential setting;
  4. Agency policies and procedures;
  5. Interactions with clients, including:
    - a. Respect, dignity, and positive interactions with clients;
    - b. Skill-building techniques;
    - c. Prevention of behavioral incidents; and
    - d. Article 9.
  6. ISPP process;
  7. Communication with families;
  8. Client rights; and
  9. Confidentiality.

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- H.** Each direct care staff shall also have training relevant to the staff's assigned responsibilities and as necessary to carry out objectives, agreements, and assignments as specified in the ISPP and to meet the client's individualized health care and safety needs.
- I.** Each direct care staff shall review, at least annually, agency policies and procedures required by this Article and the plan for meeting potential emergencies and disasters, as required by R6-6-713.
- J.** After the initial 90-day training, each direct care staff member shall have current training in the following:
1. Cardiopulmonary resuscitation (CPR), provided by a certified instructor;
  2. First aid, provided by a certified instructor; and
  3. Client intervention techniques, provided by a certified instructor, if relevant to the needs of clients in the community residential setting.
- Historical Note**  
Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).
- R6-6-809. Policies and Procedures**
- A.** The licensee shall develop and implement policies and procedures which address incidents which occur in the operation of the setting. These policies and procedures shall include, at a minimum:
1. Definitions of events and circumstances which constitute incidents;
  2. Procedures for verbally reporting and documenting incidents, consistent with the Division's incident reporting procedures; and
  3. Procedures for the review of incidents by the licensee and procedures for the development of corrective action to occur in response to incidents.
- B.** The licensee shall develop and implement policies and procedures on behavior management which are consistent with the requirements of Article 9. These policies and procedures shall include, at a minimum:
1. Descriptions of positive approaches to behavior management;
  2. Procedures for the documentation of maladaptive behaviors not included in the definition of incidents, if applicable;
  3. Procedures for the development of behavior treatment plans; and
  4. Procedures for the licensee to monitor the effectiveness of behavior treatment plans.
- C.** The licensee shall develop and implement written policies and procedures for residents for:
1. The following health-related issues:
    - a. Detection of signs of injury, illness, and changes in health status;
    - b. Detection of infectious diseases and notification to the Division and other appropriate persons;
    - c. Response to non-emergency conditions requiring prompt medical attention; and
    - d. Procedures to be followed in medical emergencies and in rendering emergency medical care.
  2. Medications, including nonprescription medications, used by residents which shall include, at a minimum:
    - a. The training to administer medications;
    - b. The specific, step-by-step procedures staff are to use in the administration of medications. These procedures shall include:
      - i. Prevention of contamination;
      - ii. Instructions for handling various types of medication, including oral, topical, or rectal;
      - iii. Instructions for verifying that the right medication is given to the right person, at the right time, in the proper dosage, and via the proper route; and
      - iv. Instructions for documenting the administration of medication on a log or chart.
- c.** Procedures for recording and reporting medication errors and reactions for residents;
- d.** Procedures for the agency review and corrective action to occur in response to medication errors;
- e.** Procedures for having prescriptions filled and maintenance of an adequate supply of medications;
- f.** Procedures for the safe disposal of expired or discontinued medications;
- g.** Procedures for the storage and inventory of medications;
- h.** Provision for self-administration of medications by a client, with the written approval of the ISPP team, if applicable, including criteria for self-administration and requirements for documentation of administration; and
- i.** Procedures for authenticating, within 72 hours, a medical practitioner's verbal orders for medication.
- D.** The licensee shall develop and implement policies and procedures which address alleged neglect and abuse of residents. These policies and procedures shall include, at a minimum:
1. Definitions and prohibitions in accordance with A.R.S. § 36-569;
  2. Detection of neglect and abuse, including cases occurring outside the agency;
  3. Immediate intervention to prevent further neglect and abuse;
  4. Reporting in accordance with A.R.S. §§ 13-3620 and 46-454 and R6-6-1601 et seq.;
  5. Investigation of alleged neglect and abuse; and
  6. Community residential setting review and corrective action to occur in response.
- E.** The licensee shall develop and implement policies and procedures which address smoking in the community residential setting and which take into account the rights of all residents living in the setting.
- F.** The licensee shall develop policies and procedures which address the storage and use of alcoholic beverages in the community residential setting and which take into account the rights of all residents living in the setting.
- G.** The licensee shall develop and implement policies and procedures regarding the internal communication among agency personnel of events affecting clients living in the community residential setting.
- H.** The licensee shall develop and implement policies and procedures regarding the communication to responsible persons of significant events affecting clients living in the community residential setting.
- I.** The licensee shall develop and implement policies and procedures which address safeguarding, accounting for, and replacing client property and funds.
- J.** The licensee shall develop and implement policies and procedures which ensure adequate staffing, consistent with rules related to staff training as specified in R6-6-808 and staff-to-client ratios as specified in R6-6-803. The policies and procedures shall address, at a minimum, planned and unexpected absenteeism, emergencies, and community activities.
- K.** The licensee shall submit all new or modified policies and procedures required by this Article to the Division for approval.

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- L. The licensee shall incorporate into policies and procedures any revisions required by the Division.
- M. The licensee shall develop and implement policies and procedures which address the role of the community residential setting in the ISPP process, consistent with the requirements of this Article.
- N. The licensee shall develop and implement policies and procedures for the maintenance and use of all personally identifiable client information. These policies and procedures shall be consistent with A.R.S. § 36-568.01 and shall address storage, disclosure, retention, and destruction of this information and actions to be taken in the event of violations of these policies and procedures by agency personnel.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-810. Consent for Release of Personally Identifiable Information**

- A. When consent for the release of personally identifiable information is required pursuant to A.R.S. § 36-568.01 for a client residing in a community residential setting, the licensee shall obtain consent from the responsible person. The consent shall:
  1. Be signed and dated,
  2. Specify the purposes for the release.
- B. Notwithstanding the provisions of R6-6-105(B) and (C), the consent for a person residing in a community residential setting is valid for a period of one year from date of signature or up to the date specified in the consent, whichever is less.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-811. Exemption**

A licensee may submit to the Division a written request for an exemption of a rule contained in this Article. The request shall demonstrate that the intent of the rule will be met by alternate means and that the exemption will not endanger the lives or health of clients or staff.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**ARTICLE 9. MANAGING INAPPROPRIATE BEHAVIORS****R6-6-901. Applicability**

These rules apply to:

1. All programs operated, licensed, certified, supervised or financially supported by the Division.
2. All habilitation programs as defined in A.R.S. § 36-551(18), as well as all interventions included in this Article, shall be addressed in the client's ISPP.

**Historical Note**

Adopted effective February 21, 1990 (Supp. 90-1). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-901 repealed, new Section R6-6-901 renumbered from R6-6-902 effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Amended effective August 30, 1994,

under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-902. Prohibitions**

- A. The following behavioral intervention techniques are prohibited:
  1. The use of seclusion (locked time-out rooms).
  2. The use of overcorrection.
  3. The application of noxious stimuli.
  4. Physical restraints, including mechanical restraints, when used as a negative consequence to a behavior.
- B. The use of behavior modifying medications is prohibited, except as specified in R6-6-909, if:
  1. They are administered on an "as needed" or "PRN" basis; or
  2. They are in dosages which interfere with the client's daily living activities; or
  3. They are used in the absence of a behavior treatment plan.
- C. No person shall implement a behavior treatment plan which:
  1. Is not included as a part of the ISPP; and
  2. Falls under R6-6-903(A), without approval of the PRC.

**Historical Note**

Adopted effective February 21, 1990 (Supp. 90-1). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-902 renumbered to R6-6-901, new Section R6-6-902 renumbered from R6-6-903 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-903. Program Review Committee (PRC)**

- A. The ISPP team shall submit to the PRC and Human Rights Committee any behavior treatment plan which includes:
  1. Techniques that require the use of force.
  2. Programs involving the use of response cost.
  3. Programs which might infringe upon the rights of the client pursuant to applicable federal and state laws, including A.R.S. § 36-551.01.
  4. The use of behavior-modifying medications.
  5. Protective devices used to prevent a client from sustaining injury as a result of the client's self-injurious behavior.
- B. The PRC shall be responsible for approving or disapproving plans specified in subsection (A) above and any other matters referred by an ISPP team member.
- C. The PRC shall review and respond in writing within ten working days of receipt of a behavior treatment plan from the ISPP team, either approving or disapproving the plan. The response shall be signed and dated by each member present and shall be transmitted to the ISPP team with a copy to the chairperson of the Human Rights Committee for review and recommendations at its next regularly scheduled meeting pursuant to R6-6-1701 et seq. The response shall include:
  1. A statement of agreement that the interventions approved are the least intrusive and present the least restrictive alternative.
  2. Any special considerations or concerns including any specific monitoring instructions.
  3. Any recommendations for change, including an explanation of the recommendations.
- D. Each PRC shall issue written reports, as prescribed by the Division, summarizing its activities, findings and recommendations while maintaining client confidentiality.
  1. On a monthly basis, report to a designated Division representative, with a copy to the chairperson of the Human Rights Committee.

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2. On an annual basis, by December 31 of each calendar year, report to the Assistant Director of the Division of Developmental Disabilities, with a copy to the Developmental Disabilities Advisory Council.
- E.** The PRC shall be composed of, but not be limited to, the following persons designated by the District Program Manager:
1. The District Program Manager or his designee, who shall act as a chairperson.
  2. A person directly providing habilitation services to clients.
  3. A person qualified, as determined by the Division, in the use of behavior management techniques, such as a psychologist or psychiatrist.
  4. A parent of an individual with a developmental disability but not the parent of the individual whose program is being reviewed.
  5. A person with no ownership in a facility and who is not involved with providing services to individuals with developmental disabilities.
  6. An individual with a developmental disability when appropriate.
- F.** A PRC shall be separate from but a complement to the ISPP team, and the Human Rights Committee established pursuant to R6-6-1701 et seq.

**Historical Note**

Adopted effective February 21, 1990 (Supp. 90-1).  
Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-903 renumbered to R6-6-902, new Section R6-6-903 renumbered from R6-6-904 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-904. ISPP Team Responsibilities**

Upon receipt of the PRC's response and as part of its development of the client's ISPP, the ISPP team shall either:

1. Implement the approved behavior treatment plan; or
2. Accept the PRC recommendation and incorporate the revised behavior treatment plan into the ISPP; or
3. Reject the recommendation in whole or in part and develop a new behavior treatment plan to be resubmitted to the PRC and Human Rights Committee.

**Historical Note**

Adopted effective February 21, 1990 (Supp. 90-1).  
Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-904 renumbered to R6-6-903, new Section R6-6-904 renumbered from R6-6-905 effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-905. Monitoring Behavior Treatment Plans**

Each ISPP team shall specifically designate and record in the ISPP the name of a member of the team, excluding those direct service staff responsible for implementing the approved behavior treatment plan, who shall:

1. Ensure that the behavior treatment plan is implemented as approved.
2. Ensure that all persons implementing the behavior treatment plan have received appropriate training as specified in R6-6-906.
3. Ensure that objective, accurate data are maintained in the client's record.
4. Evaluate, at least monthly, collected data and other relevant information as a measure of the effectiveness of the behavior treatment plan.

5. Conduct on-site observations not less than twice per month and prepare, sign, and place in the client's record a report of all observations.

**Historical Note**

Adopted effective February 21, 1990 (Supp. 90-1).  
Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-905 renumbered to R6-6-904, new Section R6-6-905 renumbered from R6-6-906 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-906. Training**

- A.** Any person who is involved in the use of a behavior treatment plan shall be trained by the Division or trained by an instructor approved by the Division prior to such involvement.
- B.** Initial training shall cover at a minimum:
1. Provisions of law related to:
    - a. Interventions; particularly this Article and 42 CFR 483.450 October 1, 1992), incorporated herein by reference and on file with the Office of the Secretary of State;
    - b. Legally mandated rights of individuals with developmental disabilities; particularly A.R.S. §§ 36-551.01, 36-561 and 42 CFR 483.420 (October 1, 1992), incorporated herein by reference and on file with the Office of the Secretary of State;
    - c. Confidentiality; particularly A.R.S. §§ 41-1959 and 36-586.01 and 42 CFR 483.410(c)(2) (October 1, 1992), incorporated herein by reference and on file with the Office of the Secretary of State.
    - d. Abuse and neglect prohibitions pursuant to A.R.S. § 36-569.
  2. Intervention techniques, treatment and services, particularly addressing the risks and side effects that may adversely affect clients.
  3. A general orientation to:
    - a. Division goals with respect to the provision of services to people with developmental disabilities.
    - b. Related policies and instructions of the Division.
- C.** With respect to the use of interventions, training shall include hands-on or practical experience to be conducted by instructors approved by the Division, using a curriculum approved by the Division, and who have experience in the actual use of interventions as opposed to administrative responsibility for such use.
- D.** In addition to initial training, the Division shall ensure that refresher training is available as necessary to maintain currency in knowledge and recent technical trends related to intervention for the management of inappropriate behavior.
- E.** Physical management techniques shall only be used by those persons specifically trained in their use.
- F.** The following records and documents related to training shall be maintained by the Division for five years and be available for public inspection.
1. A summary of the training plan adopted by the Division in compliance with this Section, including schedules, instructors, topics, and expressed parameters of the hands-on or practical experience component of the training.
  2. Required special knowledge, skills, training, education or experience of the instructors related to managing inappropriate behaviors.
  3. A list of persons satisfactorily completing initial and refresher courses and course dates.

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- G. The Division shall review the training plan at least every two years for compliance with all applicable provisions of law and Division policy as well as for the protection of clients.

**Historical Note**

Adopted effective February 21, 1990 (Supp. 90-1).  
Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-906 renumbered to R6-6-905, new Section R6-6-906 renumbered from R6-6-907 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-907. Sanctions**

For programs operated, licensed, certified, supervised or financially supported by the Division, failure to comply with any part of this Article may be grounds for suspension or revocation of a license, for termination of contract, employment, or for any other applicable administrative or judicial remedy.

**Historical Note**

Adopted effective February 21, 1990 (Supp. 90-1).  
Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-907 renumbered to R6-6-906, new Section R6-6-907 renumbered from R6-6-908 effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-908. Emergency Measures**

- A. Physical management techniques employed in an emergency to manage a sudden, intense, or out-of-control behavior shall:
1. Use the least amount of intervention necessary to safely physically manage an individual.
  2. Be used only when less restrictive methods were unsuccessful or are inappropriate.
  3. Be used only when necessary to prevent the individual from harming self or others or causing severe damage to property.
  4. Be used concurrently with the uncontrolled behavior.
  5. Be continued for the least amount of time necessary to bring the individual's behavior under control.
  6. Be appropriate to the situation to ensure safety.
- B. When an emergency measure, including the use of behavior modifying medications pursuant to R6-6-909(D), is employed to manage a sudden, intense, out-of-control behavior, the person employing that measure shall:
1. Immediately report the circumstances of the emergency measure to the person designated by the Division and to the responsible person.
  2. Provide, within one working day, a complete written report of the circumstances of the emergency measure to the responsible person, the case manager, the chairperson of the Program Review Committee, and the Human Rights Committee.
  3. Request that the case managers reconvene the ISPP team to determine the need for a new or revised behavior treatment plan when any emergency measure is used two or more times in a 30-day period or with any identifiable pattern.
- C. Upon receipt of a written report as specified in subsection (B)(2) above, the PRC shall:
1. Review, evaluate and track reports of emergency measures taken; and
  2. Report, to a person designated by the Division, instances of possible excessive or inappropriate use of emergency measures on a case-by-case basis for corrective action.

**Historical Note**

Adopted effective February 21, 1990 (Supp. 90-1).  
Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-908 renumbered to R6-6-907, new Section R6-6-908 renumbered from R6-6-909 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-909. Behavior-modifying Medications**

- A. The Division shall make available the services of a consulting psychiatrist who shall review cases and provide recommendations to prescribing physicians to ensure that the medication prescribed is the most appropriate in type and dosage to meet the client's needs.
- B. Behavior-modifying medications shall be prescribed and administered only:
1. When, in the opinion of a licensed physician, they will be effective in producing an increase in appropriate behaviors; and it can be justified that the harmful effects of the behavior clearly outweigh the potential negative effects of the behavior modifying medication.
  2. As part of a behavior treatment plan in the ISPP.
  3. With the informed consent of the responsible person.
- C. The Division shall provide the following monitoring, in addition to that specified in R6-6-905, for all behavior treatment plans that include the use of a behavior-modifying medication:
1. Ensure that collected data relative to the client's response to the medication is evaluated, at least quarterly, at a medication review by the physician and the member of the ISPP team designated pursuant to R6-6-905 and other members of the ISPP team as needed.
  2. Ensure that each client receiving a behavior-modifying medication is screened for side effects, and Tardive Dyskinesia as needed, and that the results of such screening are:
    - a. Documented in the client's case record;
    - b. Provided immediately to the physician, responsible person, and ISPP team for appropriate action if the screening results are positive; and
    - c. Provided to the Program Review Committee and the Human Rights Committee within 15 working days for review of screening results that are positive.
- D. In the event of an emergency, a physician's order for a behavior modifying medication may, if appropriate, be requested for a specific one-time emergency use. The person administering the medication shall immediately report it pursuant to R6-6-908(B).
- E. The responsible person shall immediately be notified of any changes in medication type or dosage.

**Historical Note**

Adopted effective February 21, 1990 (Supp. 90-1).  
Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-909 renumbered to R6-6-908, new Section R6-6-909 renumbered from R6-6-910 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-910. Renumbered****Historical Note**

Adopted effective February 21, 1990 (Supp. 90-1).  
Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-910 renumbered to R6-6-909 effective

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September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

### ARTICLE 10. CHILD DEVELOPMENTAL FOSTER HOME LICENSE

#### R6-6-1001. Application for License

- A. Married or single persons desiring to be licensed as a child developmental foster home shall apply for a license to the Division on the prescribed forms.
- B. The license applicant and any adult member of the household shall be fingerprinted for a criminal history record check. Any adult living on the premises and not residing in the home may be required to be fingerprinted for a criminal history record check.
- C. The license applicant, any adult member of the household, and any adult living on the premises shall authorize the Division to perform a background check through Adult Protective Services and Child Protective Services referral files.
- D. The license applicant shall participate in interviews with the Division and the home-study process as required by the Division. The home-study process shall include:
  1. An interview of all members of the license applicant's household,
  2. An interview of other knowledgeable parties as the Division determines appropriate, and
  3. An inspection of the physical premises by the Arizona Department of Health Services and the Division for compliance with this Article.
- E. To be eligible for licensure as a Child Developmental Foster Home, the license applicant shall:
  1. Be at least 21 years of age,
  2. Have income or resources independent of the Division room-and-board payments to meet the needs of the license applicant's family unit,
  3. Not have employment that conflicts with the care and supervision of the foster child,
  4. Be of reputable and honest character; and
  5. Submit documentation that each child living in the home has received the immunizations appropriate to the child's age and state of health unless the license applicant has submitted a signed statement that the children have not been immunized because of affiliation with a religion which is opposed to such immunizations or because the license applicant is opposed to such immunizations.
- F. The license applicant and members of the household shall cooperate with the Division in obtaining information necessary to determine if the home meets the requirements of this Article. Such cooperation shall include, but is not limited to:
  1. Providing releases of information;
  2. Authorizing release of medical records; and
  3. Submitting to psychological, psychiatric, drug testing, or other evaluations as required by the Division.
- G. The license applicant shall provide the Division with a minimum of three references who are familiar with the applicant's family and are not related to the license applicant by blood or by marriage. The Division may contact the references for further information regarding the character of the license applicant and ability of the license applicant to care for children with developmental disabilities.
- H. The Division may require the license applicant to submit references from current or previous employers.
- I. All members of the license applicant's household shall agree with the decision to be licensed as a child developmental foster home.

- J. The license applicant shall demonstrate an understanding of and the ability to meet the emotional, physical, social, developmental, educational, and intellectual needs of children.
- K. The license applicant shall demonstrate the ability to nurture, to provide intellectual stimulation, to be sensitive to the needs of the foster children, and to protect children placed in the applicant's home from harm.
- L. The license applicant shall not have any medical or emotional problems that may prevent the person from properly caring for foster children or that may negatively impact on foster children in the home.
  1. Following approval of the home study by the Division, the license applicant shall submit, on forms prescribed by the Division, written statements from a licensed medical practitioner for each adult living in the home. The statement shall include the following:
    - a. Confirmation that the physician has examined the adult in the last six months,
    - b. A description of the person's general physical and emotional health,
    - c. A list of all regularly prescribed medications and the purpose of the medication, and
    - d. Identification of any medical or emotional problems that may prevent the person from caring for foster children or may impact on foster children in the home.
  2. The Division may require the license applicant to submit physician statements as described in this Section for other adults living on the premises.
- M. The license applicant shall attend prelicensure training as required by R6-6-1005.

#### Historical Note

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

#### R6-6-1002. Issuing an Initial License

- A. The license applicant shall comply with the requirements of this Article.
- B. Except as provided in R6-6-1004(C), a regular license is effective for one year from the date of issuance.
- C. Based upon records, reports, and observations, if the Division determines that the license applicant may be unable to meet the physical or emotional needs of clients, the Division may require further psychological or physical evaluations, at no expense to the license applicant, to determine whether a license may be issued.
- D. A regular license for a child developmental foster home is not transferable and is valid only for the licensee and the address stated on the license.

#### Historical Note

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

#### R6-6-1003. Issuing a Renewal License

- A. A regular license is renewable annually for a one-year period.
- B. The Division shall renew a child developmental foster home regular license when:
  1. The licensee has met the annual training requirements of R6-6-1005;
  2. The home meets the requirements of R6-6-1001, except as noted in this subsection:
    - a. The licensee shall submit a written statement every three years from the date of initial licensure from a licensed medical practitioner indicating that no adult

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living in the home or on the premises has any medical, emotional, or psychological problems that would adversely impact on the health and welfare of a child with developmental disabilities.

- b. References are not required for license renewal.
  - c. The child developmental foster home shall receive a health inspection from the Arizona Department of Health Services every three years prior to license renewal, unless otherwise indicated by this Article.
3. Any person fingerprinted pursuant to R6-6-1001(B) and who is still residing in the home shall have a criminal record check every three years.
- C. Based upon records, reports, and observations, if the Division determines that the license applicant for license renewal may be unable to meet the physical or emotional needs of clients, the Division shall have the authority to require further mental or physical evaluations, at no expense to the license applicant, to determine whether to renew a license.
  - D. A license to provide child developmental foster home services is not transferable and is valid only for the licensee and the address stated on the license.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1004. Issuing a Provisional License**

- A. The Division may issue a provisional license for up to six months when:
  1. The license applicant is temporarily unable to meet the requirements of this Article, and
  2. The Division is satisfied that the listed deficiencies can be corrected within six months or less by the license applicant.
- B. The Division shall not issue a provisional license pursuant to A.R.S. § 36-592 when conditions exist which could endanger the health or safety of the children.
- C. When the licensee has met the requirements of the provisional license and a regular license is issued, the regular license is valid for one year from the date the Division issued the provisional license.
- D. A provisional license for a child developmental foster home is not transferable and is valid only for the licensee and the address stated on the license.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1004.01. Time-Frame for Granting or Denying a License**

For the purpose of A.R.S. § 41-1073, the Division establishes the following licensing time-frames:

1. Administrative completeness review time-frame:
  - a. For an initial license, 90 days;
  - b. For a renewal license, 30 days; and
  - c. For an amended license, 30 days.
2. Substantive review time-frame:
  - a. For an initial license, 30 days;
  - b. For a renewal license, 31 days; and
  - c. For an amended license, 10 days.
3. Overall time-frame:
  - a. For an initial license, 120 days;
  - b. For a renewal license, 61 days; and
  - c. For an amended license, 40 days.

**Historical Note**

Adopted effective February 1, 1998 (Supp. 98-1).

**R6-6-1004.02. Administrative Completeness and Substantive Review Process**

- A. The Division shall send the license applicant a written notice within the administrative completeness review time-frame indicating that the application package is either complete or incomplete.
- B. If the application package is incomplete, the Division shall list the missing information in the notice and ask the license applicant to supply the missing information within 60 days from the date of notice. If the license applicant fails to do so, the Division may close the file.
- C. A license applicant whose file has been closed and who later wishes to become licensed may reapply to the Division. The administrative completeness time-frame starts over when the Division receives the written request to reapply.
- D. When the application is complete, the Division shall complete a substantive review of the license applicant's qualifications. The Division shall:
  1. Review the application form and all required documents to ensure compliance with this Article;
  2. Complete a home study as prescribed in R6-6-1001(D); and
  3. Gather additional information needed to determine the license applicant's fitness to serve as a foster parent and ability to comply with foster care requirements, which may include:
    - a. Interviewing the license applicant;
    - b. Contacting references;
    - c. Verifying information provided in the application;
    - d. Visiting the license applicant's home; and
    - e. Requesting additional information, assessments, or tests as prescribed in R6-6-1001(F) and R6-6-1003(C).
- E. If a license is denied, the Division shall send a notice to the license applicant as prescribed in R6-6-1018(F) and A.R.S. § 41-1076.
- F. An applicant shall submit a license application package to DES/DDD, P.O. Box 6123, Site Code 791A, Phoenix, Arizona 85005-6123, Attention: Developmental Home Licensing Unit.

**Historical Note**

Adopted effective February 1, 1998 (Supp. 98-1).

**R6-6-1004.03. Contents of a Complete Application Package - Initial License**

An initial application package is complete when the Division has all of the following information:

1. From the license applicant, a completed application form as prescribed in R6-6-1001(A) which contains the following information:
  - a. Personally identifying information, as follows:
    - i. Name and gender,
    - ii. Date and place of birth,
    - iii. Social security number,
    - iv. Ethnicity and religious preference,
    - v. Current and previous address,
    - vi. Dates resided at previous address,
    - vii. Length of Arizona residency,
    - viii. Current marital status and marital history, and
    - ix. Any other names by which the license applicant has been known.
  - b. Personally identifying information on the license applicant's household members, as follows:
    - i. Name,
    - ii. Gender,

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- iii. Date of birth;
  - iv. Relationship to license applicant, and
  - v. Length of time living in the home.
  - c. Personally identifying information on the license applicant's children who do not live with the license applicant, including emancipated children, as follows:
    - i. Name;
    - ii. Current address;
    - iii. Date of birth; and
    - iv. Occupation or school, if currently attending.
  - d. Any current or prior licenses or certificates held by the license applicant to provide care to a child or adult, as follows;
    - i. Type of license or certificate;
    - ii. Date of each license and certificate;
    - iii. State in which each license or certificate was issued;
    - iv. Any license or certificate which was revoked, denied, voluntarily surrendered, or suspended, and the circumstances; and
    - v. Name of any other agency with which the license applicant is currently licensed or certified to provide services to children or adults.
  - e. A description of the license applicant's home, as follows:
    - i. The name of the school district in which the license applicant's home is located;
    - ii. Identification and description of any swimming pool, spa, fish pond, or other body of water; and
    - iii. Number of bedrooms.
  - f. Information about the license applicant, as follows:
    - i. Educational background;
    - ii. Employment history;
    - iii. Previous experience in providing room and board for any person;
    - iv. Any contact with Child Protective Services (CPS) or Adult Protective Services (APS) and the circumstances;
    - v. Any arrests and the circumstances;
    - vi. Any history of mental illness or treatment for a mental illness or emotional disorder including hospitalization for alcohol, drug, or mental health issues and the circumstances;
    - vii. If currently or previously employed by the Department of Economic Security or the Division, position, title, name of the supervisor, and name of the program;
    - viii. The reason for wanting to provide foster care;
    - ix. Gender, age, characteristics, and special needs of the individual the license applicant would prefer to take into the home;
    - x. Any experience caring for individuals who have special needs;
    - xi. Discipline techniques used or believed appropriate for rearing children; and
    - xii. Anticipated changes in the license applicant's family in the next 12 months.
  - g. Information about the license applicant's household members, as follows:
    - i. Any contact with CPS or APS by anyone currently or formerly residing with the license applicant and the circumstances;
    - ii. Any arrests and the circumstances;
    - iii. Any history of mental illness or treatment for a mental illness or emotional disorder including hospitalization for alcohol, drug, or mental health issues and the circumstances;
    - iv. If currently or previously employed by the Department of Economic Security or the Division, position, title, name of supervisor, and name of the program;
    - v. Any experience caring for individuals with special needs; and
    - vi. Discipline techniques used or believed appropriate for rearing children.
  - h. Reference information for the license applicant, as follows:
    - i. Three references who can attest to the license applicant's character and skill; and
    - ii. If the license applicant is working or has worked with children or adults with developmental disabilities, one employment reference;
2. From the license applicant, the following documents as listed on the application form:
    - a. A completed declaration of criminal history for the license applicant and each adult household member on a Division form with the following information:
      - i. Name,
      - ii. Social security number,
      - iii. Date of birth,
      - iv. Address,
      - v. A declaration of whether the individual has committed any of the crimes listed in A.R.S. § 36-594(3) and R6-6-1018, and
      - vi. Dated signature.
    - b. Documentation showing that the license applicant and each adult household member have been fingerprinted;
    - c. Documentation showing that the license applicant has a current driver's license, and current vehicle liability insurance as prescribed in R6-6-1012(A);
    - d. A completed monthly budget on a Division form showing the license applicant's monthly income, and monthly expenses, and the circumstances for any declaration of bankruptcy;
    - e. A physician's statement for the license applicant and each adult household member as prescribed in R6-6-1001(L);
    - f. Documentation of current immunizations for each child living in the license applicant's home as prescribed in R6-6-1001(E)(5);
    - g. Documentation that the license applicant has completed training as prescribed in R6-6-1005(A).
  3. From sources other than the applicant, the documents listed on the application form, as follows:
    - a. Three letters of reference for the license applicant as prescribed in R6-6-1001(G);
    - b. If the license applicant works with children or adults with developmental disabilities, one employment letter of reference as prescribed in R6-6-1001(H);
    - c. Documentation that the license applicant and each adult household member have had a criminal history check as prescribed in R6-6-1001(B);
    - d. Documentation showing that the license applicant's home has passed:

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- i. A fire inspection as prescribed in R6-6-1011(E), and
- ii. A health and safety inspection as prescribed in R6-6-1011(D).
- e. Documentation that vehicles used for transporting foster children have passed a Division safety inspection to meet the safety requirements set forth in R6-6-1012(B); and
- f. Documentation that the CPS/APS Central Registry has been checked as prescribed in R6-6-1001(C).
- v. Name of any other agency with which the license applicant is currently licensed or certified to provide services to children or adults.
- g. List of any individuals who live on the property on which the license applicant's home is located, but not in the license applicant's home;
- h. List of the household members and their relationship to the applicant and each other;
- i. Any changes that should be made to the license conditions;
- j. Dated signature.

**Historical Note**

Adopted effective February 1, 1998 (Supp. 98-1).

**R6-6-1004.04. Contents of a Complete Application Package - Renewal License**

A license renewal application package is complete when the Division has all the following information:

1. From the license applicant, a completed renewal application form as prescribed in R6-6-1001(A) which contains the following information:
  - a. Personally identifying information, as follows:
    - i. Name,
    - ii. Address, and
    - iii. Phone number.
  - b. Personally identifying information on the license applicant's household members, as follows:
    - i. Name,
    - ii. Gender,
    - iii. Age,
    - iv. Relationship to the license applicant, and
    - v. School or occupation.
  - c. Personally identifying information on the license applicant's children who do not live with the license applicant, including emancipated children, as follows:
    - i. Name;
    - ii. Age;
    - iii. Address; and
    - iv. Occupation or school, if currently attending.
  - d. Information about the license applicant, as follows:
    - i. Any arrest or investigation for a criminal offense, including charge, and arresting agency; and
    - ii. Any referral to or treatment for a psychiatric or psychological problem, including substance abuse, in the last year.
  - e. Information about the license applicant's household members, including:
    - i. Any arrest or investigation for a criminal offense, including charge, and arresting agency;
    - ii. Any referral to or treatment for a psychiatric or psychological problem, including substance abuse, in the last year.
  - f. Any current or prior license or certificate held by the license applicant to provide care to a child or adult, as follows:
    - i. Type of license or certificate;
    - ii. Date of each license and certificate;
    - iii. State in which the license or certificate was issued;
    - iv. Any license or certificate which was revoked, denied, voluntarily surrendered, or suspended, and the circumstances; and
2. From the license applicant, the items listed in R6-6-1004.03(2)(c), (2)(d), (2)(f), and the following:
  - a. A completed declaration of criminal history for each new adult household member and, at three-year intervals, a completed declaration for all adult household members;
  - b. Documentation showing that each new adult household member has been fingerprinted and, at three-year intervals, that all adult household members have been fingerprinted;
  - c. A physician's statement every three years from the date of the initial license for the license applicant and all adult household members; and
  - d. Documentation that the license applicant has completed training as prescribed in R6-6-1005(B).
3. From sources other than the applicant, the documents listed in R6-6-1004.03(3)(d)(i), (3)(e), and (3)(f) and the following:
  - a. Documentation that each new adult household member has had a criminal history check and that all adult household members have had a criminal history check every three years, and
  - b. Documentation that the license applicant's home has passed a health and safety inspection every three years since the date of the initial license.

**Historical Note**

Adopted effective February 1, 1998 (Supp. 98-1).

**R6-6-1004.05. Contents of a Complete Request for an Amended License**

A request for an amended license is complete when the Division has the following:

1. A description of the change requested to the license, and
2. Documentation that the requested change complies with this Article.

**Historical Note**

Adopted effective February 1, 1998 (Supp. 98-1). R6-6-1004.05 Section heading corrected at the request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1).

**R6-6-1005. Training Requirements for Child Developmental Home Foster Parents**

A. A license applicant for an initial license as a Child Developmental Foster Home shall meet the following training requirements:

1. Prelicensing training in the following subjects:
  - a. Cardiopulmonary resuscitation appropriate for children and adults provided by an instructor certified in cardiopulmonary resuscitation;
  - b. First aid provided by an instructor certified in first aid; and
  - c. Child developmental foster home parent orientation training of 16 to 20 hours, as determined by the Division.

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2. Up to ten additional hours of training based upon the needs of the license applicant or the foster child, as determined by the Division.
- B. The licensee shall annually complete a minimum of ten hours of training, as required by the Division, prior to license renewal and must maintain all certifications obtained for the initial licensure. Up to four hours of the annual training may be allowed for training related to maintenance of certifications.
- C. The license applicant or licensee shall participate in additional training based upon the specific needs of the foster family or a child placed in the foster home, as required by the Division, or shall demonstrate the ability to meet the needs of a specific child.
- D. The license applicant or licensee shall submit documentation which demonstrates satisfactory completion of these training requirements to the Division.
- K. The licensee shall ensure that money designated for the child is only used for the specific purpose intended and for the benefit of the child.
- L. The licensee shall provide appropriate hygiene for the child including bathing, tooth brushing, hair care, toileting, diapering, menstrual care, and shaving, as appropriate.
- M. The licensee shall not provide foster care or respite care to adults in the licensee's home.
- N. The licensee shall provide care only for the number of children and conditions listed on the license.
- O. The licensee shall obtain approval from the Division before accepting placements from other agencies or private parties.
- P. When the child developmental foster home also provides respite services, the licensee shall ensure that the respite placement is within the conditions stated on the Child Developmental Foster Home license.
- Q. The licensee shall not accept adult roomers or boarders without prior approval of the Division.
- R. The licensee shall treat information concerning a child placed in the licensee's home and the child's family and guardian as confidential in accordance with A.R.S. § 36-568.
- S. The licensee shall participate in the IEP meetings, unless otherwise specified by the Division, and advocate for the implementation of the IEP.
- T. The licensee shall participate in the ISPP meetings, shall carry out the tasks identified by the ISPP team as being the responsibility of the licensee, and shall advocate for the implementation of the ISPP.
- U. The licensee shall cooperate with the Division when a foster child moves from the foster home by:
  1. Providing information, including the records required in R6-6-1010(A) and (C);
  2. Ensuring personal belongings such as usable clothing, furniture, television sets, bicycles, toys, and other items purchased specifically for the child go with the child; and
  3. Assisting the Division in preparing the child for the move.
- V. The licensee shall comply with the terms of the Child Developmental Foster Home Parent Agreement.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1006. Foster Parent Responsibilities in Child Developmental Foster Homes**

- A. The licensee shall provide the child with positive emotional support and guidance including but not limited to:
  1. Including the child in daily activities;
  2. Providing the child with positive reinforcement;
  3. Assisting the child with day-to-day concerns with school, with friends, and with family;
  4. Providing appropriate care, concern, and support;
  5. Protecting the child from harm; and
  6. Assisting the child in developing and fostering personal relationships.
- B. The licensee shall follow written and verbal instructions and orders from qualified professionals regarding the medical, dental, habilitative, and therapeutic needs of the child.
- C. The licensee shall provide opportunities for social and physical development appropriate to the child's developmental level and interest, through recreation and leisure-time activities.
- D. The licensee shall cooperate with the Division in providing opportunities for the child to pursue the child's own religious beliefs or those of the child's parent, family, or guardian. The licensee shall not require the child to participate in the licensee's religious activities or practices.
- E. The licensee shall assign tasks and work appropriate to the child's age and abilities and which do not present a health or safety hazard and do not interfere with the child's educational or recreational activities.
- F. The licensee shall ensure children are dressed each day in clothing which is clean and appropriate to the age of the child, the climate, and the situation.
- G. The licensee shall provide a well-balanced and adequate diet to meet the nutritional needs of the child.
- H. The licensee shall ensure that the child has transportation to meet the educational, medical, habilitative, therapeutic, and social needs of the child.
- I. The licensee shall make reasonable efforts to support and maintain the child's relationships with parents, guardians, other family members, and other persons important to the child's life, approved or as required by the Division, the child-placing agency, or the courts.
- J. The licensee shall ensure that visitations or outings with other adults, without the licensee present, have the prior approval of the Division or are consistent with the child's ISPP or case plan.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1007. Behavior Management**

- A. The licensee shall comply with the Division's requirements for behavior management as specified in Article 9.
- B. The licensee shall establish well-defined rules which set the limits of behavior.
- C. The licensee shall provide discipline appropriate to the age, life experience, and individuality of each child:
  1. The licensee shall develop and implement fair, reasonable, age and developmentally appropriate, and consistent rewards and consequences for implementing the rules established in subsection (B).
  2. The licensee shall not use discipline which deprives the child of food, shelter, or medical care.
  3. The licensee shall not use any form of corporal or physical punishment.
  4. The licensee shall not participate in the use of verbal abuse or derogatory remarks.
- D. The licensee shall identify behavioral issues and report them to the Division.

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**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1008. Sleeping Arrangements**

The licensee shall provide appropriate, comfortable, and safe sleeping arrangements for each child consistent with the requirements of this Section.

1. Each child shall have his or her own bed and place to store clothing and personal belongings.
2. No child shall sleep in an unfinished room, a hallway, or any room which is normally used for other than sleeping arrangements by family members.
3. A child six years of age or older shall not share a bedroom with persons of the opposite sex.
4. A child shall not share a bedroom with an adult except in the following circumstances:
  - a. A child under two years of age may share a bedroom with the licensee.
  - b. A child two years of age and older may share a bedroom with the licensee for special temporary care, such as during the child's illness or as specified in the ISPP.
5. The licensee shall sleep within hearing distance of the child.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1009. Notification Requirements**

- A. The licensee shall notify the Division or placing agency of the following events:
  1. An addition to the foster home, structural remodeling of the foster home, or addition of a swimming pool or spa. The licensee shall provide prior notification to the Division and shall cooperate with the Division in obtaining an Arizona Department of Health Services inspection as prescribed in A.R.S. § 8-504;
  2. Changes in marital status or living arrangement of the licensee;
  3. A plan to make a change in location of residence;
  4. Arrests, indictments, or convictions of any household member or of persons living on the premises;
  5. Serious injury, illness, illegal substance use or substance abuse, suicidal behavior, attempted suicide, or death of any foster family member. The Division may require the licensee provide written documentation from a physician regarding the change in medical status;
  6. Changes which impact on the ability of the foster family to meet the needs of the child;
  7. Addition of a new household member shall be made to the Division prior to the addition;
  8. A temporary visitor staying more than one month; and
  9. A change in the primary care giver or a person leaving the household who contributed to the care of the child. Notification shall be made to the Division prior to the change.
- B. For children placed by the Division in the licensee's home, the licensee shall notify the Division of incidents including but not limited to:
  1. Possible child abuse or neglect as per A.R.S. § 13-3620 and R6-6-1601;
  2. Hospitalization, the intervention of a medical practitioner, or emergency medical care as a result of serious illness, injury, medication error, or suicidal behavior;
  3. Death of a child;

4. A child missing. A child missing must be reported to law enforcement officials and the Division as soon as the child is determined to be missing;
  5. Theft of money or property;
  6. Incidents which involve or may potentially involve the police or media;
  7. Significant damage to the property of the child, the property of the state, the property of the licensee, or the property of others; and
  8. Illegal substance use or substance abuse.
- C. The licensee shall obtain prior approval from the Division for alternative supervision plans. Alternate supervision shall only be provided by persons 18 years of age or older.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1010. Recordkeeping**

- A. The licensee shall maintain a record for each child which shall include the child's medical history, dental history, educational experiences, and habilitation services.
- B. The licensee shall obtain and provide to the Division receipts for expenditures for the child, as required by the Division.
- C. The licensee shall maintain a personal record for the child, which may include mementos, photos, letters, cards, report cards, school projects, art, and toys.
- D. The licensee shall keep copies of all licenses, certificates, and correspondence in a separate file to document compliance with sanitation, health, and environmental codes of state and local authorities.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1011. Health and Safety Standards in Child Developmental Foster Homes**

- A. The licensee shall maintain the premises of the child developmental foster home in a clean and sanitary condition to the degree that it does not present a health or safety hazard.
- B. The child developmental foster home shall not have an accumulation of litter, rubbish, or garbage on the premises. Litter, rubbish, and garbage shall be contained in cleanable containers with lids or sealed disposable containers and shall be removed from the property not less than once a week.
- C. The licensee shall ensure that the child developmental foster home is free from, or has an ongoing system to eradicate, insects, rodents, and other vermin.
- D. Before initial licensure and every three years thereafter, the child developmental foster home shall be inspected and meet the safety and sanitation guidelines of the Department of Health Services unless otherwise specified by the Division.
- E. Child developmental foster homes located in mobile homes shall pass an annual fire safety inspection as arranged by the Division.
- F. The licensee shall keep toxic, poisonous, hazardous, and corrosive materials in locked storage separate from food or medications, unless otherwise specified in the ISPP.
- G. The licensee shall keep medicines in locked storage separate from food, toxic, poisonous, hazardous, or corrosive materials.
- H. The licensee shall keep firearms in locked storage and shall keep ammunition locked separately from the firearms.
- I. Bedrooms shall have light, ventilation, and a usable, unobstructed exit to the outside in case of an emergency.

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- J. Telephone service or similar two-way communication methods shall be available in the home and shall be in working order.
  - K. Any permanent body of water shall be fenced and inaccessible to children and shall meet the guidelines of the Arizona Department of Health Services unless otherwise specified by the Division.
  - L. The licensee shall not allow foster children in swimming pool areas or in the area of other bodies of water unless supervised by a responsible adult or as specified in the ISPP.
  - M. The licensee shall store alcoholic beverages responsibly.
  - N. The licensee shall not use tobacco products while in an enclosed area with a foster child.
  - O. The licensee shall make reasonable efforts to ensure family pets do not present a health or safety hazard to foster children.
  - P. The licensee shall develop a fire evacuation plan and shall periodically practice the plan with the household members. The licensee shall update the fire evacuation plan as needed based on placement changes, household member changes, or structural changes to the foster home.
  - Q. The licensee shall equip the child developmental foster home with smoke detectors and fire extinguishers which are in good working order.
- 2. Foster parents licensed by a tribal jurisdiction, seeking licensure by the Division, shall sign a release of information from the tribal licensure fider.
  - 3. A person licensed by the Division as a Child Developmental Foster Home shall not be licensed to serve more than a total of three children.
  - 4. The licensee shall notify the Division of a pre-placement conference with another agency or jurisdiction.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1014. Rights of Children in Child Developmental Foster Homes**

The licensee shall uphold and safeguard the rights of clients consistent with applicable federal and state laws, specifically including A.R.S. § 36-551.01, unless legally restricted or as addressed in the ISPP in accordance with Article 9. Rights for children shall allow for reasonable standards of parental guidance and protection. In addition to those rights specifically stated in statute, rights shall include, at a minimum:

1. The right to be provided choices and to express preferences which will be respected and accepted whenever appropriate and possible;
2. The right to be free from personal and financial exploitation;
3. The right to a safe, clean, and humane physical environment;
4. The right to own and have appropriate access to personal property;
5. The right to associate with persons of the child's own choosing as appropriate to the age and developmental level of the child;
6. The right to participate in social, religious, educational, cultural, and community activities;
7. The right to have access to their personal spending money and to be taught to manage their spending money;
8. The right to the least amount of physical assistance necessary to accomplish a task;
9. The right to privacy, including during treatment and care of personal needs, and with regard to written correspondence, telephone communications, and visitations;
10. The right to have care for personal needs provided, except in cases of emergency, by a caregiver of the gender appropriate to the age of the child or as specified in the ISPP; and
11. The right to be treated with dignity and respect.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1012. Transportation**

- A. A licensee who transports foster children shall have a current and valid driver's license and shall have liability insurance for any vehicle which will be used to transport foster children. A child developmental foster home household member who transports children must be 18 years of age or older and must be identified to the Division.
- B. A licensee shall ensure that each vehicle used for transporting foster children is maintained in a safe operating condition.
- C. The licensee shall ensure foster children wear seat belts or use an appropriate child safety seat while being transported.
- D. A vehicle used to transport children in wheelchairs shall also be equipped with floor-mounted seat belts and wheelchair lock-downs for each wheelchair being transported.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1013. Dual Licensure or Certification of Child Developmental Foster Homes**

- A. Foster parents licensed pursuant to A.R.S. § 8-509 shall cooperate with the certification process of the Division to care for children with developmental disabilities.
  1. To be granted certification the home shall meet all requirements of this Article.
  2. The licensee shall cooperate with the Division in the annual certification study.
  3. A licensee certified by the Division shall not be certified to serve more than a total of three children.
  4. The licensee shall cooperate with a home visit as part of the certification process.
- B. Foster parents residing off-reservation and licensed by a tribal jurisdiction shall also be licensed by the Division for children placed by the Division.
  1. To be granted licensure, the home shall meet all requirements of this Article.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1015. Exemption**

A licensee may request from the Division an exemption of a rule contained in this Article. The request shall demonstrate that the intent of the rule will be met by alternate means and that the exemption will not endanger the lives or health of clients.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1016. Home Inspections and Monitoring**

- A. The licensee shall cooperate with the Division in assessing compliance with this Article.

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- B. The licensee shall allow the Division access to the setting for inspections and monitoring visits and shall allow the Division access to the licensee's records, reports, and vehicles used to transport clients.
- C. Inspections and monitoring visits shall include, at a minimum:
1. An annual home visit as part of the license renewal process; and
  2. Two monitoring visits each year, at least one of which will be unannounced.
- D. The licensee shall comply with corrective action plans as required by the Division.
4. Kidnapping,
  5. Arson,
  6. Sexual assault,
  7. Sexual exploitation of a child or vulnerable adult,
  8. Commercial sexual exploitation of a child or vulnerable adult,
  9. Felony offenses within the previous ten years involving the manufacture or distribution of marijuana or dangerous or narcotic drugs,
  10. Robbery,
  11. Child prostitution as defined in A.R.S. § 13-3206,
  12. Child abuse or abuse of a vulnerable adult,
  13. Sexual conduct with a child,
  14. Molestation of a child or vulnerable adult,
  15. Voluntary manslaughter, or
  16. Aggravated assault.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

*Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1994, Ch. 214, § 7. Exemption from A.R.S. Title 41, Chapter 6 means that the Department did not submit these rules to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit the rules to the Governor's Regulatory Review Council for review; the Department was not required to hold public hearings; and the Attorney General has not certified these rules.*

**R6-6-1017. Complaints**

- A. Any person who has a complaint about a child developmental foster home may make the complaint known verbally or in writing to the Department.
- B. A complainant who has provided his name and address shall be notified that his complaint has been received and the notice shall indicate what investigative actions shall be taken.
- C. The Department shall investigate complaints about child developmental foster homes within ten calendar days of the receipt of the complaint and shall notify the licensee of the investigation. In a case where there is reason to believe that imminent danger exists, the investigation shall be conducted immediately and the licensee shall be notified.
- D. The name or identifying characteristics of the complainant shall not be disclosed unless the complainant consents in writing to the disclosure or investigation of the complaint results in a legal proceeding and disclosure is ordered by an appropriate authority.
- E. The Department shall notify the licensee of the results of an investigation conducted pursuant to this rule and the requirement for any corrective action that the Department deems necessary.
- F. The licensee shall cooperate with the Division in completing investigations of complaints or concerns regarding the Child Developmental Foster Home and regarding children placed in the home.
- C. Upon notification that a member of the household or person living on the premises of a Child Developmental Foster Home is found to have been arrested for, convicted of, charged with, or pled no contest to any of the criminal acts listed in subsection (B), the licensee shall immediately take the following actions:
1. Remove the person from direct contact with children;
  2. Notify the Division, unless the licensee initially received notice from the Division.
- D. If a licensee fails to comply with subsection (C), the Division shall revoke or suspend the license.
- E. If the criminal record check indicates that an individual has been convicted of or found by a court to have committed, or is reasonably believed to have committed, offenses pursuant to A.R.S. § 36-594, other than those listed in subsection (B), the Division shall consider the following factors when determining what corrective action to take against the licensee:
1. The extent of the individual's criminal record;
  2. Length of time since the commission of the offense;
  3. Nature of the offense;
  4. Mitigating circumstances surrounding commission of the offense. The burden is on the person to demonstrate that there were mitigating circumstances;
  5. The degree of the person's participation in the offense. The burden is on the person to demonstrate that the involvement was not direct; and
  6. The extent of the person's rehabilitation, including but not limited to:
    - a. The person shall provide that probation has been completed and complete restitution or compensation for the offense has been made, and
    - b. Evidence of positive action to change criminal behavior such as completion of a drug treatment program or counseling.
  7. Personal references attesting to the person's rehabilitation.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1018. Denial, Suspension, and Revocation of Child Developmental Foster Home Licenses**

- A. The Division may deny, suspend, or revoke a license for violations of A.R.S. § 36-594.
- B. The Division may deny or revoke a license if a license applicant or licensee has been arrested for, convicted of, charged with, or pled no contest to any of the following criminal acts:
1. Sexual abuse of a child or vulnerable adult,
  2. Incest,
  3. First- or second-degree murder,
- F. When an application for a license is denied, or a license is suspended or revoked, pursuant to A.R.S. § 36-594, the Division shall deliver a written notice of the action in person or send a written notice of the action by certified mail to the license applicant or licensee. The notice shall state the reasons for the denial, suspension, or revocation with reference to applicable statutes and rules.
- G. If the reason for denial, suspension, or revocation of a license involves the health, welfare, or safety of clients, the clients shall be immediately removed from the child developmental foster home.
- H. When a license is denied, suspended, or revoked, the license applicant or licensee has the right to appeal the decision pursuant to Article 22.

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- I. The Division may suspend a child developmental foster home license for:
  1. Up to six months during an investigation or while the licensee completes a corrective action plan.
  2. Up to 12 months due to the temporary inability of the licensee to provide services.
- J. No child can be placed in the foster home during a suspended license status.
  1. Be at least 21 years of age,
  2. Have income or resources independent of the Division room-and-board payments to meet the needs of the license applicant's family unit,
  - 3, Not have employment that conflicts with the care and supervision of adults placed by the Division,
  4. Be of reputable and honest character, and
  5. The license applicant shall submit documentation that each child living in the home has received the immunizations appropriate to the child's age and state of health unless the license applicant has submitted a signed statement that the children have not been immunized because of affiliation with a religion which is opposed to such immunizations or because the license applicant is opposed to such immunizations.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). R6-6-1018(H) reference to Article 20 corrected to Article 22 at request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1).

**R6-6-1019. Appeals**

- A. When an application for a license is denied, or a license is suspended or revoked, the Division shall notify the license applicant or licensee of the right of appeal pursuant to R6-6-2201 et seq. (Appeals and Hearings), except that appeals from the decision of a hearing officer shall be in accordance with A.R.S. § 41-1992 (Hearing Officers Powers and Duties).
- B. If the license applicant or licensee appeals a licensing decision, the denial, suspension, or revocation of the license shall not become final until the appeal decision is rendered.
- C. If the children have been removed from the child developmental foster home because of a health, welfare, or safety issue, they shall remain out of the home while the appeal is pending.
  1. Providing releases of information;
  2. Authorizing release of medical records; and
  3. Submitting to psychological, psychiatric, drug testing, or other evaluations as required by the Division.
- G. The license applicant shall provide the Division with a minimum of three references who are familiar with the family and are not related to the license applicant by blood or marriage. The Division may contact the references for further information regarding the license applicant's character and ability to care for individuals with developmental disabilities.
- H. The Division may require the license applicant to submit references from current or previous employers.
- I. All members of the household shall agree with the decision to be licensed as an adult developmental home.
- J. The license applicant shall demonstrate an understanding of and the ability to meet the emotional, physical, social, developmental, educational, and intellectual needs of individuals with developmental disabilities.
- K. The license applicant shall demonstrate the ability to provide encouragement, guidance, and support; to be sensitive to the needs of the individuals with developmental disabilities; and to protect individuals with developmental disabilities from harm.
- L. The applicant shall not have any medical or emotional problems that may prevent the person from properly caring for adults with developmental disabilities or may negatively impact on clients in the home.
  1. Following approval of the home study by the Division, the license applicant shall submit, on forms prescribed by the Division, written statements from a licensed medical practitioner for each adult living in the home. The statement shall include, at a minimum:
    - a. Confirmation that the physician has examined the adult within the last six months,
    - b. A description of the person's general physical and emotional health,
    - c. A list of all regularly prescribed medications and the purpose of the medication, and
    - d. Identification of any medical or emotional problems that may prevent the person from caring for adults with developmental disabilities or may impact on clients in the home.
  2. The Division may require the license applicant to submit physician statements as described in this Section regarding the physical and emotional health of other adults living on the premises.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). R6-6-1019(A) reference to R6-6-2001 corrected to R6-6-2201 at request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1).

**ARTICLE 11. ADULT DEVELOPMENTAL HOME LICENSE****R6-6-1101. Application for License**

- A. Married or single persons desiring to be licensed as an adult developmental home shall make written application for a license to the Division on the prescribed forms.
- B. The license applicant and any adult member of the household shall be fingerprinted for a criminal history record check as prescribed by the Division. Any adult living on the premises, not residing in the home, may be required to be fingerprinted for a criminal history record check.
- C. The license applicant and any adult member of the household shall authorize the Division to perform a background check through Adult Protective Services and Child Protective Services referral files. Any adult living on the premises may be required to authorize a background check through Adult Protective Services and Child Protective Services referral files.
- D. The license applicant and all members of the license applicant's household shall participate in interviews with the Division and the home-study process as required by the Division. The home-study process shall include:
  1. Interviews with all members of the license applicant's household.
  2. Interviews with other knowledgeable parties as the Division determines appropriate.
  3. Inspection of the home and grounds by the Arizona Department of Health Services and the Division for compliance with this Article.
- E. To be eligible for licensure as an adult developmental home provider, the license applicant shall:
  1. Following approval of the home study by the Division, the license applicant shall submit, on forms prescribed by the Division, written statements from a licensed medical practitioner for each adult living in the home. The statement shall include, at a minimum:
    - a. Confirmation that the physician has examined the adult within the last six months,
    - b. A description of the person's general physical and emotional health,
    - c. A list of all regularly prescribed medications and the purpose of the medication, and
    - d. Identification of any medical or emotional problems that may prevent the person from caring for adults with developmental disabilities or may impact on clients in the home.
  2. The Division may require the license applicant to submit physician statements as described in this Section regarding the physical and emotional health of other adults living on the premises.

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- M.** The license applicant shall attend prelicensure training as required by R6-6-1105.

**Historical Note**

Former Section R6-6-1101 repealed effective September 18, 1987. New Section R6-6-1101 adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1102. Issuing an Initial License**

- A.** The license applicant shall comply with the requirements of this Article.
- B.** Except as provided in R6-6-1104(C), a regular license is effective for one year from the date of issuance.
- C.** Based upon records, reports, and observations, if the Division determines that the license applicant may be unable to meet the physical or emotional needs of clients, the Division may require further psychological or physical evaluations, at no expense to the license applicant, to determine whether a license shall be denied.
- D.** A regular license to provide adult developmental home services is not transferable and is valid only for the licensee and the address stated on the license.

**Historical Note**

Former Section R6-6-1102 repealed effective September 18, 1987. New Section R6-6-1102 adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1103. Issuing a Renewal License**

- A.** A regular license is renewable annually for a one-year period.
- B.** The Division shall renew an adult developmental home regular license when:
1. The licensee has met the annual training requirements according to R6-6-1105;
  2. The home meets the requirements of R6-6-1101 except as noted in this subsection:
    - a. The licensee shall submit a written statement every three years from the date of initial license from a licensed medical practitioner as required by R6-6-1101(M);
    - b. References are not required for license renewal;
    - c. The adult developmental home shall receive a health inspection from the Department of Health Services every three years prior to license renewal unless otherwise indicated by this Article;
  3. Any person fingerprinted pursuant to R6-6-1101(B) and still residing in the home or on the premises shall have a criminal history record check every three years.
- C.** Based upon records, reports, and observations, if the Division determines that the license applicant for license renewal may be unable to meet the physical or emotional needs of adults with developmental disabilities, the Division shall have the authority to require further psychological or physical evaluations at no expense to the developmental home provider to determine whether to renew a license.
- D.** A license to provide adult developmental home services is not transferable and is valid only for the licensee and the address stated on the license.

**Historical Note**

Former Section R6-6-1103 repealed effective September 18, 1987. New Section R6-6-1103 adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1104. Issuing a Provisional License**

- A.** The Division may issue a provisional license for up to six months when:
1. The license applicant is temporarily unable to meet the requirements of this Article, and
  2. The Division is satisfied that the listed deficiencies can be corrected within six months or less by the license applicant.
- B.** When conditions exist which could endanger the health or safety of adults with developmental disabilities, the Division shall not issue a provisional license pursuant to A.R.S. § 36-592.
- C.** When the license applicant has met the requirements of the provisional license and a regular license is issued, the regular license is valid for one year from the date the Division issued the provisional license.
- D.** A provisional license to provide adult developmental home services is not transferable and is valid only for the licensee and the address stated on the license.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1104.01. Time-Frame for Granting or Denying a License**

For the purpose of A.R.S. § 41-1073, the Division establishes the following licensing time-frames:

1. Administrative completeness review time-frame:
  - a. For an initial license, 90 days;
  - b. For a renewal license, 30 days; and
  - c. For an amended license, 30 days.
2. Substantive review time-frame:
  - a. For an initial license, 30 days;
  - b. For a renewal license, 31 days; and
  - c. For an amended license, 10 days.
3. Overall time-frame:
  - a. For an initial license, 120 days;
  - b. For a renewal license, 61 days; and
  - c. For an amended license, 40 days.

**Historical Note**

Adopted effective February 1, 1998 (Supp. 98-1).

**R6-6-1104.02. Administrative Completeness and Substantive Review Process**

- A.** The Division shall send the license applicant a written notice within the administrative completeness review time-frame indicating that the application package is either complete or incomplete.
- B.** If the application package is incomplete, the Division shall list the missing information in the notice and ask the license applicant to supply the missing information within 60 days from the date of notice. If the license applicant fails to do so, the Division may close the file.
- C.** A license applicant whose file has been closed and who later wishes to become licensed may reapply to the Division. The administrative completeness time-frame starts over when the Division receives the written request to reapply.
- D.** When the application is complete, the Division shall complete a substantive review of the license applicant's qualifications. The Division shall:
1. Review the application form and all required documents to ensure compliance with this Article,
  2. Complete a home study as prescribed in R6-6-1101(D), and
  3. Gather additional information needed to determine the license applicant's fitness to serve as an Adult Developmental Home service provider and ability to comply with

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Adult Developmental Home requirements, which may include:

- a. Interviewing the license applicant;
  - b. Contacting references;
  - c. Verifying information provided in the application;
  - d. Visiting the license applicant's home; and
  - e. Requesting additional information, assessments, or tests as prescribed in R6-6-1101(F) and R6-6-1103(C).
- E. If a license is denied, the Division shall send a notice to the license applicant as prescribed in R6-6-1118(F) and A.R.S. § 41-1076.
- F. An applicant shall submit a license application package to DES/DDD, P.O. Box 6123, Site Code 791A, Phoenix, Arizona 85005-6123, Attention: Developmental Home Licensing Unit.

**Historical Note**

Adopted effective February 1, 1998 (Supp. 98-1).

**R6-6-1104.03. Contents of a Complete Application Package - Initial License**

An initial application package is complete when the Division has all of the following information:

1. From the license applicant, a completed application form as prescribed in R6-6-1101(A) which contains the following information:
  - a. Personally identifying information, as follows:
    - i. Name and gender,
    - ii. Date and place of birth,
    - iii. Social security number,
    - iv. Ethnicity and religious preference,
    - v. Current and previous address,
    - vi. Dates resided at previous address,
    - vii. Length of Arizona residency,
    - viii. Current marital status and marital history, and
    - ix. Any other names by which the license applicant has been known.
  - b. Personally identifying information on the license applicant's household members, as follows:
    - i. Name,
    - ii. Gender,
    - iii. Date of birth,
    - iv. Relationship to license applicant, and
    - v. Length of time living in the home.
  - c. Personally identifying information on the license applicant's children who do not live with the license applicant, including emancipated children, as follows:
    - i. Name;
    - ii. Current address;
    - iii. Date of birth; and
    - iv. Occupation or school, if currently attending.
  - d. Any current or prior licenses or certificates held by the license applicant to provide care to a child or adult, as follows:
    - i. Type of license or certificate;
    - ii. Date of each license and certificate;
    - iii. State in which each license or certificate was issued;
    - iv. Any license or certificate which was revoked, denied, voluntarily surrendered, or suspended and the circumstances; and
    - v. Name of any other agency with which the license applicant is currently licensed or certified to provide services to children or adults.
  - e. A description of the license applicant's home, as follows:

- i. The name of the school district in which the license applicant's home is located;
  - ii. Identification and description of any swimming pool, spa, fish pond, or other body of water; and
  - iii. Number of bedrooms.
- f. Information about the license applicant, as follows:
- i. Educational background;
  - ii. Employment history;
  - iii. Previous experience in providing room and board for any person;
  - iv. Any contact with CPS or APS and the circumstances;
  - v. Any arrest and the circumstances;
  - vi. Any history of mental illness or treatment for a mental illness or emotional disorder including hospitalization for alcohol, drug, or mental health issues and the circumstances;
  - vii. If currently or previously employed by the Department of Economic Security or the Division, position, title, name of the supervisor, and name of the program;
  - viii. The reason for wanting to provide care to an adult;
  - ix. Gender, age, characteristics, and special needs of the individual the license applicant would prefer to take into the home;
  - x. Any experience caring for individuals who have special needs;
  - xi. Discipline techniques used or believed appropriate; and
  - xii. Anticipated changes in the license applicant's family in the next 12 months.
- g. Information about the license applicant's household member, as follows:
- i. Any contact with CPS or APS by anyone currently or formerly residing with the license applicant and the circumstances;
  - ii. Any arrests and the circumstances;
  - iii. Any history of mental illness or treatment for a mental illness or emotional disorder including hospitalization for alcohol, drug, or mental health issues and the circumstances;
  - iv. If currently or previously employed by the Department of Economic Security or the Division, position, title, name of the supervisor, and name of the program;
  - v. Any experience caring for individuals with special needs; and
  - vi. Discipline techniques used or believed appropriate.
- h. Reference information for the license applicant, as follows:
- i. Three references who can attest to the license applicant's character and skill; and
  - ii. If the license applicant is working or has worked with children or adults with developmental disabilities, one employment reference;
- i. List of any individuals who live on the property on which the license applicant's home is located, but not in the license applicant's home.
2. From the license applicant, the following documents listed on the application form:
    - a. A completed declaration of criminal history for the license applicant and each adult household member on a Division form with the following information:

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- i. Name,
- ii. Social security number,
- iii. Date of birth,
- iv. Address,
- v. A declaration of whether the individual has committed any of the crimes listed in A.R.S. § 36-594(3) and R6-6-1118, and
- vi. Dated signature.
- b. Documentation showing that the license applicant and each adult household member have been fingerprinted;
- c. Documentation showing that the license applicant has a current driver's license, and current vehicle liability insurance as prescribed in R6-6-1112(A);
- d. A completed monthly budget on a Division form showing the license applicant's monthly income, and monthly expenses, and the circumstances for any declaration of bankruptcy;
- e. A physician's statement for the license applicant and each adult household member as prescribed in R6-6-1101(L);
- f. Documentation of current immunizations for each child living in the license applicant's home as prescribed in R6-6-1101(E)(5);
- g. Documentation that the license applicant has completed training as prescribed in R6-6-1105(A).
3. From sources other than the applicant, the documents listed on the application form, as follows:
  - a. Three letters of reference for the license applicant as prescribed in R6-6-1101(G);
  - b. If the license applicant works with children or adults with developmental disabilities, one employment letter of reference as prescribed in R6-6-1101(H);
  - c. Documentation that the license applicant and each adult household member have had a criminal history check as prescribed in R6-6-1101(B);
  - d. Documentation showing that the license applicant's home has passed:
    - i. A fire inspection as prescribed in R6-6-1111(E), and
    - ii. A health and safety inspection as prescribed in R6-6-1111(D).
  - e. Documentation that vehicles used for transporting individuals with developmental disabilities have passed a Division safety inspection to meet the safety requirements in R6-6-1112(B); and
  - f. Documentation that the CPS/APS Central Registry has been checked as prescribed in R6-6-1101(C).
- iii. Age,
- iv. Relationship to the license applicant, and
- v. School or occupation.
- c. Personally identifying information on the license applicant's children who do not live with the license applicant, including emancipated children, as follows:
  - i. Name;
  - ii. Age;
  - iii. Address; and
  - iv. Occupation or school, if currently attending.
- d. Information about the license applicant, as follows:
  - i. Any arrest or investigation for a criminal offense, including charge, and arresting agency;
  - ii. Any referral to or treatment for a psychiatric or psychological problem, including substance abuse, in the last year.
- e. Information about the license applicant's household member, including:
  - i. Any arrest or investigation for a criminal offense, including charge, and arresting agency;
  - ii. Any referral to or treatment for a psychiatric or psychological problem, including substance abuse, treatment in the last year.
- f. Any current or prior license or certificate held by the license applicant to provide care to a child or adult, as follows:
  - i. Type of license or certificate;
  - ii. Date of each license and certificate;
  - iii. State in which the license or certificate was issued;
  - iv. Any license or certificate which was revoked, denied, voluntarily surrendered, or suspended and the circumstances; and
  - v. Name of any other agency with which the license applicant is currently licensed or certified to provide services to children or adults.
- g. List of any individuals who live on the property on which the license applicant's home is located, but not in the license applicant's home;
- h. List of the household members and their relationship to the applicant and to each other;
- i. Any changes that should be made to the license conditions;
- j. Dated signature.
2. From the license applicant, the items listed in R6-6-1104.03(2)(c),(2)(d), (2)(f), and the following:
  - a. A completed declaration of criminal history for each new adult household member and, at three-year intervals, a completed declaration for all adult household members;
  - b. Documentation showing that each new adult household member has been fingerprinted and, at three-year intervals, that all adult household members have been fingerprinted;
  - c. A physician's statement every three years from the date of the initial license for the license applicant and all adult household members; and
  - d. Documentation that the license applicant has completed training as prescribed in R6-6-1105(B).
3. From sources other than the applicant, the documents listed in R6-6-1104.03(3)(d)(i), (3)(e), and (3)(f) and the following:

**Historical Note**

Adopted effective February 1, 1998 (Supp. 98-1).

**R6-6-1104.04. Contents of a Complete Application Package - Renewal License**

A license renewal application package is complete when the Division has all the following information:

1. From the license applicant, a completed renewal application form as prescribed in R6-6-1101(A) which contains the following information:
  - a. Personally identifying information, as follows:
    - i. Name,
    - ii. Address, and
    - iii. Phone number.
  - b. Personally identifying information on the license applicant's household members, as follows:
    - i. Name,
    - ii. Gender,

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- a. Documentation that each new adult household member has had a criminal history check and that all adults household members have had a criminal history check every three years; and
- b. Documentation that the license applicant's home has passed a health and safety inspection every three years since the date of the initial license.

**Historical Note**

Adopted effective February 1, 1998 (Supp. 98-1).

**R6-6-1104.05. Contents of a Complete Request for an Amended License**

A request for an amended license is complete when the Division has the following:

1. A description of the change requested to the license, and
2. Documentation that the requested change complies with this Article.

**Historical Note**

Adopted effective February 1, 1998 (Supp. 98-1).

**R6-6-1105. Training Requirements for Adult Developmental Home Providers**

- A. An applicant for an initial license as an adult developmental home provider shall meet the following training requirements:
  1. Prelicensing training in the following subjects:
    - a. Cardiopulmonary resuscitation appropriate for children and adults provided by an instructor certified in cardiopulmonary resuscitation;
    - b. First aid provided by an instructor certified in first aid; and
    - c. Orientation training of 12 to 20 hours, as prescribed by the Division.
  2. Up to ten additional hours of training based upon the needs of the license applicant or the adult placed by the Division, as determined by the Division.
- B. The licensee shall annually complete a minimum of ten hours of training, as required by the Division, prior to license renewal and must maintain cardiopulmonary resuscitation and first-aid certifications obtained for the initial license. Up to four hours of the annual training may be allowed for training related to maintenance of certificates.
- C. The licensee shall participate in additional training, as required by the Division, based upon the specific needs of the license applicant or licensee or an adult placed by the Division or shall demonstrate the ability to meet the needs of the specific client.
- D. The license applicant or licensee shall submit documentation to the Division demonstrating satisfactory completion of the training requirements.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1106. Adult Developmental Home Licensee Responsibility**

- A. The licensee shall provide the client with positive emotional support and guidance including but not limited to:
  1. Including the client in daily activities;
  2. Providing the client with positive reinforcement;
  3. Assisting the client with day-to-day concerns with school, work, friends, and family;
  4. Providing appropriate care, concern, and support;
  5. Protecting the client from exploitation; and
  6. Assisting the client in developing and fostering personal relationships.

- B. The licensee shall follow written and verbal instructions and orders from qualified professionals regarding the medical, dental, habilitation, and therapeutic needs of the client.
- C. The licensee shall provide opportunities for social and physical development appropriate to the client's abilities and interest, through recreation and leisure-time activities.
- D. The licensee shall provide opportunities for the client to pursue the client's own religious beliefs. The licensee shall not require the client to attend or participate in the licensee's religious activities or practices.
- E. The licensee shall develop an agreement with the client for shared household tasks which do not present a health or safety hazard and do not interfere with the client's school, work, day programs, or recreational activities.
- F. The licensee and any client who smokes tobacco products shall develop mutually acceptable rules regarding the smoking of tobacco products.
- G. The licensee shall provide appropriate direction in the selection of clothing while allowing individual choice.
- H. In cooperation with the client, the licensee shall plan and provide well-balanced and adequate meals to meet the nutritional needs of the client.
- I. The licensee shall ensure transportation is arranged to meet the educational, employment, medical, habilitative, therapeutic, and social needs of the client.
- J. The licensee shall make reasonable efforts to support and maintain the client's relationships with parents, guardians, other family members, and other persons important to the client's life as indicated in the ISPP.
- K. The licensee shall ensure that money designated for or earned by the client is only used for the specific purpose intended and for the benefit of the client consistent with the Individual Spending Plan.
- L. The licensee shall ensure that the client is provided opportunities to make choices regarding the client's own spending money.
- M. The licensee shall not provide residential care or respite services to children in the adult developmental home.
- N. The licensee shall provide care only for the number of clients and conditions listed on the license.
- O. The licensee shall obtain approval from the Division before accepting placements from other agencies or private parties.
- P. When the licensee also provides respite services, the licensee shall ensure that the respite placement is within the conditions stated on the license.
- Q. The licensee shall not accept roomers or boarders without prior approval of the Division.
- R. The licensee shall treat information concerning a client placed in the licensee's home and the client's family or guardian as confidential in accordance with A.R.S. § 36-568.
- S. When the client is attending school, the licensee shall encourage and promote the educational development of the client by participating in the IEP meetings, unless otherwise specified by the Division, and by advocating for the implementation of the IEP.
- T. The licensee shall participate in the ISPP meetings, shall carry out the tasks identified by the ISPP team as being the responsibility of the licensee, and shall advocate for the implementation of the ISPP.
- U. The licensee shall cooperate with the Division when a client moves from the adult developmental home. The licensee shall:
  1. Provide information including records of the client's medical and dental history, educational experience, and progress on ISPP activities.
  2. Ensure personal belongings such as usable clothing, furniture, television sets, bicycles, the personal record, and

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other items purchased specifically for the client go with the client.

3. Assist the Division is preparing the client for the move.
- V. The licensee shall assist the client in maintaining an inventory of the client's personal property such as furniture, bicycles, radios, television sets, and adaptive equipment.
- W. The licensee shall comply with the terms of the Adult Developmental Home Agreement.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1107. Behavior Management**

- A. The licensee shall comply with the Division requirements for behavior management as specified in Article 9.
- B. The licensee shall establish, with the client, house rules for sharing the living environment which are appropriate to the life experience and individuality of each client.
1. The licensee and the client shall develop and implement a fair and reasonable process for resolving disputes.
  2. The licensee shall contact the Division if a dispute cannot be resolved.
  3. The licensee shall not deprive the client of meals, shelter, or medical care.
  4. The licensee shall not allow any form of corporal or physical punishment.
  5. The licensee shall not allow the use of verbal abuse or derogatory remarks.
  6. The licensee shall identify and report to the Division behavioral issues which may impact the health, safety, or training needs of the client.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1108. Sleeping Arrangements**

The licensee shall provide appropriate, comfortable, safe, and private sleeping arrangements for each client.

1. Clients shall have their own beds and places to store clothing in the bedroom and a place for storing personal belongings.
2. The client's bedrooms shall not be unfinished rooms, hallways, or rooms which are normally used for other than sleeping arrangements by family members.
3. A client shall not share a bedroom with another person unless each person agrees to the arrangement and each client has a separate bed and space for storing clothing in the bedroom and a place for storing personal belongings.
4. A client shall not share a bedroom with a person of the opposite sex unless otherwise specified in the ISPP.
5. An adult client and a child shall not share a bedroom.
6. The licensee shall sleep within hearing distance of the client if indicated by the needs of the client.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1109. Notification Requirements**

- A. The licensee shall notify the Division of the following events:
1. Prior to building an addition to the home or structural remodeling of the home, or adding a swimming pool or spa, and shall cooperate with the Division in obtaining an

Arizona Department of Health Services inspection as prescribed in A.R.S. § 8-504 for any home additions.

2. Changes in marital status or living arrangement of the licensee.
  3. A plan to make a change in residence.
  4. Known arrests, indictments, or convictions of any household member or of persons living on the premises.
  5. Serious injury, major illness, illegal substance use or substance abuse, suicidal behavior, attempted suicide, or death of any household member. The Division may require the licensee to provide written documentation from a physician regarding the change in medical status.
  6. Changes which may impact on the ability of the licensee to meet the needs of the client.
  7. Notification shall be made to the Division prior to the addition of a household member.
  8. A temporary visitor staying more than one month.
  9. The licensee shall notify the Division prior to a change in primary caregiver or a person moving from the household who contributed to the care of the client.
- B. For adults placed by the Division in the licensee's home, the licensee shall notify the Division of incidents including but not limited to:
1. Possible abuse or neglect as per A.R.S. § 13-3620 and R6-6-1601.
  2. Hospitalizations, the intervention of a medical practitioner, or emergency medical care as a result of serious illness, injury, medication errors, or suicidal behavior.
  3. Death of the client.
  4. A client missing. A client missing must be reported to law enforcement officials and the Division as soon as the client is determined to be missing.
  5. Theft of money or property.
  6. Incidents which have involved or may potentially involve the police or media.
  7. Significant damage to client property, licensee property, state property, or the property of others.
  8. Illegal substance use or substance abuse.
- C. The licensee shall obtain Division prior approval for alternative supervision plans.
1. The licensee shall involve the client in the development of alternative supervision plans.
  2. The licensee shall ensure that alternative supervision is only provided by persons 18 years of age or older.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1110. Recordkeeping**

- A. The licensee shall maintain a record for each client of medical history, dental history, educational experiences, and progress on ISPP activities.
- B. The licensee shall obtain and provide to the Division receipts for expenditures for the client as required by the Division.
- C. The licensee shall assist the client in maintaining a personal record of mementos, photos, letters, cards, report cards, and special projects.
- D. The licensee shall keep copies of all licenses, certificates, and correspondence in a separate file to document compliance with sanitation, health, and environmental codes of state and local authorities.

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**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1111. Health and Safety Standards in an Adult Developmental Home**

- A. The licensee shall maintain the premises of the adult developmental home in a clean and sanitary condition to the degree that it does not present a health or safety hazard.
- B. The adult developmental home shall not have an accumulation of litter, rubbish, or garbage on the premises. Litter, rubbish, and garbage shall be contained in cleanable containers with lids or sealed disposable containers and shall be removed from the property not less than once a week.
- C. The licensee shall ensure that the adult developmental home is free from, or has an ongoing system to eradicate, insects, rodents, and other vermin.
- D. Before initial licensure and every three years thereafter, the adult developmental home shall be inspected and meet the safety and sanitation guidelines of the Department of Health Services unless otherwise specified by the Division.
- E. Adult developmental homes located in mobile homes shall pass an annual fire safety inspection as arranged by the Division.
- F. The licensee shall keep toxic, poisonous, hazardous, and corrosive materials in locked storage unless otherwise specified in the ISPP of each client in the household.
- G. The licensee shall keep medicines in separate locked storage unless otherwise specified in the ISPP of each client in the household.
- H. The licensee shall keep firearms in locked storage and shall keep ammunition locked separately from the firearms.
- I. Bedrooms shall have light, ventilation, and a usable and unobstructed exit to the outside in case of an emergency.
- J. Telephone service or similar two-way communication methods shall be available in the home and shall be in working order.
- K. Any permanent body of water shall be fenced and inaccessible to clients and shall meet the guidelines of the Department of Health Services unless otherwise specified by the Division.
- L. The licensee shall not allow clients in swimming pool areas or in the area of other bodies of water unless supervised by a responsible adult or as specified in the ISPP.
- M. The licensee shall store alcoholic beverages responsibly.
- N. The licensee shall ensure that smoking of tobacco products does not occur while in an enclosed area with residents who do not smoke tobacco products.
- O. The licensee shall make reasonable efforts to ensure family pets do not present a health or safety hazard to clients.
- P. The licensee shall develop a fire evacuation plan and shall periodically practice the plan with the family members. The licensee shall update the fire evacuation plan as needed based on placement changes, household member changes, and structural changes to the adult developmental home.
- Q. The licensee shall equip the adult developmental home with smoke detectors and fire extinguishers which are in good working order.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1112. Transportation**

- A. A licensee who transports clients shall have a current and valid driver's license and shall have liability insurance for any vehicle which will be used to transport clients. An Adult Develop-

mental Home household member who transports clients must be 18 years of age or older and must be identified to the Division.

- B. The licensee shall ensure that vehicles used for transporting clients are maintained in a safe operating condition.
- C. The licensee shall ensure that clients wear seat belts or use an appropriate safety restraint while being transported.
- D. A vehicle used to transport clients in wheelchairs shall also be equipped with floor-mounted seat belts and wheelchair lock-downs for each wheelchair being transported.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1113. Dual Licensure of Adult Developmental Homes**

Adult Developmental Home providers licensed by another jurisdiction, such as a county or a state agency other than the Department, or licensed by a tribal authority but located off-reservation, shall be licensed by the Division before the Division places a client in the setting.

1. To be granted a license, the setting shall meet all requirements of this Article.
2. An Adult Developmental Home, licensed by another jurisdiction, seeking licensure by the Division shall sign a release of information to provide the Division access to the licensing files of the other jurisdiction.
3. An Adult Developmental Home licensed by another jurisdiction shall not be licensed by the Division to serve more than a total of three adults regardless of the placing agency.
4. The licensee shall not accept private placements or placements from other agencies or jurisdictions without prior approval of the Division.
5. The licensee shall notify the Division of any pre-placement conference with another agency or jurisdiction.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1114. Client Rights in Adult Developmental Homes**

The licensee shall uphold and safeguard the rights of clients consistent with applicable federal and state laws, specifically including A.R.S. § 36-551.01, unless legally restricted or as addressed in the ISPP in accordance with Article 9. In addition to those rights specifically stated in statute, rights shall include, at a minimum:

1. The right to be provided choices and to express preferences which will be respected and accepted whenever appropriate and possible;
2. The right to be free from personal and financial exploitation;
3. The right to a safe, clean, and humane physical environment;
4. The right to own and have free access to personal property;
5. The right to associate with persons of the client's own choosing;
6. The right to participate in social, religious, educational, cultural, and community activities;
7. The right to manage personal financial affairs and to be taught to do so;
8. The right to the least amount of physical assistance necessary to accomplish a task;

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9. The right to privacy, including during treatment and care of personal needs and with regard to written correspondence, telephone communications, and visitations;
10. The right to have care for personal needs provided, except in cases of emergency, by a caregiver of the gender chosen by the responsible person or as specified in the ISPP; and
11. The right to be treated with dignity and respect.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1115. Exemption**

A license applicant or licensee may request from the Division an exemption of a rule contained in this Article. The request shall demonstrate that the intent of the rule will be met by alternate means and that the exemption will not endanger the lives or health of clients.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1116. Home Inspections and Monitoring**

- A. The licensee shall cooperate with the Division in assessing compliance with this Article.
- B. The licensee shall allow the Division access to the setting for home inspections and monitoring visits and shall allow the Division access to records, reports, and vehicles used to transport clients.
- C. Monitoring visits shall include, at a minimum:
  1. An annual license renewal home visit; and
  2. Two monitoring visits each year, at least one of which will be unannounced.
- D. The licensee shall comply with corrective action plans as required by the Division.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1117. Complaints**

- A. Any person who has a complaint about an adult developmental home may make the complaint known verbally or in writing to the Department.
- B. A complainant who has provided his name and address shall be notified that the complaint has been received and the notice shall indicate what investigative actions shall be taken.
- C. The Department shall investigate complaints about adult developmental homes within ten calendar days of the receipt of the complaint and shall notify the licensee of the investigation. In a case where there is reason to believe that imminent danger exists, the investigation shall be conducted immediately and the licensee shall be notified.
- D. The name or identifying characteristics of the complainant shall not be disclosed unless the complainant consents in writing to the disclosure or investigation of the complaint results in a legal proceeding and disclosure is ordered by an appropriate authority.
- E. The Department shall notify the licensee of the results of an investigation conducted pursuant to this rule and the requirement for any corrective action that the Department deems necessary.

- F. The licensee shall cooperate with the Division in completing investigations into complaints or concerns regarding the licensee and regarding clients placed in the home.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-1118. Denial, Suspension, and Revocation of Adult Developmental Home Licenses**

- A. The Division may deny, suspend, or revoke a license for violations of A.R.S. § 36-594.
- B. The Division may deny or revoke a license if a license applicant or licensee has been arrested for, convicted of, charged with, or pled no contest to any of the following criminal acts:
  1. Sexual abuse of a child or vulnerable adult,
  2. Incest,
  3. First- or second-degree murder,
  4. Kidnapping,
  5. Arson,
  6. Sexual assault,
  7. Sexual exploitation of a child or vulnerable adult,
  8. Commercial sexual exploitation of a child or vulnerable adult,
  9. Felony offenses within the previous ten years involving the manufacture or distribution of marijuana or dangerous or narcotic drugs,
  10. Robbery,
  11. Child prostitution as defined in A.R.S. § 13-3206,
  12. Child abuse or abuse of a vulnerable adult,
  13. Sexual conduct with a child,
  14. Molestation of a child or vulnerable adult,
  15. Voluntary manslaughter, or
  16. Aggravated assault.
- C. Upon notification that a member of the household or person living on the premises of an Adult Developmental Home is found to have been arrested for, convicted of, charged with, or pled no contest to any of the criminal acts listed in subsection (B), the licensee shall immediately take the following actions:
  1. Remove the person from direct contact with children;
  2. Notify the Division, unless the licensee initially received notice from the Division.
- D. If a licensee fails to comply with subsection (C), the Division shall revoke or suspend the license.
- E. If the criminal record check indicates that an individual has been convicted of or found by a court to have committed, or is reasonably believed to have committed, offenses pursuant to A.R.S. § 36-594, other than those listed in subsection (B), the Division shall consider the following factors when determining what corrective action to take against the licensee:
  1. The extent of the individual's criminal record;
  2. Length of time since the commission of the offense;
  3. Nature of the offense;
  4. Mitigating circumstances surrounding commission of the offense. The burden is on the person to demonstrate that there were mitigating circumstances;
  5. The degree of the person's participation in the offense. The burden is on the person to demonstrate that the involvement was not direct; and
  6. The extent of the person's rehabilitation, including but not limited to:
    - a. The person shall prove that probation has been completed and complete restitution or compensation for the offense has been made, and

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- b. Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling.
7. Personal references attesting to the person's rehabilitation.
- F. When an application for a license is denied, or a license is suspended or revoked, pursuant to A.R.S. § 36-594, the Division shall deliver a written notice of the action in person or send a written notice of the action by certified mail to the license applicant or licensee. The notice shall state the reasons for the denial, suspension, or revocation with reference to applicable statutes and rules.
- G. If the reason for denial, suspension, or revocation of a license involves the health, welfare, or safety of clients, the clients shall be immediately removed from the Adult Developmental Home.
- H. When a license is denied, suspended, or revoked, the license applicant or licensee has the right to appeal the decision pursuant to Article 22.
- I. The Division may suspend an Adult Developmental Home license for:
1. Up to six months during an investigation or while the licensee completes a corrective action plan.
  2. Up to 12 months due to the temporary inability of the licensee to provide services.
- J. No child can be placed in the adult developmental home during a suspended-license status.
2. ALTCS clients receiving residential services from the Division.
- B. The Division may include all services provided in calculating the cost of care for a non-ALTCS client.

**Historical Note**

Adopted as an emergency effective October 31, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). New Section R6-6-1201 adopted effective July 9, 1979 (Supp. 79-4). Repealed as an emergency effective August 12, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-4). Former Section R6-6-1201 repealed, new Section R6-6-1201 adopted as an emergency effective November 16, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R6-6-1201 repealed, new Section R6-6-1201 adopted as an emergency effective November 16, 1981 now adopted and amended as a permanent rule effective February 17, 1982 (Supp. 82-1). Correction to emergency effective August 12, 1981, should read: Former Section R6-6-1201 repealed, new Section R6-6-1201 adopted as an emergency effective August 12, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Section repealed, new Section adopted effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, effective December 1, 1996; filed in the Office of the Secretary of State November 22, 1996 (Supp. 96-4). Amended by exempt rulemaking at 10 A.A.R. 205, effective January 1, 2004 (Supp. 03-4).

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). R6-6-1118(H) reference to Article 20 corrected to Article 22 at request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1).

**R6-6-1119. Appeals**

- A. When an application for a license is denied, or a license is suspended or revoked, the Division shall notify the license applicant or licensee of the right of appeal pursuant to R6-6-2201 et seq. (Appeals and Hearings), except that appeals from the decision of a hearing officer shall be in accordance with A.R.S. § 41-1992 (Hearing Officers Powers and Duties).
- B. If the license applicant or licensee appeals a licensing decision, the denial, suspension, or revocation of the license shall not become final until the appeal decision is rendered.
- C. If the adults placed by the Division have been removed from the home because of a health, welfare, or safety issue, they shall remain out of the home while the appeal is pending.

**Historical Note**

Adopted effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). R6-6-1119(A) reference to R6-6-2001 corrected to R6-6-2201 at request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1).

**ARTICLE 12. COST OF CARE PORTION**

*Correction: See Historical Notes, R6-6-1201 through R6-6-1204, correction to Emergency Certification effective August 12, 1981 (Supp. 83-1).*

**R6-6-1201. Cost of Care Portion for Services**

- A. This Article prescribes the cost of care contribution requirements for clients, parents of minor clients, and trusts, estates, and annuities of which the client is a beneficiary. This Article applies to:
1. Non-ALTCS clients receiving any services;

**R6-6-1202. Determination of the Cost of Care Portion for Services**

- A. The Cost of Care Portion Table (Appendix A) shows the percentage of the cost of services that a client is responsible for paying.
- B. The Cost of Care Portion Table (Appendix A) also shows the percentage of the cost of services that the parent of a minor client is responsible for paying.
1. If the parents of a client are not married to each other, the Division determines the cost of care portion based on the custodial parent's income.
  2. If the parent is married to an individual who is not legally responsible for the client, the Division determines the parent's cost of care portion using the community income, plus any sole and separate income of the parent.
  3. If a parent has more than one minor client receiving services from the Division, the parent's cost of care portion shall not exceed the maximum amount the parent would be required to pay for the minor client receiving the most expensive services.

**Historical Note**

Adopted as an emergency effective October 31, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). New Section R6-6-1202 adopted effective July 9, 1979 (Supp. 79-4). Repealed as an emergency effective August 12, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-4). Former Section R6-6-1202 repealed, new Section R6-6-1202 adopted as an emergency effective November 16, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R6-6-1202 repealed, new Section R6-6-1202 adopted as an emergency effective November 16, 1981 now adopted and amended as a permanent rule effective February 17, 1982 (Supp. 82-1). Correction to emergency effective August 12, 1981, should read:

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Former Section R6-6-1202 repealed, new Section R6-6-1202 adopted as an emergency effective August 12, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Section repealed, new Section adopted effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, effective December 1, 1996; filed in the Office of the Secretary of State November 22, 1996 (Supp. 96-4). Amended by exempt rulemaking at 10 A.A.R. 205, effective January 1, 2004 (Supp. 03-4).

**R6-6-1203. Determination of the Cost of Care for Services for a Client who is the Beneficiary of an Estate, Trust, or Annuity**

- A. For a client who is the beneficiary of an estate, trust, or annuity, the cost of care for services is the actual cost of all services and programs provided by the Division until the client meets the financial eligibility requirements for federal social security supplemental income benefits or the financial eligibility requirements for the Arizona Long-term Care System.
- B. The responsible party shall pay the client's cost of care.
- C. When billing a trust, the Division is not limited to the trust income, but shall also bill the trust corpus.

**Historical Note**

Adopted as an emergency effective October 31, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). New Section R6-6-1203 adopted effective July 9, 1979 (Supp. 79-4). Repealed as an emergency effective August 12, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-4). Former Section R6-6-1203 repealed, new Section R6-6-1203 adopted as an emergency effective November 16, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R6-6-1203 repealed, new Section R6-6-1203 adopted as an emergency effective November 16, 1981 now adopted and amended as a permanent rule effective February 17, 1982 (Supp. 82-1). Correction to emergency effective August 12, 1981, should read: Former Section R6-6-1203 repealed, new Section R6-6-1203 adopted as an emergency effective August 12, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Section repealed, new Section adopted effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, effective December 1, 1996; filed in the Office of the Secretary of State November 22, 1996 (Supp. 96-4). Amended by exempt rulemaking at 10 A.A.R. 205, effective January 1, 2004 (Supp. 03-4).

**R6-6-1204. Provisions for Cost of Care Portion from Clients Receiving Residential Services**

- A. The cost of care portion for a client receiving residential services is based on the amount of income or benefits the client receives, including Social Security, Veteran's, and Railroad Retirement benefits.
- B. The client shall keep either 12% or \$50 of the client's monthly income or benefits, whichever is greater, until the client's personal savings reach the maximum amount allowed by the federal agency providing the benefits, before federal benefits are cut off.
- C. When a client reaches the maximum allowable limit of personal savings as described in subsection (A) the client's monthly cost of care portion is the actual cost of residential services until the client's personal savings drop below the maximum allowable limit.

- D. If a client receives a retroactive benefit payment, the client shall retain the greater of either 12% of the total amount of the retroactive payments or the maximum amount allowed by the benefit source before federal benefits are cut off. The client shall pay the rest of the retroactive benefit payments, up to the actual cost of the client's residential services, to the Division to cover the months of placement in residential services for which the benefits are being paid.
- E. If a client receiving residential services uses the client's own income to pay either all or part of the rent, food, or utilities, the Division shall reduce the cost of care for the client by the documented amount the client pays for these items.

**Historical Note**

Adopted as an emergency effective October 31, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). New Section R6-6-1204 adopted effective July 9, 1979 (Supp. 79-4). Repealed as an emergency effective August 12, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-4). Former Section R6-6-1204 repealed, new Section R6-6-12-04 adopted as an emergency effective November 16, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R6-6-1204 repealed, new Section R6-6-1204 adopted as an emergency effective November 16, 1981 now adopted and amended as a permanent rule effective February 17, 1982 (Supp. 82-1). Correction to emergency effective August 12, 1981, should read: Former Section R6-6-1204 repealed, new Section R6-6-1204 adopted as an emergency effective August 12, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Former Section R6-6-1204 renumbered to R6-6-1206, new Section R6-6-1204 adopted effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Former Section R6-6-1204 repealed, new Section renumbered from R6-6-1205 and amended under an exemption from A.R.S. Title 41, Chapter 6 effective December 1, 1996; filed in the Office of the Secretary of State November 22, 1996 (Supp. 96-4). Amended by exempt rulemaking at 10 A.A.R. 205, effective January 1, 2004 (Supp. 03-4). Amended by exempt rulemaking at 16 A.A.R. 1136, effective on June 15, 2010 at request of the Department, Office File No. M10-462, filed December 6, 2010 (Supp. 10-2).

**R6-6-1205. Billing for the Cost of Care Portion**

- A. Each year, prior to July 1, the Division shall send a financial information form to each responsible party.
- B. The responsible party shall return the financial information form to the Division within 30 days of the date of the request.
- C. The responsible party shall provide the following information on the financial information form:
  1. Client name;
  2. Parent or responsible party name;
  3. Parent or responsible party address;
  4. Declaration of income from the prior year federal tax return;
  5. Declaration of the assets of the client's estate, including any amount held in trust or in an annuity for the benefit of the client; and
  6. Date and signature of the individual filling out the form.
- D. The responsible party shall provide documentation that fully discloses the assets of the client's estate and a copy of the prior year federal tax return.
- E. If the responsible party does not return the financial information form, the Division shall charge 100% of the cost of care. If a change occurs in financial circumstances or family size

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during any year, the responsible party shall contact the Division to amend the financial statement.

- F. The Division shall determine the cost of care portion based on the cost of care and the financial information submitted by the responsible party.
- G. Along with the monthly billing, the Division shall provide the responsible party with the information used to determine the cost of care for the client.
- H. If the Division does not receive the required cost of care portion for two consecutive months, the Office of Accounts Receivable and Collections shall send a delinquent notice to the responsible party. If the responsible party fails to make the overdue payment within 30 days after the date of the delinquent notice, the Office of Accounts Receivable and Collections may take further action to collect, including requesting a change in the representative payee for benefits or referring the case to the Office of the Attorney General.
- I. The Division reserves the right to terminate services to a client for nonpayment.

**Historical Note**

Adopted effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Former Section R6-6-1205 repealed, new Section renumbered from R6-6-1206 and amended under an exemption from A.R.S. Title 41, Chapter 6 effective December 1, 1996; filed in the Office of the Secretary of State November 22, 1996 (Supp. 96-4). Amended by

exempt rulemaking at 10 A.A.R. 205, effective January 1, 2004 (Supp. 03-4).

**R6-6-1206. Review and Appeal**

- A. If a responsible party wants a review of the decision for the cost of care portion, the responsible party shall request the review, either orally or in writing, within 10 business days of the date on the billing statement to the Assistant Director, Division of Developmental Disabilities.
- B. A responsible party who contests the cost of care portion assessed according to this Article may request a fiscal administrative review pursuant to R6-6-1801 et seq. The responsible party may file a formal appeal as described in R6-6-2201 et seq. after exhausting the fiscal administrative review.

**Historical Note**

Section R6-6-1206 renumbered from R6-6-1204 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Former Section R6-6-1206 renumbered to R6-5-1205, new Section adopted effective December 1, 1996; filed in the Office of the Secretary of State November 22, 1996 (Supp. 96-4). Amended by exempt rulemaking at 10 A.A.R. 205, effective January 1, 2004 (Supp. 03-4). R6-6-1206(B) reference to R6-6-2001 corrected to R6-6-2201 at request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1).

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Appendix A. Cost of Care Portion Table

**DEPARTMENT OF ECONOMIC SECURITY  
DIVISION OF DEVELOPMENTAL DISABILITIES  
COST OF CARE PORTION TABLE  
Income based on 200% of federal poverty guidelines issued January 23, 2009**

PERCENT TO PAY OF SERVICES RECEIVED	FAMILY SIZE									
	1	2	3	4	5	6	7	8	9	10
	MONTHLY FAMILY INCOME									
0.0%	\$0.00 to \$1,805	\$0.00 to \$2,428	\$0.00 to \$3,052	\$0.00 to \$3,675	\$0.00 to \$4,298	\$0.00 to \$4,922	\$0.00 to \$5,545	\$0.00 to \$6,168	\$0.00 to \$6,792	\$0.00 to \$7,415
15.0%	\$1,806 to \$2,058	\$2,429 to \$2,768	\$3,053 to \$3,479	\$3,676 to \$4,190	\$4,299 to \$4,900	\$4,923 to \$5,611	\$5,546 to \$6,321	\$6,169 to \$7,032	\$6,793 to \$7,743	\$7,416 to \$8,453
20.0%	\$2,059 to \$2,310	\$2,769 to \$3,108	\$3,480 to \$3,906	\$4,191 to \$4,704	\$4,901 to \$5,502	\$5,612 to \$6,300	\$6,322 to \$7,098	\$7,033 to \$7,895	\$7,744 to \$8,693	\$8,454 to \$9,491
25.0%	\$2,311 to \$2,563	\$3,109 to \$3,448	\$3,907 to \$4,333	\$4,705 to \$5,219	\$5,503 to \$6,104	\$6,301 to \$6,989	\$7,099 to \$7,874	\$7,896 to \$8,759	\$8,694 to \$9,644	\$9,492 to \$10,529
30.0%	\$2,564 to \$2,816	\$3,449 to \$3,788	\$4,334 to \$4,761	\$5,220 to \$5,733	\$6,105 to \$6,705	\$6,990 to \$7,678	\$7,875 to \$8,650	\$8,760 to \$9,623	\$9,645 to \$10,595	\$10,530 to \$11,567
35.0%	\$2,817 to \$3,069	\$3,789 to \$4,128	\$4,762 to \$5,188	\$5,734 to \$6,248	\$6,706 to \$7,307	\$7,679 to \$8,367	\$8,651 to \$9,427	\$9,624 to \$10,486	\$10,596 to \$11,546	\$11,568 to \$12,606
40.0%	\$3,070 to \$3,321	\$4,129 to \$4,468	\$5,189 to \$5,615	\$6,249 to \$6,762	\$7,308 to \$7,909	\$8,368 to \$9,056	\$9,428 to \$10,203	\$10,487 to \$11,350	\$11,547 to \$12,497	\$12,607 to \$13,644
45.0%	\$3,322 to \$3,574	\$4,469 to \$4,808	\$5,616 to \$6,042	\$6,763 to \$7,277	\$7,910 to \$8,511	\$9,057 to \$9,745	\$10,204 to \$10,979	\$11,351 to \$12,213	\$12,498 to \$13,448	\$13,645 to \$14,682
50.0%	\$3,575 to \$3,827	\$4,809 to \$5,148	\$6,043 to \$6,470	\$7,278 to \$7,791	\$8,512 to \$9,112	\$9,746 to \$10,434	\$10,980 to \$11,755	\$12,214 to \$13,077	\$13,449 to \$14,398	\$14,683 to \$15,720
55.0%	\$3,828 to \$4,079	\$5,149 to \$5,488	\$6,471 to \$6,897	\$7,792 to \$8,306	\$9,113 to \$9,714	\$10,435 to \$11,123	\$11,756 to \$12,532	\$13,078 to \$13,940	\$14,399 to \$15,349	\$15,721 to \$16,758
60.0%	\$4,080 to \$4,332	\$5,489 to \$5,828	\$6,898 to \$7,324	\$8,307 to \$8,820	\$9,715 to \$10,316	\$11,124 to \$11,812	\$12,533 to \$13,308	\$13,941 to \$14,804	\$15,350 to \$16,300	\$16,759 to \$17,796
65.0%	\$4,333 to \$4,585	\$5,829 to \$6,168	\$7,325 to \$7,751	\$8,821 to \$9,335	\$10,317 to \$10,918	\$11,813 to \$12,501	\$13,309 to \$14,084	\$14,805 to \$15,668	\$16,301 to \$17,251	\$17,797 to \$18,834
70.0%	\$4,586 to \$4,837	\$6,169 to \$6,508	\$7,752 to \$8,178	\$9,336 to \$9,849	\$10,919 to \$11,520	\$12,502 to \$13,190	\$14,085 to \$14,861	\$15,669 to \$16,531	\$17,252 to \$18,202	\$18,835 to \$19,872
75.0%	\$4,838 to \$5,090	\$6,509 to \$6,848	\$8,179 to \$8,606	\$9,850 to \$10,364	\$11,521 to \$12,121	\$13,191 to \$13,879	\$14,862 to \$15,637	\$16,532 to \$17,395	\$18,203 to \$19,153	\$19,873 to \$20,910
80.0%	\$5,091 to \$5,343	\$6,849 to \$7,188	\$8,607 to \$9,033	\$10,365 to \$10,878	\$12,122 to \$12,723	\$13,880 to \$14,568	\$15,638 to \$16,413	\$17,396 to \$18,258	\$19,154 to \$20,103	\$20,911 to \$21,948
85.0%	\$5,344 to \$5,596	\$7,189 to \$7,528	\$9,034 to \$9,460	\$10,879 to \$11,393	\$12,724 to \$13,325	\$14,569 to \$15,257	\$16,414 to \$17,190	\$18,259 to \$19,122	\$20,104 to \$21,054	\$21,949 to \$22,987
90.0%	\$5,597 to \$5,848	\$7,529 to \$7,868	\$9,461 to \$9,887	\$11,394 to \$11,907	\$13,326 to \$13,927	\$15,258 to \$15,946	\$17,191 to \$17,966	\$19,123 to \$19,985	\$21,055 to \$22,005	\$22,988 to \$24,025
95.0%	\$5,849 to \$6,101	\$7,869 to \$8,208	\$9,888 to \$10,315	\$11,908 to \$12,422	\$13,928 to \$14,528	\$15,947 to \$16,635	\$17,967 to \$18,742	\$19,986 to \$20,849	\$22,006 to \$22,956	\$24,026 to \$25,063
100.0%	\$6,102 Or greater	\$8,209 Or greater	\$10,316 Or greater	\$12,423 Or greater	\$14,529 Or greater	\$16,636 Or greater	\$18,743 Or greater	\$20,850 Or greater	\$22,957 Or greater	\$25,064 Or greater

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PERCENT TO PAY OF SERVICES RECEIVED	FAMILY SIZE									
	11	12	13	14	15	16	17	18	19	20
	MONTHLY FAMILY INCOME									
0.0%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	to \$8,038	to \$8,662	to \$9,285	to \$9,908	to \$10,532	to \$11,155	to \$11,778	to \$12,402	to \$13,025	to \$13,648
15.0%	\$8,039	\$8,663	\$9,286	\$9,909	\$10,533	\$11,156	\$11,779	\$12,403	\$13,026	\$13,649
	to \$9,164	to \$9,874	to \$10,585	to \$11,296	to \$12,006	to \$12,717	to \$13,427	to \$14,138	to \$14,849	to \$15,559
20.0%	\$9,165	\$9,875	\$10,586	\$11,297	\$12,007	\$12,718	\$13,428	\$14,139	\$14,850	\$15,560
	to \$10,289	to \$11,087	to \$11,885	to \$12,683	to \$13,481	to \$14,278	to \$15,076	to \$15,874	to \$16,672	to \$17,470
25.0%	\$10,290	\$11,088	\$11,886	\$12,684	\$13,482	\$14,279	\$15,077	\$15,875	\$16,673	\$17,471
	to \$11,414	to \$12,300	to \$13,185	to \$14,070	to \$14,955	to \$15,840	to \$16,725	to \$17,610	to \$18,496	to \$19,381
30.0%	\$11,415	\$12,301	\$13,186	\$14,071	\$14,956	\$15,841	\$16,726	\$17,611	\$18,497	\$19,382
	to \$12,540	to \$13,512	to \$14,485	to \$15,457	to \$16,429	to \$17,402	to \$18,374	to \$19,347	to \$20,319	to \$21,291
35.0%	\$12,541	\$13,513	\$14,486	\$15,458	\$16,430	\$17,403	\$18,375	\$19,348	\$20,320	\$21,292
	to \$13,665	to \$14,725	to \$15,785	to \$16,844	to \$17,904	to \$18,964	to \$20,023	to \$21,083	to \$22,143	to \$23,202
40.0%	\$13,666	\$14,726	\$15,786	\$16,845	\$17,905	\$18,965	\$20,024	\$21,084	\$22,144	\$23,203
	to \$14,791	to \$15,937	to \$17,084	to \$18,231	to \$19,378	to \$20,525	to \$21,672	to \$22,819	to \$23,966	to \$25,113
45.0%	\$14,792	\$15,938	\$17,085	\$18,232	\$19,379	\$20,526	\$21,673	\$22,820	\$23,967	\$25,114
	to \$15,916	to \$17,150	to \$18,384	to \$19,619	to \$20,853	to \$22,087	to \$23,321	to \$24,555	to \$25,790	to \$27,024
50.0%	\$15,917	\$17,151	\$18,385	\$19,620	\$20,854	\$22,088	\$23,322	\$24,556	\$25,791	\$27,025
	to \$17,041	to \$18,363	to \$19,684	to \$21,006	to \$22,327	to \$23,649	to \$24,970	to \$26,292	to \$27,613	to \$28,934
55.0%	\$17,042	\$18,364	\$19,685	\$21,007	\$22,328	\$23,650	\$24,971	\$26,293	\$27,614	\$28,935
	to \$18,167	to \$19,575	to \$20,984	to \$22,393	to \$23,802	to \$25,210	to \$26,619	to \$28,028	to \$29,437	to \$30,845
60.0%	\$18,168	\$19,576	\$20,985	\$22,394	\$23,803	\$25,211	\$26,620	\$28,029	\$29,438	\$30,846
	to \$19,292	to \$20,788	to \$22,284	to \$23,780	to \$25,276	to \$26,772	to \$28,268	to \$29,764	to \$31,260	to \$32,756
65.0%	\$19,293	\$20,789	\$22,285	\$23,781	\$25,277	\$26,773	\$28,269	\$29,765	\$31,261	\$32,757
	to \$20,417	to \$22,001	to \$23,584	to \$25,167	to \$26,750	to \$28,334	to \$29,917	to \$31,500	to \$33,084	to \$34,667
70.0%	\$20,418	\$22,002	\$23,585	\$25,168	\$26,751	\$28,335	\$29,918	\$31,501	\$33,085	\$34,668
	to \$21,543	to \$23,213	to \$24,884	to \$26,554	to \$28,225	to \$29,895	to \$31,566	to \$33,236	to \$34,907	to \$36,578
75.0%	\$21,544	\$23,214	\$24,885	\$26,555	\$28,226	\$29,896	\$31,567	\$33,237	\$34,908	\$36,579
	to \$22,668	to \$24,426	to \$26,184	to \$27,942	to \$29,699	to \$31,457	to \$33,215	to \$34,973	to \$36,731	to \$38,488
80.0%	\$22,669	\$24,427	\$26,185	\$27,943	\$29,700	\$31,458	\$33,216	\$34,974	\$36,732	\$38,489
	to \$23,793	to \$25,639	to \$27,484	to \$29,329	to \$31,174	to \$33,019	to \$34,864	to \$36,709	to \$38,554	to \$40,399
85.0%	\$23,794	\$25,640	\$27,485	\$29,330	\$31,175	\$33,020	\$34,865	\$36,710	\$38,555	\$40,400
	to \$24,919	to \$26,851	to \$28,784	to \$30,716	to \$32,648	to \$34,581	to \$36,513	to \$38,445	to \$40,378	to \$42,310
90.0%	\$24,920	\$26,852	\$28,785	\$30,717	\$32,649	\$34,582	\$36,514	\$38,446	\$40,379	\$42,311
	to \$26,044	to \$28,064	to \$30,083	to \$32,103	to \$34,123	to \$36,142	to \$38,162	to \$40,181	to \$42,201	to \$44,221
95.0%	\$26,045	\$28,065	\$30,084	\$32,104	\$34,124	\$36,143	\$38,163	\$40,182	\$42,202	\$44,222
	to \$27,170	to \$29,276	to \$31,383	to \$33,490	to \$35,597	to \$37,704	to \$39,811	to \$41,918	to \$44,025	to \$46,131
100.0%	\$27,171	\$29,277	\$31,384	\$33,491	\$35,598	\$37,705	\$39,812	\$41,919	\$44,026	\$46,132
	Or greater	Or greater	Or greater	Or greater	Or greater	Or greater	Or greater	Or greater	Or greater	Or greater

To determine amount to pay:

1. Find family size, include any children out of the home that are receiving Division services.
2. Find Monthly Family Income (round to the nearest whole dollar).
3. Move down the correct family size column to the cell that contains the range corresponding to the monthly family income.
4. From that cell move to the far left to the percent pay column.
5. The percent is the percent you are required to pay monthly for the services your family / child received.
6. The payment amount is not to exceed the cost of services provided.

**Historical Note**

Adopted effective February 17, 1982 (Supp. 82-1). Former Appendix A repealed, new Appendix A adopted effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Former Appendix A repealed, new Appendix A adopted

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effective December 1, 1996, under an exemption from A.R.S. Title 41, Chapter 6; filed in the Office of the Secretary of State, November 22, 1996 (96-4). Amended by exempt rulemaking at 10 A.A.R. 205, effective January 1, 2004 (Supp. 03-4). Former Appendix A repealed; new Appendix A made by exempt rulemaking at 16 A.A.R. 314, effective January 25, 2010 (Supp. 10-1).

### ARTICLE 13. COORDINATION OF BENEFITS; THIRD-PARTY PAYMENTS

#### R6-6-1301. Information Required at Initial Application and Redetermination

During the initial application process and at each redetermination for eligibility, the applicant shall provide the Division with information on all health insurance which covers, or is available to cover, the person to receive services including, but not limited to, the name of the policyholder, the policyholder's relationship to the person to receive services, social security number of the policyholder, the name, phone number, and address of the insurer, the policy number, and extent of insurance coverage.

##### Historical Note

Adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Section repealed, new Section R6-6-1301 renumbered from R6-6-1302 effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

#### R6-6-1302. Assignment of Rights to Benefits

- A. As a condition of eligibility, each applicant shall assign to the Division rights to health insurance payments applicable to the person to receive services and agree to cooperate with the Division in obtaining medical support and insurance payments pursuant to A.R.S. § 36-596.
- B. If the responsible person refuses to assign health insurance benefits to the Division, the Division shall deny or terminate eligibility for the client.
- C. If the policy holder is someone other than the responsible person and refuses to cooperate with the requirements of this Article, the Division may deny or terminate eligibility for the client.

##### Historical Note

Adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-1302 renumbered to Section R6-6-1301, new Section R6-6-1302 renumbered from R6-6-1303 effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

#### R6-6-1303. Collections of Health Insurance

- A. Service providers shall identify and pursue collections of reimbursement from all probable sources of third-party liability.
- B. Service providers shall identify and notify the Division of any and all changes in health insurance information for clients.
- C. The Division is the payor of last resort for DD/non-ALTCS Division-covered services, unless specifically prohibited by law. Service providers shall submit all claims covered by health insurance to the insurer prior to submitting a claim for payment to the Division.
- D. When submitting a claim for payment to the Division, service providers shall include a copy of the explanation of benefits from the health insurer. The Division shall not pay for covered services if the client has insurance coverage which will pay for the service.
- E. If a responsible person receives an insurance or benefit payment for a service provided through the Division, the amount received as payment is immediately due and payable to the Division. If the amount is not paid, the Division shall terminate eligibility.

##### Historical Note

Adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-1303 renumbered to Section R6-6-1302, new Section R6-6-1303 renumbered from R6-6-1304 and amended effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

#### R6-6-1304. Monitoring and Compliance

The Division shall monitor third-party payments made to service providers. The Division shall determine whether a service provider is in compliance with the requirements set forth in this Article by inspecting documents to assess:

1. Verifiability and reliability;
2. Appropriateness of recovery attempt;
3. Timeliness of billing;
4. Accounting for reimbursements;
5. Auditing of receipts;
6. Provision of claim and explanation of benefits to the Division;
7. Auditing of receipts;
8. Other monitoring which the Division deems reasonably necessary to ensure compliance.

##### Historical Note

Adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-1304 renumbered to Section R6-6-1303, new Section R6-6-1304 renumbered from R6-6-1305 and amended effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

#### R6-6-1305. Notification of Liens

- A. When a service provider renders service to a client, the service provider shall notify the Division with the information listed in R6-6-1305(B) not later than five days after rendering such service for an injury or condition for which a third party may be liable.
- B. The service provider shall send the Division the following information:
  1. Name of service provider;
  2. Address of service provider;
  3. Name of client;
  4. Client's social security or Division identification number;
  5. Address of the responsible person;
  6. Date of client's injury or accident;
  7. Amount due for care of client;
  8. Name of the county in which injuries were sustained; and
  9. Names and addresses of all persons, firms or corporations and their insurance carriers which the responsible person asserts may be liable for damages.

##### Historical Note

Adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-1305 renumbered to Section R6-6-1304, new Section R6-6-1305 renumbered from R6-6-1306 and amended effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

#### R6-6-1306. Renumbered

##### Historical Note

Adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section

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R6-6-1306 renumbered to Section R6-6-1305 effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**ARTICLE 14. EXPIRED****R6-6-1401. Expired****Historical Note**

Adopted effective January 13, 1981 (Supp. 81-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 14, effective July 31, 2015 (Supp. 15-4).

**ARTICLE 15. STANDARDS FOR CERTIFICATION OF HOME AND COMMUNITY-BASED SERVICE (HCBS) PROVIDERS****R6-6-1501. Definitions**

The following definitions apply in this Article:

1. "AHCCCS provider type" means the descriptive category of service types assigned to a provider by AHCCCS during the registration process for individuals or agencies providing services to ALTCS clients.
2. "Applicant" means an agency or individual that has applied to the Division to become certified or to renew a certificate as an HCBS service provider.
3. "Certified instructor" means an individual who has a current certificate to provide instruction for CPR, First Aid, or client intervention techniques.
4. "Client intervention techniques" means methods which provide an individual with defensive skills for dealing with aggressive behaviors and is designed to reduce the chance of physical injury and property destruction and to prevent reinforcement of those aggressive behaviors.
5. "Compliance audit" means an examination of service provider records and interviews which the Division conducts to assess compliance with HCBS certification.
6. "Corrective action plan" means a specific activity prescribed by the Division which directs the service provider to remedy violations of HCBS certification requirements within a specific period of time.
7. "Direct services" means services provided specifically for the benefit of an individual client.
8. "Direct care" means those services provided to a client which result in attention to personal needs and supervision of the client.
9. "HCBS" or "Home and Community-based Services" means one or more of the following services provided to clients:
  - a. Attendant Care,
  - b. Day Treatment and Training for Children or Adults,
  - c. Habilitation,
  - d. Home Health Aide,
  - e. Home Health Nurse,
  - f. Hospice Care,
  - g. Housekeeping-Chore/Homemaker,
  - h. Non-Emergency Transportation,
  - i. Occupational Therapy,
  - j. Personal Care,
  - k. Physical Therapy,
  - l. Respiratory Therapy,
  - m. Respite services,
  - n. Speech/Hearing Therapy,
  - o. Supported Employment,
  - p. Other comparable services as approved by the AHCCCS Director.
10. "HCBS certificate" means the document the Division issues to a service provider or applicant as evidence that the applicant shall provide a copy of any other license or cer-

service provider has met the Home and Community-based Service standards in this Article.

11. "HCBS certification" means the process by which the Division ensures that an applicant or service provider meets the standards in this Article for Home and Community-based Services.
12. "Housekeeping" means providing assistance in the performance of activities related to routine household maintenance at a client's residence but does not include any direct care for the client.
13. "Immediate relative" means natural parent, stepparent, adoptive parent, natural child, natural sibling, adoptive child, adoptive sibling, stepchild, stepbrother, stepsister, spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.
14. "Medicare certified" means having received Medicare certification through the Arizona Department of Health Services.

**Historical Note**

Adopted effective May 12, 1982 (Supp. 82-3). Section R6-6-1501 repealed effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). New Section adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1502. Applicability**

This Article applies to an individual or agency that provides or wishes to provide Home and Community-based Services to clients.

**Historical Note**

Adopted effective May 12, 1982 (Supp. 82-3). Section R6-6-1501 repealed effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). New Section adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1503. Requirement for an HCBS Certificate**

- A. No individual shall provide Home and Community-based Services to clients unless the Division has certified the individual in accordance with this Article and, if providing services through ALTCS, registered the applicant with AHCCCS.
- B. The Division shall register the applicant with AHCCCS, if required, as part of HCBS certification.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1504. Application for an Initial HCBS Certificate**

- A. To become certified to provide a Home and Community-based Service to a client, an applicant shall file an application for an HCBS certificate with the Division and meet the requirements of this Article.
  - B. The applicant shall complete application for an initial HCBS certificate on a form prescribed by the Division. The form shall contain the following information:
    1. Name,
    2. Home and business address,
    3. Specific services for which application is made,
    4. Phone number,
    5. Social security number or tax identification number,
    6. Self declaration regarding criminal history of offenses listed in R6-6-1514(B),
    7. Description of work experience, and
    8. Description of educational background.
- certificate required by this Article to provide a specific service.

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- D. Except as provided by R6-6-1521, the applicant shall provide forms for three letters of reference to individuals who are not the applicant's family members and who have personal knowledge about the applicant's employment history, education, or character. The letters will be on forms provided by the Division. The individual giving the reference shall send the completed reference form to the Division.
  - E. The Division shall be in receipt of a completed application and three letters of reference before considering certification of the applicant.
  - F. The applicant shall provide the Division with written documentation signed by the person performing the inspection of the completion of the requirements of R6-6-1505.
  - G. Within 60 days of receipt of an application, the Division shall notify the applicant of any missing documents or information. The Division shall allow 30 days from the date of notification to the applicant for submission of the remaining documents or information and, if not received at that time, may close the record.
  - H. The Division shall conduct background checks with Child Protective Services and Adult Protective Services on applicants when information in the application indicates a past history of child or elder abuse. The Division shall utilize the background check information when determining whether to certify an applicant.
- 1. Review the application form and all required documents to ensure compliance with this Article,
  - 2. Conduct CPS/APS background checks, and
  - 3. Verify previous licensure or certification.
- E. If an HCBS certificate is denied, the Division shall send a notice to the applicant and include the following information:
    - 1. The reason for the denial with citation to supporting statutes or rules,
    - 2. The applicant's right to appeal the denial, and
    - 3. The time periods for appealing the denial.
  - F. An applicant shall submit an HCBS certificate application package to DES/DDD, P.O. Box 6123, Site Code 791A, Phoenix, Arizona 85005-6123, Attention: HCBS Certification Unit.

**Historical Note**

Adopted effective February 1, 1998 (Supp. 98-1).

**R6-6-1504.03. Contents of a Complete Application Package - Initial Certificate**

An initial application package is complete when the Division has all of the following information:

- 1. From the applicant, a completed application form as prescribed in R6-6-1504 (B); and
- 2. From the applicant, the following documents listed on the application form:
  - a. A completed AHCCCS provider participation agreement form as prescribed in R6-6-1503 which contains the following information:
    - i. The applicant's name, social security number or tax identification number, and business address;
    - ii. Terms of the agreement between the provider and AHCCCS; and
    - iii. Signature of the applicant.
  - b. A completed declaration of criminal history as prescribed in R6-6-1504(B)(6) on a Division form which contains the following information:
    - i. Name of the applicant,
    - ii. Social security number,
    - iii. Date of birth,
    - iv. Applicant address,
    - v. A declaration of whether or not the applicant has committed any of the crimes listed in R6-6-1514, and
    - vi. Dated signature.
  - c. Documentation showing that fingerprints have been taken as prescribed in R6-6-1506;
  - d. Documentation showing current CPR training as prescribed in R6-6-1520;
  - e. Documentation showing current First Aid training as prescribed in R6-6-1520;
  - f. Documentation showing Article 9 review as prescribed in R6-6-1520;
  - g. Documentation showing that the applicant has a current driver's license, vehicle registration, and liability insurance as prescribed in R6-6-1520(D);
  - h. Copies of any applicable professional license or certification as prescribed in R6-6-1504(C); and
  - i. AHCCCS provider registration form as prescribed in R6-6-1503 which contains the following information:
    - i. Name, social security number, and Federal Employer Identification (FEI) number of the applicant;
    - ii. Physical and mailing address of the applicant;
    - iii. Telephone number and telefacsimile number, if applicable for the applicant;

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1504.01. Time-Frame for Granting or Denying an HCBS Certificate**

For the purpose of A.R.S. § 41-1073, the Division establishes the following HCBS certificate time-frames:

- 1. Administrative completeness review time-frame:
  - a. For an initial certificate, 60 days;
  - b. For a renewal certificate, 25 days; and
  - c. For an amended certificate, 25 days.
- 2. Substantive review time-frame:
  - a. For an initial certificate, 60 days;
  - b. For a renewal certificate, 5 days; and
  - c. For an amended certificate, 5 days.
- 3. Overall time-frame:
  - a. For an initial certificate, 120 days;
  - b. For a renewal certificate, 30 days; and
  - c. For an amended certificate, 30 days.

**Historical Note**

Adopted effective February 1, 1998 (Supp. 98-1).

**R6-6-1504.02. Administrative Completeness and Substantive Review Process**

- A. The Division shall send the applicant a written notice within the administrative completeness review time-frame indicating that the application package is either complete or incomplete.
- B. If the application package is incomplete, the Division shall list the missing information in the notice and ask the applicant to supply the missing information within 30 days from the date of notice. If the applicant fails to do so, the Division may close the file.
- C. An applicant whose file has been closed and who later wishes to become certified may reapply to the Division. The administrative completeness time-frame starts over when the Division receives the written request to reapply.
- D. When the application is complete, the Division shall complete a substantive review of the applicant's qualification. The Division shall:

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- iv. Categories of service provided;
  - v. Changes from the prior year, if necessary;
  - vi. AHCCCS provider identification number;
  - vii. Districts and counties served;
  - viii. Place and date of birth; and
  - ix. Dated signature.
3. From sources other than the applicant, the documents listed on the application form as follows:
- a. Three letters of reference as prescribed in R6-6-1504(D), and
  - b. Documentation showing that the applicant's home or office has passed:
    - i. A fire inspection as prescribed in R6-6-1505, and
    - ii. A health and safety inspection as prescribed in R6-6-1505.

**Historical Note**

Adopted effective February 1, 1998 (Supp. 98-1).

**R6-6-1504.04. Contents of a Complete Application Package - Renewal Certificate**

A renewal application is complete when the Division has all the following information:

- 1. From the applicant, the following items:
  - a. AHCCCS provider registration form;
  - b. Documentation of current CPR and First Aid training, current driver's license, and applicable professional licenses and certifications, if prior documentation has expired;
  - c. A completed declaration of criminal history every three years since the date of initial certification; and
  - d. Documentation that fingerprints have been taken at three-year intervals.
- 2. From sources other than the applicant, documentation that the applicant's home or office has passed a fire inspection every two years since the date of initial certification.

**Historical Note**

Adopted effective February 1, 1998 (Supp. 98-1).

**R6-6-1504.05. Contents of a Complete Request for an Amended Certificate**

A request for an amended HCBS certificate is complete when the Division has the following information:

- 1. AHCCCS provider registration form, and
- 2. Documentation to support the requested change.

**Historical Note**

Adopted effective February 1, 1998 (Supp. 98-1).

**R6-6-1505. Setting Requirements for HCBS Service Providers**

- A. Except as provided by R6-6-1521, the applicant shall cooperate with an initial health and safety inspection by ensuring the residence or facility which the applicant owns, rents, or leases, and in which the services are to be provided, if other than the client's home is fully accessible to an inspector approved by the Division. The health and safety inspection focuses on such areas as general appearance and cleanliness of the residence or facility, heating and cooling, ventilation, lighting, safety hazards, swimming pools, yard, and the storage of toxic materials and medicines.
- B. Except as provided by R6-6-1521, the applicant shall have a fire department or individual approved by the Division perform a fire inspection at the time of initial application and every two years after, on each residence or facility which the applicant owns, rents, or leases, and in which services are to be

provided, unless the services are provided in the client's home. The applicant shall maintain the results of the fire inspection on file.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1506. Fingerprinting Requirements**

- A. Except as otherwise provided by R6-6-1521, each applicant shall be fingerprinted by:
  - 1. Filing a request with the Department on a form prescribed by the Department and paying the applicable fees; or
  - 2. Filing a request with an agency authorized by state or federal statute to obtain fingerprints, paying the applicable fees, and having the fingerprints forwarded to the Department of Economic Security's Office of Special Investigations, located in Phoenix, Arizona.
- B. Except as otherwise provided by R6-6-1521, the following individuals shall be fingerprinted for a criminal record check at the time of initial application or initial employment, and every three years from the date of clearance, thereafter:
  - 1. All applicants, including individuals and agency administrators;
  - 2. Direct-care staff;
  - 3. Supervisors of direct-care staff; and
  - 4. All individuals age 18 and above who reside in the home when services are to be delivered in the applicant or service provider's home.
- C. Each applicant who has been fingerprinted shall maintain a file which includes:
  - 1. A clearance letter from the Department dated within six months of the date the fingerprints were taken; or
  - 2. A copy of a letter sent by the service provider to the Division stating that the clearance letter was not received within the required six months.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1507. Application for an HCBS Certificate Renewal**

- A. The Division shall send a notice of renewal to the service provider 60 days prior to the expiration of the HCBS certificate.
- B. Not more than 30 days and not less than 10 days prior to the expiration date of a current HCBS certificate, an applicant shall apply to the Division for renewal on a form provided and prescribed by the Division. The form shall contain the following information:
  - 1. Name;
  - 2. Home and business address;
  - 3. Social security number or tax identification number;
  - 4. AHCCCS registration number;
  - 5. Phone number; and
  - 6. Any services which the applicant wishes to:
    - a. Provide in addition to services currently on the HCBS certificate; or
    - b. Delete from services currently on the HCBS certificate.
- C. The applicant shall include a copy of current licenses and training as required by this Article.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1508. Issuing an HCBS Certificate**

- A. The Division shall issue a new or renewal HCBS certificate to the applicant when it determines that:

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1. The applicant meets the fingerprinting requirements provided by R6-6-1506;
  2. Each applicant and the direct-care staff of a contracted agency possess any license, have completed any training, and have the professional experience required by this Article; and
  3. The applicant demonstrates the ability, knowledge, experience, and fitness through personal references and past history to provide these services.
- B.** The HCBS certificate shall specify the services the applicant is certified to provide.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1509. Duration of an HCBS Certificate**

- A.** An initial HCBS certificate is valid for one year from the date of issuance or a lesser period if so specified on the HCBS certificate.
- B.** A renewal HCBS certificate is valid for one year from the date of issuance or a lesser period if so specified on the HCBS certificate.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).  
Amended effective June 4, 1998 (Supp. 98-2).

**R6-6-1510. Amending an HCBS Certificate**

- A.** A service provider shall request an amendment to the HCBS certificate when any of the following information or circumstances change:
1. Name, address, or telephone number;
  2. Addition of a service to the Division's service contract;
  3. Deletion of a service to the Division's service contract;
  4. Change in the Tax ID#; or
  5. Change in AHCCCS provider type.
- B.** The service provider shall file a request for amendment not more than 30 days after the change by sending a written request to the Division.
- C.** The Division shall mail the service provider written notice of amendment approval or denial within 30 days of receipt of the written request.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1511. Maintenance of an HCBS Certificate**

- During the term of the HCBS certificate, each service provider shall keep the following requirements current:
1. Fingerprinting as provided by R6-6-1506;
  2. Licensure, training, and professional experience as required in this Article; and
  3. Records, as provided by R6-6-1519.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1512. Compliance Audit of HCBS Service Providers**

- A.** The Division shall conduct a compliance audit of each HCBS service provider's records at least every two years. The Division shall schedule with the service provider the record audit at least two business days in advance.
- B.** The Division may conduct an unscheduled compliance audit as a result of a complaint or noncompliance issue.
- C.** The individual or contracted agency shall cooperate with the compliance audit conducted by the Division by:

1. Making available the following information to the Division:
  - a. Fingerprint clearance letters for each individual as provided by R6-6-1506(B);
  - b. Written documentation of completion of a current Cardiopulmonary Resuscitation (CPR) certificate for each individual service provider and direct-care staff as provided by R6-6-1520(A)(1)(b);
  - c. Written documentation of current First-aid training for each individual service provider and direct-care staff as provided by R6-6-1520(A)(1)(c);
  - d. Written documentation that each individual service provider and direct-care staff has reviewed Article 9, except as provided by R6-6-1521;
  - e. Copies of three references for each direct-care staff as provided by R6-6-1504(D);
  - f. Written documentation showing that each individual service provider and direct-care staff has completed training in client intervention techniques as provided by R6-6-1520(C);
  - g. Written documentation showing that the individual providing service has received an orientation to the specific needs of each client served prior to the delivery of service, as provided by R6-6-1520(A)(1)(a);
  - h. A copy of a current valid driver's license, valid registration, and current liability insurance coverage as required by A.R.S. Title 28, Chapter 3, 4, and 7 for each individual providing transportation for a client;
  - i. Written documentation of any other training required by this Article; and
  - j. Written documentation of the date of hire for each direct-care staff of a contracted agency.
2. Allowing the Division to interview employees; and
3. Participating in the compliance audit entrance and exit conferences with Division employees.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1513. Complaints**

- A.** Any person who has a complaint about an HCBS service provider may register an oral or written complaint with the Division.
- B.** If the complainant provides his or her name and address at the time the complaint is registered, the Division shall, within 30 days, send the complaining party notice that the complaint was received and of the action to be taken on the complaint.
- C.** The Division shall investigate complaints about the HCBS service provider within 10 calendar days of the receipt of the complaint. The Division shall notify the service provider that an investigation is in progress and provide an opportunity for the service provider to relate any information known regarding the complaint. If the Division has reasonable cause to believe that imminent danger exists, the Division shall conduct the investigation immediately, report to the appropriate authorities, if applicable, and provide notice to the service provider that an investigation is in progress.
- D.** The Division shall notify the service provider of the results of an investigation through a summary of the investigative findings conducted pursuant to this rule and any corrective action. The Division may release the summary investigative findings by request to the responsible person or client, unless prohibited by A.R.S. §§ 41-1959 and 36-568.01.

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- E. Complaints are not considered a formal grievance. A grievance may be filed with the Division pursuant to R6-6-1801 et seq.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1514. Denial, Suspension, or Revocation of an HCBS Certificate**

- A. The Division may deny, suspend or revoke an HCBS certificate or an amendment to an HCBS certificate for any one or a combination of the following:
1. An applicant or service provider refuses to cooperate in providing information as required in this Article; or
  2. An applicant or service provider violates applicable provisions of Articles 1, 9, 15, and 16.
- B. The Division may deny or revoke an HCBS certificate if an applicant, individual service provider, or agency administrator has been convicted of, pled no contest to, or is currently awaiting trial on any of the following criminal acts:
1. Sexual abuse of a child or vulnerable adult,
  2. Incest,
  3. First- or second-degree murder,
  4. Kidnapping,
  5. Arson,
  6. Sexual assault,
  7. Sexual exploitation of a child or vulnerable adult,
  8. Commercial sexual exploitation of a child or vulnerable adult,
  9. Felony offenses within the previous 10 years involving the manufacture or distribution of marijuana or dangerous or narcotic drugs,
  10. Robbery,
  11. Child prostitution as defined in A.R.S. § 13-3206,
  12. Child abuse or abuse of a vulnerable adult,
  13. Sexual conduct with a child,
  14. Molestation of a child or vulnerable adult,
  15. Voluntary manslaughter, or
  16. Aggravated assault.
- C. Upon notification that an agency employee is found to have been convicted of, awaiting trial on, or pled no contest to any of the criminal acts listed in R6-6-1514(B), an agency shall immediately take the following actions:
1. Remove the employee from direct contact with clients; and
  2. Notify the Division, unless the agency initially received notice from the Division.
- D. If an agency fails to comply with R6-6-1514(C), the Division may deny or revoke the agency HCBS certificate.
- E. Upon notification that an individual service provider has been convicted of, pled no contest to, or is currently awaiting trial on any of the criminal acts listed in R6-6-1514(B), the Division shall immediately take the following action to assure that the individual service provider has no direct contact with the client:
1. Prohibit the service provider from rendering services to the client,
  2. Notify the responsible person, and
  3. Prevent further authorization for service with the service provider.
- F. If the criminal records check pursuant to R6-6-1506(B) indicates that an individual service provider, agency administrator, a direct-care staff person or the supervisor of a direct-care staff person has been convicted of or found by a court to have committed, or is reasonably believed to have committed, the offenses listed in A.R.S. § 36-594, other than those listed in

R6-6-1514(B), the Division shall consider the following factors when determining what action to take regarding HCBS certification:

1. The extent of the individual's criminal record;
  2. Length of time since the commission of the offense;
  3. Nature of the offense;
  4. Mitigating circumstances surrounding commission of the offense;
  5. The degree of the individual's participation in the offense;
  6. The extent of the individual's rehabilitation, including but not limited to:
    - a. Completion of all terms of probation, and
    - b. Payment of all restitution or compensation for the offense, and
    - c. Evidence of positive action to change criminal behavior such as completion of a drug treatment program or counseling,
    - d. References attesting to the individual's rehabilitation;
  7. The individual has the burden of providing evidence of mitigating factors listed in subsection (F).
- G. If the reason for denial, suspension, or revocation of a certificate involves a threat to the health, welfare, or safety of clients, the service provider shall not render services to a client.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).  
Typographical correction made to subsection reference in R6-6-1514(F)(7) (Supp. 96-4).

**R6-6-1515. Corrective Action Plan**

- A. In lieu of revocation or suspension, the Division may require a service provider to implement a corrective action plan to correct HCBS certification deficiencies when:
1. Allowing the service provider to continue services is in the best interest of the clients; and
  2. The client's health, safety, or welfare will not be jeopardized.
- B. The following conditions may result in a request for corrective action:
1. Certificate in CPR or training in First Aid for an individual service provider or direct-care staff is not current;
  2. Written documentation of an orientation to the specific needs of each client is not available;
  3. Required training is not documented or not completed; or
  4. Fire inspection cannot be obtained within the time provided by R6-6-1505(B). The burden is on the service provider to document the inability to obtain a fire inspection.
- C. The Division shall notify the service provider in writing of each deficiency, the corrective action to be taken, and the deadlines for all corrective action.
- D. The service provider shall develop a corrective action plan and submit it to the Division.
- E. If the service provider does not provide the Division with written documentation showing the completion of corrective action by the deadlines in the notice of deficiency, the Division may revoke or suspend the HCBS certificate pursuant to R6-6-1514.
- F. The Division's decision to require a corrective action plan is not subject to administrative review pursuant to R6-6-1516.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1516. Right to Administrative Review**

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- A. An applicant or service provider may request an administrative review pursuant to R6-6-1801 et seq. when the Division denies, suspends or revokes an HCBS certificate.
  - B. The Division shall provide written notice at the time of the action to the applicant or service provider of the right to an administrative review.
  - C. An appeal of any decision rendered in an administrative review shall be conducted in accordance with R6-6-2201 et seq., "Appeals and Hearings."
  - D. An appeal of the decision of a hearing officer is conducted in accordance with A.R.S. § 41-1992.
  - E. When a service provider timely appeals the decision to suspend or revoke an HCBS certificate, pursuant to R6-6-2201 et seq., revocation or suspension shall not become effective until the final administrative or judicial decision is rendered, except for suspensions made under A.R.S. § 41-1064(C).
- B. The records shall include the following items:
    1. Verification of fingerprints taken as provided by R6-6-1506, a copy of the clearance letter provided by R6-6-1506(C)(1) and the declaration regarding criminal history provided by R6-6-1504(B)(6);
    2. Written documentation of a current certificate for CPR and training in First Aid;
    3. Current license and any other certificate required by this Article;
    4. Written documentation that any training required in this Article has been completed;
    5. Proof that each employee is at least 18 years old;
    6. Reference letters for each direct-care staff and supervisor of direct-care staff of an agency;
    7. Written documentation that each service provider or direct-care staff has the experience required in this Article; and
    8. Copies of all other documents required by this Article.
  - C. Each individual making a written entry into personnel or client records shall initial the entry. All entries shall be:
    1. Legible,
    2. Typed or written in ink,
    3. Dated, and
    4. Factual and correct.
  - D. All training documentation shall be signed and dated by the trainer or individual designated to confirm training documentation.
  - E. If required records are kept in more than one location, the service provider shall maintain a list indicating the location of the records.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4). R6-6-1516(C) and (E) references to R6-6-2001 corrected to R6-6-2201 at request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1).

**R6-6-1517. Reporting Obligations of HCBS Service Providers**

- A. If the following types of incidents occur while a client is in the direct care of a service provider, the service provider shall immediately report to the Division:
  1. The death of a client;
  2. Alleged neglect or abuse of a client;
  3. An incident related to a client that involves law enforcement personnel, emergency services, emergency medical care, the media, or emergency medical techniques;
  4. Suicide attempts by a client; and
  5. Community complaints about a client.
- B. The service provider shall report a missing client to law enforcement officials and the Division as soon as the service provider determines that the client is missing.
- C. The service provider shall cooperate in any investigation by obtaining and providing any available information related to the incident to the Department or a law enforcement agency conducting the investigation.
- D. The report shall include at a minimum:
  1. The full name of the client,
  2. The name and phone number of the individual making the report, and
  3. A summary of the circumstances.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1518. Rights of Clients**

All service providers shall observe the rights of clients listed in A.R.S. § 36-551.01 and A.A.C. R6-6-102.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1519. Records**

- A. Each service provider shall maintain, as required in this Article, the applicable records listed in subsection (B). Each individual service provider shall maintain his or her own records and may do so by making arrangements with the Division to keep current records on file with the Division. Each agency service provider shall maintain these records for all agency employees as required by this Article.
- B. All individual service providers providing direct care to clients shall complete the training and orientation listed in R6-6-

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1520. Basic Qualifications, Training, and Responsibilities**

- A. The following minimum requirements apply to all agency service providers:
  1. When a Home and Community-based Service is delivered, a direct-care staff who has completed the following required training and orientation shall be present, except as provided by R6-6-1521:
    - a. Orientation to the specific needs of the client being served;
    - b. CPR to meet the needs of the client and provided by a certified instructor;
    - c. First aid, provided by a certified instructor unless the direct-care staff is a licensed registered nurse (R.N.), LPN, Certified Nursing Assistant, or a Physical, Occupational, Respiratory, or a Speech/Hearing therapist; and
    - d. Article 9 review.
  2. A direct-care staff shall complete the following training before working alone with clients. The training shall occur no later than 90 calendar days from the date of hire with the agency, except as provided by R6-6-1521:
    - a. CPR, provided by a certified instructor to meet the needs of the client served;
    - b. First aid, provided by a certified instructor, unless the direct-care staff is a licensed R.N., LPN, Certified Nursing Assistant, or a Physical, Occupational, Respiratory, or a Speech/Hearing therapist; and
    - c. Article 9 Review.
- B. All individual service providers providing direct care to clients shall complete the training and orientation listed in R6-6-

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1520(A)(1) prior to delivering services, except as provided by R6-6-1521:

- C. Each individual service provider and direct care staff of an agency shall complete client intervention techniques training if indicated in the ISPP or requested by the parent or guardian. CIT training shall be provided by a certified instructor.
- D. Each individual service provider and direct-care staff of an agency who transports clients shall maintain a current valid driver's license, valid registration, and current liability insurance coverage as required by A.R.S. Title 28, Chapters 3, 4, and 7.
- E. When providing housekeeping services, an individual or direct-care staff is exempt from the requirements of R6-6-1520.
- F. Each service provider and direct-care staff shall comply with Article 9, except R6-6-902(B) does not apply when services are provided in the client's home.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1521. Additional Qualifications for Attendant Care Services**

- A. An individual who wishes to provide Attendant Care services and is not an immediate relative of the client shall comply with this Article in order to obtain an HCBS certificate.
- B. The Division shall not compensate a spouse to provide Attendant Care services to the other spouse.
- C. Immediate relatives may provide Attendant Care services except as required in subsection (B), and a client's natural, adoptive, or stepparent may only provide Attendant Care services to a client who is 21 years of age or older.
- D. When a client is age 21 years or older and a parent provides Attendant Care services, the parent shall apply for an HCBS certificate and shall have:
  - 1. A current CPR certificate,
  - 2. Current training in First Aid, and
  - 3. Training in such other subjects as indicated in the ISPP.
- E. When a client's immediate relative other than the client's parent, provides the client with Attendant Care services, the immediate relative shall apply for an HCBS certificate and shall have:
  - 1. Current CPR certificate,
  - 2. Current training in First Aid,
  - 3. Written documentation of a health and safety inspection unless the services are provided in the client's home,
  - 4. Written documentation of a fire inspection unless the services are provided in the client's home, and
  - 5. Such other training as indicated in the ISPP.
- F. An immediate relative shall comply with the fingerprinting requirements in R6-6-1506 when:
  - 1. The client is under age 18, and
  - 2. The client is age 18 or older and does not live with the immediate relative providing Attendant Care services.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1522. Additional Qualifications for Day Treatment and Training Services**

In addition to the general requirements in R6-6-1520, each individual who provides Day Treatment and Training services shall:

- 1. Have at least three months' experience in conducting group or individual activities related to specific developmental, habilitative, or recreational programs, or be supervised by an individual with such experience; and

- 2. Have completed training, approved by the Division, in early childhood development when working with children who are under age 6.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1523. Additional Qualifications for Habilitation Services**

In addition to the general requirements in R6-6-1520, each direct care staff of an agency and each individual service provider who provides Habilitation services shall:

- 1. Have at least three months' experience implementing and documenting performance in individual programs;
- 2. Have both three months' experience in providing either respite or personal care, and have received training, approved by the Division, in implementing and documenting performance; or
- 3. Perform three months of habilitation services under the direct supervision of an individual who is qualified to provide habilitation under subsection (1) or (2).

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1524. Additional Qualifications for Home Health Aide Services**

In addition to the general requirements in R6-6-1520, only a Medicare-certified home health agency shall perform Home Health Aide services.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1525. Additional Qualifications for Home Health Nurse Services**

- A. In this Section, "not available" means that the Division has made an effort to procure Home Health Nurse services through a Medicare-certified home health agency but one cannot be contracted with in the geographic location to provide these services.
- B. In addition to the general requirements in R6-6-1520, Home Health Nurse services shall be provided through:
  - 1. A Medicare-certified home health agency; or
  - 2. A home health agency licensed by the state of Arizona which only allows an R.N. to provide nursing service, if a Medicare-certified home health agency is not available; or
  - 3. An independent R.N. currently licensed to practice professional nursing by the Arizona Board of Nursing, if a Medicare-certified home health agency is not available.
- C. An R.N. or an L.P.N. who is supervised by an R.N. shall provide home health nursing. Services may be provided through a Medicare-certified home health agency, a licensed home health agency, or by an independent nurse currently licensed to practice professional nursing by the Arizona Board of Nursing.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1526. Additional Qualifications for Hospice Services**

In addition to the general requirements in R6-6-1520, services shall be provided by a Hospice:

- 1. Licensed by the Arizona Department of Health Services, and

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2. Certified by Medicare.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1527. Additional Qualifications for Housekeeping Services**

In addition to the general requirements in this Article, each individual who provides housekeeping services shall receive an orientation to the specific housekeeping needs of the client.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1528. Additional Qualification for Occupational Therapy Services**

In addition to the general requirements in R6-6-1520, each individual who provides Occupational Therapy services shall be currently licensed as an Occupational Therapist by the state of Arizona, Board of Occupational Therapy Examiners.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1529. Additional Qualifications for Personal Care Services**

In addition to the general requirements in R6-6-1520, each individual who provides Personal Care services shall:

1. Have at least three months experience in providing assistance to an individual to meet essential personal physical needs, such as showering, bathing, toileting, and eating; and
2. Complete training approved by the Division in home accident prevention.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1530. Additional Qualifications for Physical Therapy Services**

In addition to the general requirements in R6-6-1520, each individual who provides Physical Therapy services shall be currently licensed as a Physical Therapist by the state of Arizona, Board of Physical Therapy Examiners.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1531. Additional Qualifications for Respiratory Therapy Services**

In addition to the general requirements in R6-6-1520, each individual who provides Respiratory Therapy services shall be currently licensed as a Respiratory Therapist by the state of Arizona, Board of Respiratory Care Examiners.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1532. Additional Qualifications for Respite Services**

In addition to the general requirements in R6-6-1520, each individual who provides Respite services shall have at least three months' experience in providing assistance to an individual to meet essential personal physical needs as described in R6-6-1529.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**R6-6-1533. Additional Qualifications for Speech/Hearing Therapy Services**

In addition to the general requirements in R6-6-1520, each individual who provides Speech/Hearing Therapy services shall:

1. Have a Master's degree in speech-language pathology,
2. Have a Certificate of Clinical Competence from the American Speech and Hearing Association, and
3. Have a current membership card from the American Speech-Language Hearing Association.

**Historical Note**

Adopted effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4).

**ARTICLE 16. ABUSE AND NEGLECT****R6-6-1601. Reporting Procedures**

- A. Any employee of an agency contracting with the Department to provide services (service provider) who must physically defend self or others against a client's aggressive behavior shall use the minimum amount of force necessary to control the situation and shall immediately report the incident to the employee's supervisor or the District Program Manager and record the incident in the daily log or client record.
- B. Any employee of a service provider who injures a client shall immediately report the incident to the employee's supervisor or the District Program Manager and record the incident in the daily log or client incident record.
- C. Any employee of a service provider who observes abusive treatment or neglect of a client shall intervene on the client's behalf and shall immediately report the incident to the employee's supervisor or the District Program Manager and record the incident in the daily log or client incident record.
- D. All cases of possible abusive treatment or neglect of a client shall be reported immediately by an employee of a service provider to his supervisor or the District Program Manager and the employee shall record the incident in the daily log or client incident record.
- E. An employee of a service provider shall report to the employee's supervisor or the District Program Manager any situation in which another employee intimidates a client, parent, guardian, or fellow employee in connection with or to prevent the reporting of any incident described above.
- F. Whenever an employee of a service provider reports to the employee's supervisor an incident as described above, that supervisor shall report the incident immediately to the District Program Manager.

**Historical Note**

Adopted effective June 23, 1981 (Supp. 81-3). Amended effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-1602. Investigation**

- A. Upon receipt of an incident report, the District Program Manager shall initiate an investigation of the incident.
- B. The supervisor to whom a case of possible abusive treatment or neglect of a minor client is reported shall refer the matter immediately to Child Protective Services for investigation.

**Historical Note**

Adopted effective June 23, 1981 (Supp. 81-3). Amended effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-1603. Medical Evaluation**

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- A. The employees of a service provider immediately shall refer any client who appears to have been abused, neglected, or injured for medical evaluation by nursing staff. If nursing staff is unavailable, the client shall be referred immediately to a licensed physician.
- B. If the nursing staff, during the course of any medical evaluation, notes any injury to a client which is not clearly due to an accidental cause, it shall arrange for the client to be seen immediately by a licensed physician. The physician shall examine the client for signs of neglect and abusive treatment and send a written report to the District Program Manager within seven days.

**Historical Note**

Adopted effective June 23, 1981 (Supp. 81-3). Amended effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**ARTICLE 17. EXPIRED****R6-6-1701. Expired****Historical Note**

Adopted effective April 30, 1981 (Supp. 81-2). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Amended effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-1702. Expired****Historical Note**

Adopted effective April 30, 1981 (Supp. 81-2). Amended effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-1703. Expired****Historical Note**

Adopted effective April 30, 1981 (Supp. 81-2). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-1704. Expired****Historical Note**

Adopted effective April 30, 1981 (Supp. 81-2). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Amended effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-1705. Expired****Historical Note**

Adopted effective April 30, 1981 (Supp. 81-2). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**R6-6-1706. Expired****Historical Note**

Adopted effective April 30, 1981 (Supp. 81-2). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Section expired under

A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

**ARTICLE 18. ADMINISTRATIVE REVIEW****R6-6-1801. Definitions**

In addition to the definitions in Article 1 of this Chapter, the following definitions apply to this Article:

1. "Action" means:
  - a. Denial or termination of eligibility for Division services;
  - b. The imposition of or increase in financial contribution to cost of services determined under Article 12 of this Chapter;
  - c. The denial or limited authorization of a requested service solely funded by state dollars including the type or level of service;
  - d. The reduction or termination of a previously authorized service solely funded by state dollars; or
  - e. The denial, suspension, or revocation of a Home and Community-based Services (HCBS) certificate under Article 15 of this Chapter.
2. "Administrative Decision" means the Division's written decision resulting from an Administrative Review.
3. "Appeal" means a request for a hearing pursuant to Article 22 under this Chapter to adjudicate the Division's Administrative Decision or proceeding pursuant to R6-6-1808(B)(1).
4. "Applicant" means an adult, guardian of an adult, or a parent or guardian of a minor, who has applied for eligibility for Division services.
5. "Day" means calendar day unless otherwise specified.
6. "Department" means the Arizona Department of Economic Security.
7. "Division" means the Division of Developmental Disabilities within the Department.
8. "HCBS" and "Home and Community-based Services" mean the same as in R6-6-1501.
9. "Member" means an individual enrolled with the Division.
10. "Representative" means an individual authorized in writing by the Requestor to represent the Requestor during the Administrative Review process.
11. "Requestor" means an Applicant, Member, other Responsible Person, or Home and Community-based Services (HCBS) certificate applicant or holder affected by an Action.
12. "Responsible Person" means the same as in A.R.S. § 36-551.
13. "Working Day" means 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding state observed holidays.

**Historical Note**

Adopted effective March 8, 1983 (Supp. 83-2). Section repealed, new Section adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-1801 repealed, new Section R6-6-1801 renumbered from R6-6-1802 and amended effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). R6-6-1801(A) reference to R6-6-2001 corrected to R6-6-2201 at request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1). Section repealed; new Section made by final rulemaking at 23 A.A.R. 3350, effective January 27, 2018 (Supp. 17-4).

**R6-6-1802. Applicability**

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This Article establishes an Administrative Review process for a Requestor challenging a Division Action. This Article applies only to:

1. Division eligibility;
2. Programs and services provided through the Division that are not funded by Medicaid (Title XIX of the Social Security Act); and
3. Home and Community-based Services (HCBS) certificates pursuant to Arizona Administrative Code, Title 6, Chapter 6, Article 15.

**Historical Note**

Adopted effective March 8, 1983 (Supp. 83-2). Section repealed, new Section adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-1802 renumbered to R6-6-1801, new Section R6-6-1802 renumbered from R6-6-1803 and amended effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Section repealed; new Section made by final rulemaking at 23 A.A.R. 3350, effective January 27, 2018 (Supp. 17-4).

**R6-6-1803. Notice**

- A. When taking an Action, the Division shall give written notice to the Applicant, Member, other Responsible Person, Home and Community-based Services (HCBS) certificate applicant or holder subject to the Action, or the person's representative, if applicable.
- B. The notice shall include the following:
  1. The Action the Division has taken or intends to take;
  2. The specific reason for the Action;
  3. The effective date of the Action, if applicable;
  4. The right to request Administrative Review; and
  5. The procedures for requesting Administrative Review.

**Historical Note**

Adopted effective March 8, 1983 (Supp. 83-2). Section repealed, new Section adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-1803 renumbered to R6-6-1802, new Section R6-6-1803 renumbered from R6-6-1804 effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). R6-6-1803 reference to R6-6-2001 corrected to R6-6-2201 at request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1). Section repealed; new Section made by final rulemaking at 23 A.A.R. 3350, effective January 27, 2018 (Supp. 17-4).

**R6-6-1804. Who May File a Request for Administrative Review**

The following persons may request an Administrative Review:

1. A Requestor; or
2. A Representative. If a Representative is acting on behalf of the Member or Applicant, the Representative shall submit a valid Health Information Portability and Accountability Act authorization. The Representative may not charge a fee for the representation unless the Representative is the Member's or Applicant's attorney.

**Historical Note**

Adopted effective March 8, 1983 (Supp. 83-2). Section repealed, new Section adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-1804 renumbered to R6-6-1803, new Section R6-6-1804 renumbered from R6-6-1805 effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Section repealed; new Section made by final rulemaking

at 23 A.A.R. 3350, effective January 27, 2018 (Supp. 17-4).

**R6-6-1805. Filing a Request for Administrative Review**

- A. A Requestor or Representative shall file a request for Administrative Review with the Division no later than 30 days following the date of the notice.
- B. A Requestor or Representative may request an Administrative Review orally or in writing, including mail, email, fax, and hand-delivered hard copy.
- C. The Division shall consider the request for Administrative Review filed on the date that the Division received the request as established by a date stamp on the request or other record of receipt. In the absence of a date stamp or other record of receipt:
  1. If the request is transmitted via United States Postal Service, the date received shall be shown by the post mark, or postage meter mark of the envelope.
  2. If the request is transmitted via facsimile and there is no record of receipt, then the date received shall be shown by the date on the written request.
- D. The Division shall send the Requestor or Representative who filed the request a written acknowledgement of receipt of the request for Administrative Review within five working days of receiving the request.

**Historical Note**

Adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-1805 renumbered to R6-6-1804, new Section R6-6-1805 renumbered from R6-6-1806 effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). R6-6-1805 reference to R6-6-2001 corrected to R6-6-2201 at request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1). Section repealed; new Section made by final rulemaking at 23 A.A.R. 3350, effective January 27, 2018 (Supp. 17-4).

**R6-6-1806. Contents of a Request for Administrative Review**

- A. A request for Administrative Review shall include:
  1. Identification of the Action;
  2. Reason for the request for administrative review, including why the Requestor disagrees with the Action;
  3. Desired resolution; and
  4. Written consent of the Applicant, Member, or Responsible Person, when applicable.
- B. The Division shall consider additional supporting documentation submitted by the Requestor or Representative within 10 days of the file date of the request for an Administrative Review. The Division may consider additional supporting documentation submitted by the Requestor or Representative more than 10 days from the file date of the request for an Administrative Review.

**Historical Note**

Adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-1806 renumbered to R6-6-1805 effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). New Section made by final rulemaking at 23 A.A.R. 3350, effective January 27, 2018 (Supp. 17-4).

**R6-6-1807. Denial of a Request for Administrative Review**

The Division shall deny a request for Administrative Review upon determination that:

1. The request is untimely;
2. The request does not meet the requirements in R6-6-1806(A);

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3. The request is not based on an Action; or
4. The Action is based solely on a change in federal or state law, rule, or regulation adversely affecting some or all Applicants or Members.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 3350, effective January 27, 2018 (Supp. 17-4).

**R6-6-1808. Time-frame for Completing Administrative Review**

- A. The Division shall mail a written Administrative Decision to the Requestor or Representative no later than 30 days after the Division receives the request for an Administrative Review, unless a longer period is mutually agreed upon in writing.
- B. If the Requestor or Representative does not receive an Administrative Decision within 30 days of the date on the acknowledgement of the request for Administrative Review, the Requestor or Representative may:
  1. Consider the Action upheld and file an Appeal under Article 22 of this Chapter; or
  2. Wait for the Division to issue an Administrative Decision and file an Appeal within the time-frame provided in Article 22 of this Chapter.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 3350, effective January 27, 2018 (Supp. 17-4).

**R6-6-1809. Content of an Administrative Decision**

- A. The Division shall ensure the written Administrative Decision includes the results of the Administrative Review and the date it was completed.
- B. For an Administrative Review not resolved wholly in favor of the Requestor, the Administrative Decision shall contain:
  1. The right to request an Appeal under Article 22 of this Chapter, and how to make the request;
  2. The right of a Member or Representative to request continuation of the Member's service under R6-6-1811 while the Appeal is pending, and how to make the request; and
  3. The factual and legal basis for the decision.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 3350, effective January 27, 2018 (Supp. 17-4).

**R6-6-1810. Initial Determination of Ineligibility**

When the Division denies eligibility and a Requestor or Representative requests an Administrative Review, the Division shall not authorize services until a final administrative or judicial decision establishes eligibility.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 3350, effective January 27, 2018 (Supp. 17-4).

**R6-6-1811. Continuation of Services During the Administrative Review Process**

- A. The Division shall continue authorizing a Member's service solely funded by the state if:
  1. The Member or the Member's Representative files a timely request for Administrative Review;
  2. The request for Administrative Review involves the termination, suspension, or reduction of a previously authorized service or termination of eligibility for Division services;
  3. The period covered by the original authorization has not expired; and

4. The Member or the Member's Representative requests continuation of services at the time of the request for Administrative Review.

- B. If a request is made under subsection (A) and the Division continues the Member's service while the Administrative Review is pending, the Division shall continue services until:
  1. The Member or the Member's Representative withdraws the request for Administrative Review,
  2. The Member or the Member's Representative fails to file a timely Appeal for hearing under Article 22 of this Chapter,
  3. Final administrative or judicial resolution of the subject matter in the request for Administrative Review occurs and it is in the Division's favor, or
  4. The time-period or service limits of a previously authorized service have been met.

- C. The Division shall take the Action as specified in the written notice if the request for Administrative Review is untimely.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 3350, effective January 27, 2018 (Supp. 17-4).

**R6-6-1812. Continuation of Home and Community-based Services (HCBS) Certificates during the Administrative Review Process**

When an HCBS certificate holder timely files a request for an Administrative Review regarding a decision to suspend or revoke an HCBS certificate, the revocation or suspension shall not become effective, unless the Division finds that the public health, safety, or welfare imperatively requires emergency action under A.R.S. § 41-1064, until:

1. There is an Administrative Decision, or the Action is considered upheld under R6-6-1808(B)(1), and the Requestor does not file a timely Appeal under Article 22 of this Chapter; or
2. If there is a timely Appeal under Article 22 of this Chapter, a final administrative or judicial decision is rendered.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 3350, effective January 27, 2018 (Supp. 17-4).

**R6-6-1813. Appeals and Hearings**

A Requestor shall have the right to an Appeal under Article 22 of this Chapter if:

1. The Requestor is dissatisfied with the Administrative Decision; or
2. The Action is considered upheld pursuant to R6-6-1808(B)(1).

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 3350, effective January 27, 2018 (Supp. 17-4).

**ARTICLE 19. RECODIFIED****R6-6-1901. Recodified****Historical Note**

Adopted effective October 16, 1981 (Supp. 81-5). Repealed effective August 29, 1991 (Supp. 91-3). Adopted by emergency action effective September 13, 1995, pursuant to A.R.S. § 41-1026, in effect for a maximum 180 days (Supp. 95-3). Adopted again by emergency action effective March 12, 1996, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 96-1). Adopted with changes effective April 17,

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1996 (Supp. 96-2). Section recodified to R6-6-2001 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-1902. Recodified****Historical Note**

Adopted effective October 16, 1981 (Supp. 81-5). Repealed effective August 29, 1991 (Supp. 91-3). Adopted by emergency action effective September 13, 1995, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 95-3). Adopted again by emergency action effective March 12, 1996, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 96-1). Adopted with changes effective April 17, 1996 (Supp. 96-2). Section recodified to R6-6-2002 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-1903. Recodified****Historical Note**

Adopted by emergency action effective September 13, 1995, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 95-3). Adopted again by emergency action effective March 12, 1996, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 96-1). Adopted with changes effective April 17, 1996 (Supp. 96-2). Section recodified to R6-6-2003 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-1904. Recodified****Historical Note**

Adopted by emergency action effective September 13, 1995, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 95-3). Adopted again by emergency action effective March 12, 1996, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 96-1). Adopted with changes effective April 17, 1996 (Supp. 96-2). Section recodified to R6-6-2004 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-1905. Recodified****Historical Note**

Adopted by emergency action effective September 13, 1995, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 95-3). Adopted again by emergency action effective March 12, 1996, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 96-1). Adopted with changes effective April 17, 1996 (Supp. 96-2). Section recodified to R6-6-2005 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-1906. Recodified****Historical Note**

Adopted by emergency action effective September 13, 1995, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 95-3). Adopted again by emergency action effective March 12, 1996, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 96-1). Adopted with changes effective April 17, 1996 (Supp. 96-2). Section recodified to R6-6-2006 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-1907. Recodified****Historical Note**

Adopted by emergency action effective September 13, 1995, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 95-3). Adopted again by emergency action effective March 12, 1996, pursuant to

A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 96-1). Adopted with changes effective April 17, 1996 (Supp. 96-2). Section recodified to R6-6-2007 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-1908. Recodified****Historical Note**

Adopted by emergency action effective September 13, 1995, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 95-3). Adopted again by emergency action effective March 12, 1996, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 96-1). Adopted with changes effective April 17, 1996 (Supp. 96-2). Section recodified to R6-6-2008 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-1909. Recodified****Historical Note**

Adopted by emergency action effective September 13, 1995, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 95-3). Adopted again by emergency action effective March 12, 1996, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 96-1). Adopted with changes effective April 17, 1996 (Supp. 96-2). Section recodified to R6-6-2009 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-1910. Recodified****Historical Note**

Adopted by emergency action effective September 13, 1995, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 95-3). Adopted again by emergency action effective March 12, 1996, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 96-1). Adopted effective April 17, 1996 (Supp. 96-2). Section recodified to R6-6-2010 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-1911. Recodified****Historical Note**

Adopted by emergency action effective September 13, 1995, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 95-3). Adopted again by emergency action effective March 12, 1996, pursuant to A.R.S. § 41-1026, in effect for a maximum of 180 days (Supp. 96-1). Adopted effective April 17, 1996 (Supp. 96-2). Section recodified to R6-6-2011 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-1912. Repealed****Historical Note**

Adopted effective April 17, 1996; automatically repealed effective May 1, 1996 (Supp. 96-2).

*Editor's Note: The above Section was adopted and automatically repealed during the same calendar quarter. For the text of this Section, refer to 2 A.A.R. 1691, May 10, 1996.*

**ARTICLE 20. CONTRACTS**

*Former Article 20, consisting of Sections R6-6-2001 through R6-6-2016, recodified to Article 22; new Article 20, consisting of Sections R6-6-2001 through R6-6-2011, recodified from Article 19 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).*

**R6-6-2001. Definitions**

The following definitions apply in this Article:

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1. "Competitive solicitation" means an invitation from the Division to two or more parties for the submission of proposals for the provision of goods or services.
2. "Contract" means all types of state agreements, regardless of what they may be called, for the procurement of goods or services.
3. "Offeror" means a person who or an entity which submits a proposal to the Division in response to a request for goods or services.
4. "Procurement" means buying, purchasing, renting, or leasing or otherwise acquiring any goods or services. Procurement also includes all functions that pertain to the obtaining of any good or service including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
5. "Proposal" means all documents, whether attached or incorporated by reference, that an offeror submits to the Division to make an offer to provide goods or services.
6. "Qualified offeror" means an offeror who meets the specific requirements set forth in a request for proposals.
7. "Request for proposals" means all documents, whether attached or incorporated by reference, which are used for soliciting proposals for goods or services.

**Historical Note**

Adopted effective March 7, 1983 (Supp. 83-2). Section repealed, new Section adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-2001 repealed, new Section R6-6-2001 renumbered from R6-6-2002 and amended effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Former Section R6-6-2001 recodified to R6-6-2201; new Section R6-6-2001 recodified from R6-6-1901 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2002. Contracting Process**

- A. The Division shall procure goods and services in the manner prescribed in A.R.S. Title 41, Chapter 23 ("The Arizona Procurement Code"), except for goods and services described in Laws 1995, Ch. 84, § 3.
- B. The Division shall procure goods and services described in Laws 1995, Ch. 84, § 3 by following the procedures in this Article when any of the following conditions occur:
  1. The Division has issued a competitive solicitation, pursuant to A.R.S. § 41-2534, and the solicitation has not resulted in the number of offerors needed to meet the service needs of the clients;
  2. The Division has identified an immediate or emergency service need and current providers cannot meet the need;
  3. The Division solicits proposals for acute care services from health plans, pursuant to R6-6-2005;
  4. The Division needs acute care providers for a geographic area in which:
    - a. No health plan has responded to the Division's solicitation of proposals under R6-6-2005;
    - b. The offeror has withdrawn from the solicitation process described in this Article; or
    - c. The offeror cannot reach an agreement with the Division during the solicitation process described in this Article; or
  5. A federal or state statute, regulation, rule, or programmatic change requires the Division to make changes in mandated ALTCS services, in ALTCS service delivery, or in the administration of the DD/ALTCS program.

**Historical Note**

Adopted effective March 7, 1983 (Supp. 83-2). Section repealed, new Section adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-2002 renumbered to R6-6-2001, new Section R6-6-2002 renumbered from R6-6-2003 effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Former Section R6-6-2002 recodified to R6-6-2202; new Section R6-6-2002 recodified from R6-6-1902 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4). R6-6-2002(B)(3) and (B)(4)(a) references to R6-6-1905 corrected to R6-6-2005 at request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1).

**R6-6-2003. Solicitation for Offerors**

When a competitive solicitation does not result in the number of offerors required to meet the service needs of the clients, the Division shall:

1. Recruit a potential offeror by advertisement or other reasonable means of communicating the service need;
2. Verify that an offeror complies with all applicable Division and AHCCCS qualification, licensing, and certification requirements for the service as described in the original request for proposals;
3. Establish a contract with a qualified offeror;
4. Request that each provider contracting under this rule submit proposals in response to the next competitive solicitation the Division issues under A.R.S. Title 41, Chapter 23 for these services;
5. Advise each provider that failure to respond to the next competitive solicitation will result in expiration of the existing contract; and
6. Send each provider holding a contract under this Section a notice of the next competitive solicitation for the service.

**Historical Note**

Adopted effective March 7, 1983 (Supp. 83-2). Section repealed, new Section adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-2003 renumbered to R6-6-2002, new Section R6-6-2003 renumbered from R6-6-2004 effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Former Section R6-6-2003 recodified to R6-6-2203; new Section R6-6-2003 recodified from R6-6-1903 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2004. Immediate or Emergency Need for Services**

When the Division identifies an immediate or emergency need for service and current providers cannot meet the service need, the Division shall follow the steps listed in R6-6-2003 to procure the service.

**Historical Note**

Adopted effective March 7, 1983 (Supp. 83-2). Section repealed, new Section adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-2004 renumbered to R6-6-2003, new Section R6-6-2004 renumbered from R6-6-2005 effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Former Section R6-6-2004 recodified to R6-6-2204; new Section R6-6-2004 recodified from R6-6-1904 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4). R6-6-2004 reference to R6-6-1903 corrected to R6-6-

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2003 at request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1).

**R6-6-2005. Acute Care - Solicitation of Service from Health Plans**

- A.** The Division shall solicit proposals from providers of acute care services. The Division shall include at least the following information in the request for proposals;
1. The time and date set for the proposal opening;
  2. The address of the office at which proposals are to be received;
  3. The period during which the offer contained in the proposal will remain open;
  4. The service description, covered populations, geographic coverage, specifications, and a delivery or performance schedule;
  5. The contract terms and conditions, including bonding or other security requirements, if applicable;
  6. A provision for the award of contracts by category of member or service in order to secure the most financially advantageous offers for the state;
  7. A provision that each submitted proposal describe each category of member, type of service, and geographic area the offeror will cover in the proposed contract;
  8. A provision for a procedure allowing the Division to request voluntary price reduction of offers from only those offerors the Division has tentatively selected for award, before the final award or rejection of proposals;
  9. The factors to be used in the evaluation;
  10. The location and method for obtaining documents that are incorporated by reference in the Division's request for proposals;
  11. The requirement that the offeror acknowledge receipt of all amendments issued by the Division;
  12. The type of services required and a description of the work involved;
  13. The type of contract to be used and a copy of a proposed contract form or provisions;
  14. The estimated length of time during which services will be required;
  15. A requirement for cost or pricing data;
  16. The minimum information that an offeror shall submit with a proposal; and
  17. A provision requiring that an offeror to certify that the submission of the proposal does not involve collusion or other anti-competitive practice.
- B.** The Division shall conduct discussions with qualified offerors to provide information about, and assure full understanding of, and responsiveness to, the request for proposals.
- C.** The Division shall accord offerors fair treatment with respect to any opportunity for discussion and revision of proposals, and may permit such revisions after submissions and before award of the contract for the purpose of obtaining best and final offers.
- D.** Prior to the award of the contract, the Division shall not disclose information derived from proposals submitted by competing offerors.
- E.** The Division may request voluntary price reduction of offers contained in the submitted proposals before the final award or rejection of proposals.
- F.** The Division may issue one or more written requests for a best and final offer to responsive offerors, which shall set forth the date, time, and place for the submission of this offer. If the offeror does not submit a notice of withdrawal or a best and final offer in response to the Division's request, the Division shall use the offeror's most recent offer as the best and final offer.

**Historical Note**

Adopted effective March 7, 1983 (Supp. 83-2). Section repealed, new Section adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-2005 renumbered to R6-6-2004, new Section R6-6-2005 renumbered from R6-6-2006 effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Former Section R6-6-2005 recodified to R6-6-2205; new Section R6-6-2005 recodified from R6-6-1905 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2006. Acute Care - Evaluation of Proposals; Cancellation**

- A.** The Division shall base proposal evaluations on the evaluation factors set forth in the request for proposals.
- B.** The Division shall send a written notice of rejection to offerors whose proposals are rejected and maintain a copy of the notice in the procurement file.
- C.** The Assistant Director may cancel a request for proposals or may reject any and all proposals in whole or in part if the Assistant Director determines that the cancellation or rejection is in the state's best interest based on the following factors:
1. The availability of funding,
  2. The inability to come to agreement with offerors,
  3. A change in the need for services,
  4. The potential for loss of federal funds,
  5. A change in federal or state requirements which affect the service specified in the proposal, and
  6. Collusion or anti-competitive practices on the part of an offeror.
- D.** The Division shall document the reasons for the cancellation or rejection in the procurement file.

**Historical Note**

Adopted effective March 7, 1983 (Supp. 83-2). Section repealed, new Section adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-2006 renumbered to R6-6-2005, new Section R6-6-2006 renumbered from R6-6-2007 effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Former Section R6-6-2006 recodified to R6-6-2206; new Section R6-6-2006 recodified from R6-6-1906 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2007. Acute Care - Award of Contracts**

- A.** The Division shall award a contract:
1. To the qualified offeror who submits the most advantageous proposal to the state based on the evaluation factors set forth in the request for proposals; and
  2. By the category of member, type of service, and geographic area.
- B.** The Division may award contracts to more than one offeror for each geographic area in the state for the purpose of limiting the number of high-risk clients who may be included in each contract.
- C.** The Division shall not award a contract to any offeror who will cause the state to lose any federal monies to which the state is otherwise entitled.
- D.** The Division shall document the reasons for the award in the procurement file.
- E.** The Division shall notify each unsuccessful offeror of the award of the contract.

**Historical Note**

Adopted effective March 7, 1983 (Supp. 83-2). Section repealed, new Section adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-2007 renumbered to R6-6-2006, new Section R6-6-2007 renumbered from

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R6-6-2008 and amended effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Former Section R6-6-2007 recodified to R6-6-2207; new Section R6-6-2007 recodified from R6-6-1907 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2008. Acute Care - Protests**

- A. The Assistant Director shall resolve any protest filed concerning a contract proposal or award covered by this Article.
- B. An offeror may protest a contract proposal or award by filing a written protest with the Assistant Director.
- C. A protest shall include the following information;
  1. Name, address, and telephone number of the protester;
  2. Signature of the protester or its representative;
  3. Identification of the request for proposals or contract number;
  4. A statement of the legal and factual grounds of the protest including copies of any relevant documents; and
  5. The relief requested.
- D. The protester shall file the protest within one of the following time-frames:
  1. Prior to the closing date for receipt of initial proposals if the protest relates to a request for proposals; or
  2. Within 14 working days after a contract award has been made public as described in R6-6-2007(E), if the protest relates to the award of a contract.
- E. A protest is deemed filed when the written document is received by the Division.
- F. If a protest is filed before the award of a contract, the Division may award a contract unless the Assistant Director makes a written determination that there is reasonable probability that the protest will be sustained and that the stay of award of the contract is consistent with the best interests of the state.
- G. Within 14 work days of the filing date of a protest, the Assistant Director shall send a written decision to the protester by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The Assistant Director shall explain the reasons for the conclusions reached in the decision.
- H. If the Assistant Director sustains the protest in whole or part, and determines that the request for proposals, proposed contract award, or contract award does not comply with applicable statutes and rules, the Assistant Director shall implement an appropriate remedy as prescribed in subsection (J).
- I. In determining an appropriate remedy, the Assistant Director shall consider the following:
  1. Circumstances surrounding the procurement or proposed procurement,
  2. The seriousness of the procurement deficiency,
  3. The degree of prejudice to other interested parties,
  4. The degree of prejudice to the integrity of the procurement system,
  5. The good faith of the parties,
  6. The extent of performance,
  7. The costs to the state,
  8. The urgency of the procurement, and
  9. The impact of the relief on the Department's mission.
- J. The following actions, alone or in combination, shall serve as an appropriate remedy;
  1. Decline to exercise an option to renew under the contract,
  2. Terminate the contract,
  3. Reissue the request for proposals,
  4. Issue a new request for proposals, or
  5. Award a contract as provided in these procurement rules.

**Historical Note**

Adopted effective March 7, 1983 (Supp. 83-2). Section repealed, new Section adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-2008 renumbered to R6-6-2007, new Section R6-6-2008 renumbered from R6-6-2009 effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Former Section R6-6-2008 recodified to R6-6-2208; new Section R6-6-2008 recodified from R6-6-1908 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4). R6-6-2008(D)(2) reference to R6-6-1907(E) corrected to R6-6-2007(E) at request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1).

**R6-6-2009. Acute Care Providers in a Geographic Area With No Health Plan**

The Division shall recruit individual providers for acute care services by following R6-6-2003(1), (2), and (3) when:

1. The Division has first tried to obtain offers by issuing a solicitation of service as prescribed in R6-6-2005; and
2. The Division finds;
  - a. A response is not obtained,
  - b. An offeror withdraws from the solicitation process, or
  - c. An agreement does not result between a health plan and the Division.

**Historical Note**

Adopted effective March 7, 1983 (Supp. 83-2). Section repealed, new Section adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-2009 renumbered to R6-6-2008, new Section R6-6-2009 renumbered from R6-6-2010 effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Former Section R6-6-2009 recodified to R6-6-2209; new Section R6-6-2009 recodified from R6-6-1909 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4). R6-6-2009 Section heading corrected; reference to R6-6-1903(1), (2), and (3) corrected to R6-6-2003(1), (2), and (3); R6-6-2009(1) reference to R6-6-1905 corrected to R6-6-2005 at request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1).

**R6-6-2010. Statute, Regulation, Rule, or Program Change**

When a new federal or state statute, regulation, rule, or programmatic change involving the DD/ALTCS program or administration requires the Division to comply by modifying current programs, the Division shall follow the steps in R6-6-2003(1), (2), and (3).

**Historical Note**

Adopted effective March 7, 1983 (Supp. 83-2). Section repealed, new Section adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-2010 renumbered to R6-6-2009, new Section R6-6-2010 renumbered from R6-6-2011 and amended effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Former Section R6-6-2010 recodified to R6-6-2210; new Section R6-6-2010 recodified from R6-6-1910 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4). R6-6-2010 reference to R6-6-1903(1), (2), and (3) corrected to R6-6-2003(1), (2), and (3) at request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1).

**R6-6-2011. Procurement Records**

The Division shall maintain the following records relating to the procurement of contracts in the procurement file, if applicable:

1. A copy of the request for proposals;

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2. The proposals received;
3. The best and final offers;
4. Written correspondence;
5. The basis for award;
6. The documentation required by R6-6-2006(D) and R6-6-2007(D).

**Historical Note**

Adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-2011 renumbered to R6-6-2010, new Section R6-6-2011 renumbered from R6-6-2012 effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Former Section R6-6-2011 recodified to R6-6-2211; new Section R6-6-2011 recodified from R6-6-1911 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4). R6-6-2011(6) reference to R6-6-1906(D) and R6-6-1907(D) corrected to R6-6-2006(D) and R6-6-2007(D) at request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1).

**R6-6-2012. Recodified****Historical Note**

Adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-2012 renumbered to R6-6-2011, new Section R6-6-2012 renumbered from R6-6-2013 and amended effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Section R6-6-2012 recodified to R6-6-2212 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2013. Recodified****Historical Note**

Adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-2013 renumbered to R6-6-2012, new Section R6-6-2013 renumbered from R6-6-2014 and amended effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Section R6-6-2013 recodified to R6-6-2213 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2014. Recodified****Historical Note**

Adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-2014 renumbered to R6-6-2013, new Section R6-6-2014 renumbered from R6-6-2015 effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Section R6-6-2014 recodified to R6-6-2214 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2015. Recodified****Historical Note**

Adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-2015 renumbered to R6-6-2014, new Section R6-6-2015 renumbered from R6-6-2016 and amended effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Section R6-6-2015 recodified to R6-6-2215 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2016. Recodified****Historical Note**

Adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-2016 renumbered to R6-6-2015, new Section R6-6-2016 renumbered from R6-6-2017 and

amended effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Section R6-6-2016 recodified to R6-6-2216 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2017. Renumbered****Historical Note**

Adopted effective August 29, 1991 (Supp. 91-3). Former Section R6-6-2017 renumbered to R6-6-2016 effective September, 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**ARTICLE 21. DIVISION PROCUREMENT AND RATE SETTING – QUALIFIED VENDORS**

*New Article 21, consisting of Sections R6-6-2101 through R6-6-2115, made by exempt rulemaking at 9 A.A.R. 170, effective February 1, 2003 (Supp. 03-1).*

**R6-6-2101. Definitions**

The following definitions apply to this Article:

1. “Agreement file” means the public, documented record of procurement transactions that is maintained by and available at the Division contracts management office.
2. “AHCCCS” means the Arizona Health Care Cost Containment System as established by A.R.S. § 36-2901 et seq.
3. “Application” means the Qualified Vendor application, including any amendments, supplements, or updates submitted by the applicant.
4. “Assistant Director” means the Assistant Director of the Department of Economic Security, Division of Developmental Disabilities.
5. “Authorization” means the approval by the Division or its designee identifying the type and number of units of service a Qualified Vendor is authorized to provide to a specific consumer.
6. “Community developmental disability services” means any service or support the Division is authorized to purchase under A.R.S. § 36-557 on behalf of individuals with developmental disabilities and their families or guardians.
7. “Conflict of interest” means that a Qualified Vendor applicant, a Qualified Vendor, or an officer or employee of a Qualified Vendor applicant or Qualified Vendor has a relative as defined in A.R.S. § 38-502 who is an employee of the Division with direct or indirect responsibility for purchasing, authorizing, monitoring or evaluating community developmental disability services or vendors.
8. “Consumer” means an individual authorized to receive community developmental disability services from the Division.
9. “Consumer and family choice” means the consumer’s or consumer’s representative’s expressed preference to receive services from a specific provider.
10. “Contract list” means a roster of agencies, organizations, and professional independent providers who, on January 1, 2003 have a valid contract or agreement with the Division to provide community developmental disability services.
11. “Day” means calendar day unless otherwise specified.
12. “Department” means the Arizona Department of Economic Security.
13. “Department procurement officer” means the person, or his or her designee, authorized by the Department to make written determinations with respect to purchasing

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- processes or agreements authorized under A.R.S. § 36-557.
14. "Division" means the Division of Developmental Disabilities of the Department of Economic Security.
  15. "Division web site" means the Division of Developmental Disabilities internet web site.
  16. "Emergency need" means a situation that requires an immediate change in services, in service providers, or in both services and service providers, and is necessary for the health or safety of the consumer.
  17. "Independent assessment" means a review by a third party of an authorization decision.
  18. "Independent rate model" means a methodology for rate development that includes the definition of the cost components and assumptions used in the development of a reimbursement rate.
  19. "Individual Independent Provider" means a person who is qualified to provide service, has a provider identification number and an individual service agreement or a qualified vendor agreement with the Division to provide community developmental disability services.
  20. "Individual service agreement" means the legally binding contract between the Division and an individual independent provider to provide community developmental disability services.
  21. "Individual support plan" or "ISP" means a written statement of services to be provided to an individual with developmental disabilities including habilitation goals and objectives and a listing of the services, if any, the consumer is authorized to receive. The ISP incorporates and replaces the Individual Program Plan, the placement evaluation, the individualized service program plan and the service program plan used in A.R.S. § 36-557, and for the purposes of these rules incorporates the Individual Family Service Plan (IFSP) as defined in Section 809.1 of the Division of Developmental Disabilities Policy and Procedures Manual.
  22. "Individual support plan team" or "ISP Team" means a group of persons including the consumer, the consumer's representative, and other persons selected by the consumer, assembled by the Division and coordinated by the consumer's support coordinator in compliance with A.R.S. §§ 36-551 and 36-560 to develop the consumer's individual support plan.
  23. "Itemized service budget" means a description of the cost of services and includes documentation that results in a defined unit rate.
  24. "List serv" means an electronic mailing list maintained by the Division for purposes of sending information via electronic mail to a predefined directory of intended recipients.
  25. "Negotiated rate" means the amount per unit of service a provider will be paid for services rendered based on successful negotiation of a price with the Division.
  26. "Network development plan" means the annual plan developed by the Division that identifies the services and supports anticipated to be needed by consumers throughout the state.
  27. "Non-identifying information" means a description that does not provide information that could lead the recipient of the information to recognize a consumer.
  28. "Notice of Protest" means a written document signed by the protester and submitted to the Department procurement officer to protest a procurement process or decision under this Article.
  29. "Open and continuous process" means that responses to a Request for Qualified Vendor Applications may be submitted by an applicant to the Division at any time during the time period the Request is posted to the Division web site and identified as being open.
  30. "Personal financial statement" means documentation of the applicant's financial status for the past three years as represented by copies of federal income tax statements, an accountant's statement of assets and liabilities or other similar documentation of financial status.
  31. "Professional Independent Provider" means a person who is licensed or certified under Title 32, Arizona Revised Statutes, who provides services for consumers as a Qualified Vendor and is not an employee or subcontractor of a provider agency.
  32. "Program plan" means a response to a requirement specified in the Qualified Vendor application that identifies the services to be provided and the service specific methodology to be followed by the applicant.
  33. "Provider" means a Qualified Vendor or an Individual Independent Provider.
  34. "Provider organization" means a corporation, professional corporation, partnership, limited liability company, or joint venture that is or applies to be a Qualified Vendor.
  35. "Published rate" means the payment amount per unit of service established by the Division for the purchase of a community developmental disability service.
  36. "Qualified Vendor" means a provider of community developmental disability services that has applied for Qualified Vendor status, meets the criteria for Qualified Vendor status, and has entered into a Qualified Vendor Agreement with the Division.
  37. "Qualified Vendor Agreement" means the legal, binding document between the Division and a Qualified Vendor describing the services the Qualified Vendor is qualified to provide and the terms and conditions governing the relationship between the Division and the Qualified Vendor including any amendments, attachments, schedules, or exhibits.
  38. "Qualified vendor list" means the roster of vendors who have entered into Qualified Vendor Agreements with the Division.
  39. "Quality management plan" means the procedures used to monitor service and system performance and to define and implement actions that will result in service and system improvements.
  40. "Request for Problem Solving" means a written document, signed by the protester and submitted to the Division to protest a procurement process or decision under this Article that requests informal problem solving actions be taken by the Division.
  41. "Request for Qualified Vendor Applications" means a notice issued by the Division requesting vendors to apply to be Qualified Vendors for the delivery of community developmental disability services.
  42. "Vendor Call for Services" means a notice from the Division inviting Qualified Vendors and individual independent providers to submit a response indicating their availability to provide services for a specific consumer or specific group of consumers, based on the requirements defined in the consumer's ISP.
  43. "Vendor Call Response" means a response to a Vendor Call for Services that indicates the provider's availability to provide the requested service or services and describes how the provider proposes to meet the special accommo-

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dations needed for a specific consumer or specific group of consumers, based on the consumer's ISP.

44. "Title XIX" means that section of the federal Social Security Act that authorizes the provision of Medicaid services including acute care and long-term care services.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 170, effective February 1, 2003 (Supp. 03-1). Amended by exempt rulemaking at 9 A.A.R. 4656, effective October 9, 2003 (Supp. 03-4).

**R6-6-2102. Applicability**

- A.** This Article shall apply to services purchased by the Division under the authority of A.R.S. § 36-557 and to reimbursement rates established by the Division under the authority of A.R.S. § 36-2959. This Article does not apply to services purchased by the Division under the Arizona Procurement Code, A.R.S. Title 41, Chapter 23.
- B.** Under this Article, the Division may:
1. Enter into Qualified Vendor Agreements for the delivery of statewide community developmental disability services;
  2. Amend Qualified Vendor Agreements in accordance with these rules;
  3. Establish, review, and update reimbursement rates for the purchase of services for persons with developmental disabilities in the Arizona long-term care system and the state only program;
  4. Purchase community developmental disability services from provider organizations, Professional Independent Providers and Individual Independent Providers who have submitted a Qualified Vendor application, have become qualified as a vendor and have signed a Qualified Vendor Agreement or an Individual Service Agreement with the Division;
  5. Create a list of Qualified Vendors based on applications received that meet the criteria defined at R6-6-2104;
  6. Reimburse a Qualified Vendor for the provision of community developmental disability services based on published rates or negotiated rates;
    - a. The Division shall determine if the reimbursement methodology will be published rate or negotiated rate for each service purchased.
    - b. The Division shall use only one reimbursement methodology per service.
  7. Issue an authorization to a Qualified Vendor who has been selected to provide the service for a specific consumer;
  8. Establish a process for the consumer or the consumer's representative to select a provider from a list of Qualified Vendors or Individual Independent Providers; and
  9. Maintain an open and continuous process of accepting applications to become a Qualified Vendor.
- C.** A Professional Independent Provider shall become a Qualified Vendor in order to provide community developmental disability services for the Division.
- D.** An Individual Independent Provider may become a Qualified Vendor but is not required to become a Qualified Vendor in order to provide community developmental disability services under an agreement with the Division.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 170, effective February 1, 2003 (Supp. 03-1).

**R6-6-2103. Qualified Vendor Application Process**

- A.** The Division shall post the following information on the Division web site:
1. All Requests for Qualified Vendor Applications;
  2. A description of the Division's anticipated service needs;
  3. The Qualified Vendor application form or forms, if any, including a description of the information and documents that must be submitted by an applicant to complete the application, and any assurances, representations or warranties that must be made by an applicant;
  4. Instructions for completing the application as described in subsection (D);
  5. The Qualified Vendor Agreement, including all terms and conditions, amendments, schedules and attachments; and
  6. Any other information reasonably necessary to advise an applicant of application requirements, as deemed necessary by the Division to evaluate the applications.
- B.** The Division may send written or electronic notice of the Request for Qualified Vendor Applications to all providers on the Division's contract list, Qualified Vendor List and any party not on the contract list who has notified the Division business office in writing that it wishes to receive notification.
- C.** Providers and other interested parties are responsible for making themselves aware of the opportunities posted to the Division web site.
- D.** The Division shall include the following instructions and information as part of the Request for Qualified Vendor Applications:
1. The acceptable methods for transmitting the application to the Division, such as e-mail, fax, or mail delivery;
  2. The due date, if any, for applications to be considered by the Division;
  3. The street address, mailing address, e-mail address and facsimile number of the Division office to which applications are to be sent;
  4. The term of the Qualified Vendor Agreement and the renewal options as established by the Division;
  5. A description of the service or services for which Qualified Vendors are requested, including the covered populations, the service need by geographic area, service specifications, a delivery or performance schedule and any other information that the Division finds necessary or appropriate;
  6. Whether the payment for each service will be a negotiated rate or a published rate;
  7. The published rate tables as appropriate to the services requested in the Request for Qualified Vendor Applications;
  8. A description of the factors to be used in the evaluation of the application;
  9. The location and method for obtaining documents that are incorporated by reference in the Request for Qualified Vendor Applications including, as applicable, the Division internet address;
  10. The requirement that the applicant acknowledge receipt of all amendments to the Request for Qualified Vendor Applications issued by the Division; and
  11. A description of the minimum information that an applicant must submit.
- E.** The Division shall advise each Qualified Vendor applicant in writing whether the application is complete within 30 days of receipt of the application and shall identify the information or documentation that is missing or incomplete in the application.
1. The Division may conduct discussions with applicants to provide information about the completeness of the application and the information needed to make the application complete.

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2. The Division shall specify the time-frame in which the applicant must provide the missing information.
  3. The Division shall deny the application if the applicant does not provide the additional information within the time-frame defined by the Division.
- F.** The Division shall notify a Qualified Vendor applicant in writing whether the applicant has been accepted as a Qualified Vendor within 60 days of receipt of a complete application.
- G.** For negotiated rate agreements, the Division may extend the 60 day time-frame defined at R6-6-2103(F).
- H.** The Division shall evaluate applications for Qualified Vendor Agreements based upon the criteria defined at R6-6-2104.
- I.** The Division shall accord all applicants the same opportunity for discussion of the application completeness and revision to the application information.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 170, effective February 1, 2003 (Supp. 03-1). Amended by exempt rulemaking at 9 A.A.R. 4656, effective October 9, 2003 (Supp. 03-4).

**R6-6-2104. Criteria for Qualified Vendor Agreements**

- A.** To obtain a Qualified Vendor Agreement, an applicant shall submit a complete application to the Division that includes:
1. Identification of the services the applicant proposes to provide;
  2. Identification of current and proposed locations at which service, administrative, or monitoring activities are conducted;
  3. A description of staff qualifications if requested by the Division in the Request for Qualified Vendor Applications;
  4. Corporate structure demonstrating ownership and corporate affiliations, if applicable;
  5. A program plan to be included in the Directory of Qualified Vendors in a format prescribed by the Division;
  6. Assurance that the applicant:
    - a. Holds the appropriate current Arizona license or certification to provide developmental disability services, and
    - b. That the license or certification is in good standing with the licensing or certification organization, or
    - c. Will possess the appropriate license or certification by the time of authorization of service;
  7. A description of the applicant's quality management plan;
  8. A declaration of any potential conflict of interest with any Division employee;
  9. Assurances required by the Division as part of the application and documentation to support such assurances, if specifically requested by the Division in the Request for Qualified Vendor Applications;
  10. Certification that the submission of the application does not involve collusion or other anti-competitive practice; and
  11. Documentation of financial stability, including:
    - a. For a Qualified Vendor Agreement for services requiring a negotiated rate, the applicant shall submit a program budget and a proposed rate. The program budget information shall include:
      - i. An itemized service budget in a format prescribed by the Division;
      - ii. An income statement or statement of revenue by fund source for the applicant's current fiscal year to date and for each of the previous three fiscal years;
    - iii. A statement of expenditures by fund source for the applicant's current fiscal year to date and for each of the previous three fiscal years; and
    - iv. An audited financial statement or a financial audit for the prior fiscal year, if available.
- b.** For a Qualified Vendor Agreement for services that have a published rate, the applicant shall submit its audited financial statement for the prior year. In the absence of an audited financial statement, the applicant may submit quarterly financial statements for the prior year, including revenues and expenditures.
- c.** Applicants who do not have an audited financial statement or quarterly financial statements shall submit a personal financial statement of the Director or Chief Executive Officer or if a corporation, the corporate business plan.
- d.** A newly formed corporation shall submit the corporate business plan and personal financial statements of the Director or Chief Executive Officer.
- e.** Additional financial information may be required by the Request for Qualified Vendor Applications.
- B.** The Division shall consider the following factors in determining if an applicant is a Qualified Vendor and eligible to enter into a Qualified Vendor Agreement:
1. Ability of the applicant to meet the need for services based on performance, including compliance with licensing and certification requirements; program monitoring, agreement monitoring, or contract monitoring reports; and corporate or individual experience providing community developmental disability services or similar services in Arizona and in other states;
  2. Whether the applicant has met the requirements of the Qualified Vendor application process;
  3. Whether the application is consistent with the Division's network development plan or other documentation of projected service need;
  4. Financial stability of the applicant as demonstrated by the financial information provided in the application;
  5. The rate proposal for a negotiated rate agreement; and
  6. Any other criteria deemed relevant by the Division and included as part of the Request for Qualified Vendor Applications.
- C.** The Division shall document the results of its evaluation of the applications in the Division agreement file.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 170, effective February 1, 2003 (Supp. 03-1). Amended by exempt rulemaking at 9 A.A.R. 4656, effective October 9, 2003 (Supp. 03-4).

**R6-6-2105. Qualified Vendor Agreement**

- A.** The Division shall enter into Qualified Vendor Agreements with an applicant that:
1. Meets the requirements defined of R6-6-2104,
  2. Accepts the published rate or agreed upon negotiated rate, and
  3. Accepts the terms and conditions of the Qualified Vendor Agreement as defined by the Division in the Request for Qualified Vendor Applications and any amendments to the Request for Qualified Vendor Applications.
- B.** The Division shall enter into only one Qualified Vendor Agreement per applicant, which may be amended as needed.
- C.** The Division shall specify in the Qualified Vendor Agreement what information updates to the application will require an agreement amendment.

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- D.** A Qualified Vendor shall update the assurances, financial information, conflict of interest statement, and other information provided in the application when there is a change or at the request of the Division.
- E.** A Qualified Vendor may update the Qualified Vendor's program plan at any time to reflect a change in services, methodology or locations of service delivery, for inclusion in the Qualified Vendor Directory. The Division shall review all changes submitted by the Qualified Vendor for consistency with the Qualified Vendor Agreement.
- F.** If the Division finds that information provided in the original application or as an update to the application is materially inaccurate, and the Qualified Vendor fails to correct such information within the time specified in a notice from the Division, such failure may be cause for termination of the Qualified Vendor Agreement in whole or in part. The Division may remove the information from the Qualified Vendor Directory until a correction is provided or the Qualified Vendor Agreement is terminated.
- G.** A Qualified Vendor may submit an amended application to request that additional services be added to the Qualified Vendor Agreement at any time a service is posted to the Division web site as an open and continuous Request for Qualified Vendor Applications. The Division shall respond to a request for an amendment to Qualified Vendor Agreements based on the criteria defined at R6-6-2103 and R6-6-2104.
- H.** Prior to the effective date of the Qualified Vendor Agreement, the Division shall not disclose any information identified by the applicant as confidential business information or proprietary information without first notifying the applicant in writing and allowing the applicant opportunity to respond or protest the planned disclosure.
2. There is a change in provider requested in the ISP at the time of the annual ISP review,
  3. The consumer's needs change and the current provider or providers are no longer able to meet the consumer's needs,
  4. The consumer or the consumer's representative requests a change pursuant to R6-6-2109(C), or
  5. The current provider is unable or unwilling to continue to meet the needs of the consumer.
- C.** The Division shall confirm that the program plan for the provider selected from the Qualified Vendor Directory or Independent Individual Provider list will meet the needs of the consumer as defined in the consumer's ISP.
- D.** For providers to be selected through the Vendor Call for Services process, the Division shall post a Vendor Call for Services to the Division's web site that includes a list of the service needs of a consumer based on the consumer's ISP, identification of any special accommodations needed by the consumer or specific group of consumers and the consumer's desired time-frame for delivery of the services.
- E.** The Division shall notify Qualified Vendors and Individual Independent Providers via the list serv when the consumer or the consumer's representative have requested that the Vendor Call for Services process be used to identify potential providers and the Vendor Call for Services has been posted to the Division's web site.
- F.** The Division shall include only individual consumer non-identifying information in the Vendor Call for Services.
- G.** A Qualified Vendor shall submit to the Division, within the time-frame indicated in the Vendor Call for Services, a Vendor Call Response indicating the Qualified Vendor's availability to provide the needed service or services, a description of how the Qualified Vendor would meet the special accommodations described in the Vendor Call for Services, and any other information described in the Vendor Call for Services to select a provider of service.
- H.** The Division shall review and evaluate the Vendor Call Responses and identify those responses that meet the needs described in the consumer's ISP.
- I.** The Division shall notify the responding Qualified Vendors within 14 days after the due date for Vendor Call Responses as to whether the response meets the needs of the consumer.
- J.** The Division shall provide the consumer and the consumer's representative with a list of those providers that, based on the Vendor Call Response submitted, can meet the needs of the consumer.
- K.** The consumer or the consumer's representative shall select any Qualified Vendors from the list provided by the Division or may select an Individual Independent Provider.
- L.** If a consumer or the consumer's representative refuses or fails to select a Qualified Vendor from the list, the Division shall make the selection based on a random automatic assignment methodology. The Division shall include the following criteria in the automatic assignment process:
1. Continuity of care,
  2. Least disruption to established daily routines of the consumer, and
  3. Least disruption to the consumer's receipt of other services and supports.
- M.** Before a final selection, the Division may require Qualified Vendors to meet with the consumer or the consumer's representative. The Division shall provide a minimum of 48 hours notice when scheduling the meeting.
- N.** A Qualified Vendor may withdraw its response to a Vendor Call for Services anytime prior to the consumer, the con-

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 170, effective February 1, 2003 (Supp. 03-1). Amended by exempt rulemaking at 9 A.A.R. 4656, effective October 9, 2003 (Supp. 03-4).

**R6-6-2106. List Serv**

- A.** The Division shall maintain a list serv as one means of providing information and notices to providers of service and interested parties.
- B.** The Division shall include on the Division list serv the contact information for all Qualified Vendors.
- C.** The Division list serve contact information for Qualified Vendors shall include:
1. Name of the Qualified Vendor,
  2. Name of the contact person for each Qualified Vendor,
  3. Telephone number, and
  4. E-mail address.
- D.** A Qualified Vendor shall be responsible for notifying the Division business office of any change in the contact information.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 170, effective February 1, 2003 (Supp. 03-1).

**R6-6-2107. Selecting a Provider – Individual Consumers**

- A.** A consumer or the consumer's representative shall select providers of service from the Qualified Vendor Directory and Individual Independent Provider list or by requesting that the Division post to its web site a Vendor Call for Services.
- B.** The Department shall provide a consumer or the consumer's representative with an opportunity to select a provider at any time that:
1. A consumer who is new to the service system is seeking a provider,

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- sumer's representative or the Division selecting a Qualified Vendor.
- O.** Once a consumer, the consumer's representative or the Division has selected a Qualified Vendor, the Qualified Vendor may not refuse to provide the authorized services for the consumer based on the difficulty of supports needed by the consumer.
- P.** If the Qualified Vendor determines, subsequent to its selection, that it cannot meet the consumer's needs, the Qualified Vendor may request an informal review by the Division.
1. The party requesting a review shall submit a written request to the Division District Program Manager.
  2. The Division District Program Manager shall review the facts and provide the final decision in writing to the Qualified Vendor within 21 days of the request for a review from the Qualified Vendor.
  3. If the District Program Manager rejects the Vendor's request, the District Program Manager shall provide the Qualified Vendor with the reason for the decision.
  4. A Qualified Vendor who disagrees with the decision of the Division District Program Manager may file a grievance as provided by R6-6-1801 et seq. and R6-6-2201 et seq.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 170, effective February 1, 2003 (Supp. 03-1). R6-6-2107(P)(4) reference to R6-6-2001 corrected to R6-6-2201 at request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1).

**R6-6-2108. Emergency Procurement**

- A.** The Division may obtain services on an emergency basis when it determines there is an immediate and serious need for services that cannot be met through the procurement process defined in this Article and the procurement is necessary for the preservation or protection of property or the health or safety of any person.
- B.** The Division shall limit an emergency procurement to those services necessary to meet the emergency need.
- C.** When the Division has determined that an emergency need exists, the Division shall:
1. Post to the Division web site an emergency Vendor Call for Services with an abbreviated time-frame for response from Qualified Vendors and send a notice through the list serv to Qualified Vendors;
  2. If the Assistant Director determines that posting an emergency Vendor Call for Services is not in the best interest of the consumer, or that based upon the urgency of the need any competition would be impracticable, contact one or more Qualified Vendors to obtain a Vendor Call Response in order to identify a provider to meet the emergency need; or
  3. If no Qualified Vendor is available, contact providers not on the Qualified Vendor list to request a Vendor Call Response in order to identify a provider to meet the emergency need.
- D.** The consumer, the consumer's representative or the Division shall select a Qualified Vendor based on matching the Vendor Call Response to the needs of the consumer as defined in the ISP.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 170, effective February 1, 2003 (Supp. 03-1).

**R6-6-2109. Consumer Choice**

- A.** In support of a consumer-responsive service delivery system, the Division shall provide a consumer or the consumer's representative the opportunity to express and document their interest in utilizing services from a specific Qualified Vendor or Individual Independent Provider through the ISP process.
- B.** At the annual review of the ISP, the consumer or the consumer's representative may express a preference to utilize a different Qualified Vendor, without explanation. The Division shall accommodate the request to the extent appropriate and practical, as determined solely by the Division.
- C.** If the consumer or the consumer's representative expresses a preference to utilize a different Qualified Vendor between annual reviews of the ISP, the consumer or the consumer's representative must state in writing or must report to the support coordinator, for incorporation into ISP notes, the rationale for changing providers and a description of the opportunities given to the current Qualified Vendor to address the consumer's concerns. The consumer may change Individual Independent Providers at any time.
- D.** The Division shall accommodate the requested change if the consumer and the current Qualified Vendor are unable to resolve the consumer's concerns, the change is reasonable, and another Qualified Vendor or Individual Independent Provider, identified through the Vendor Call for Services process or the consumer's or the consumer's representative's choice, indicates that it is available to provide services for the consumer.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 170, effective February 1, 2003 (Supp. 03-1). Amended by exempt rulemaking at 9 A.A.R. 4656, effective October 9, 2003 (Supp. 03-4).

**R6-6-2110. Authorization to Provide Services**

- A.** The Division shall issue authorizations to the Qualified Vendors selected by the consumer, the consumer's representative or the Division to provide the needed services.
- B.** The Division shall pay a Qualified Vendor based on the rates established in the Qualified Vendor Agreement and the units of service documented on the invoices submitted for valid authorizations issued for individual consumers.
- C.** The Division shall modify authorizations based on changes in the needs of consumers as documented in the ISP by the ISP Team and as applicable, approved by the Division.
- D.** The Division shall not provide reimbursement for services that have not been authorized except in an emergency situation, as determined by the Division.
- E.** A Qualified Vendor may provide short-term emergency services and, if the services are approved by the Division, the Division shall pay for the short-term emergency services.
1. The Qualified Vendor shall notify the Division of the emergency situation within one working day of implementing the emergency services.
  2. The Division shall approve payment for emergency services for up to five days. Upon verbal or written request from the Qualified Vendor, the District Program Manager may approve an additional emergency period for up to 15 days. The District Program Manager shall approve any extension of the emergency period in writing.
  3. The Division shall review the consumer's needs through the ISP process and document as appropriate the revised authorization level.
- F.** A Qualified Vendors providing service may request an informal review by the Division of the number of units of service or type of services authorized for a specific consumer by submitting a written request for review to the Division District Program Manager.

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1. The District Program Manager:
  - a. Shall conduct a review of the authorized units of service and issue a determination within 10 days of receipt of the request for review; or
  - b. May, at the sole discretion of the Division, arrange for an independent assessment of the service authorization by an external party selected from a list of independent assessors approved by the Division. The independent assessor shall review the service authorization and provide a written assessment to the District Program Manager within 30 days of the request for an assessment.
2. The District Program Manager shall issue a decision including the reasons for the decision within 10 days of receiving the independent assessment.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 170, effective February 1, 2003 (Supp. 03-1). Amended by exempt rulemaking at 9 A.A.R. 4656, effective October 9, 2003 (Supp. 03-4).

**R6-6-2111. Termination of the Qualified Vendor Agreement**

The Division shall terminate a Qualified Vendor Agreement and shall remove a provider from the Qualified Vendor List for any of the following reasons:

1. Upon request of the vendor,
2. When the Qualified Vendor Agreement has expired,
3. When a vendor no longer meets the criteria defined in the Request for Qualified Vendor Applications,
4. For non-compliance with the Qualified Vendor Agreement requirements,
5. For failure to maintain a valid license, AHCCCS registration or Division certification, as appropriate,
6. As determined by the Division after the Qualified Vendor has been given notice and opportunity to be heard in accordance with R6-6-2115, or
7. For other reasons, such as lack of available funds.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 170, effective February 1, 2003 (Supp. 03-1). Amended by exempt rulemaking at 9 A.A.R. 4656, effective October 9, 2003 (Supp. 03-4).

**R6-6-2112. Cancellation of Requests and Notices**

- A. The Assistant Director may cancel a Request for Qualified Vendor Applications or a Vendor Call for Services in whole or in part if the Assistant Director determines that the cancellation is in the state's best interest based on the following factors:
  1. The availability of funding,
  2. The inability to come to agreement with applicants,
  3. A change in the need for services,
  4. The potential for loss of federal funds,
  5. A change in federal or state requirements that affect the service specified in the Request for Qualified Vendor Applications or Qualified Vendor Agreement, or
  6. Collusion or anti-competitive practices on the part of an applicant or Qualified Vendor.
- B. The Division shall document the reasons for the cancellation or rejection in the Division Agreement file.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 170, effective February 1, 2003 (Supp. 03-1).

**R6-6-2113. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 170, effective February 1, 2003 (Supp. 03-1). Amended by exempt rulemaking at 9 A.A.R. 4656, effective October 9, 2003 (Supp. 03-4). Section repealed by final rulemaking at 18 A.A.R. 194, effective January 10, 2012 (Supp. 12-1).

**R6-6-2114. Rate Setting**

- A. The Division may establish a rate structure for community developmental disability services, including the rate structure for provider organizations, professional independent providers and individual independent providers. Each fiscal year, the Division shall review the reimbursement rates for Arizona long-term care services and state only programs and may update the rate structure.
  1. The Division shall contract with an independent consulting firm for an annual review of the adequacy and appropriateness of reimbursement rates to providers of community developmental disability services.
  2. The Division shall complete a study of reimbursement rates for each community developmental disability service contracted for by the Division no less than once every five years.
  3. The Division may require, and Qualified Vendors and Individual Independent Providers shall provide, financial data to the Division in the form and format prescribed by the Division to assist in the annual review. The Division shall seek provider recommendations regarding the form and format.
  4. The Division shall annually establish a schedule that identifies which community developmental disability services will be reviewed for adequacy and appropriateness, and which community developmental disability services will be included in the rate reimbursement study.
  5. The Department shall determine if the independent consulting firm shall perform one or more of the following activities to measure the adequacy and appropriateness of the reimbursement rates:
    - a. Review the Department's current rate structure,
    - b. Conduct a provider cost survey,
    - c. Compare the Department's rates to rates for similar services used by other state agencies, and
    - d. Develop independent rate models for community developmental disabilities services.
  6. The Assistant Director may consider evidence of the adequacy and appropriateness of the Division's reimbursement rates gathered from R6-6-2114(5)(a) through (d), the rate study, or other relevant data sources to determine whether a new rate needs to be created or an existing rate needs to be revised.
  7. After considering the evidence in the adequacy and appropriateness review, the Assistant Director may establish a rate change for each service reviewed, based on the availability of funds.
  8. After considering the evidence in the study of reimbursement rates and independent rate models, the Assistant Director may propose a new rate.
  9. The Division shall provide public notice if rates for a community developmental disability service are to be established or revised. The Division shall include in the notice the proposed rate or rate change, the effective date of the rate change, where those rates shall be available for review and, if a rate for a service is being established for the first time, any phase-in schedule for the rate change.
  10. The Division may provide a public comment period regarding the rate change.

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11. The Assistant Director shall review any public comments received about the proposed rate, rate change or phase-in schedule, existing service history or current purchase of service information about the rates and any other information and may make adjustments to the proposed rate, rate change or phase-in schedule prior to finalizing the rate and the phase-in schedule.
  12. The Division shall provide public notice of the final rates and phase-in schedule.
  13. The Division shall adjust rates in accordance with legislatively mandated and appropriated increases or decreases.
  14. The Division shall maintain rate schedules for providers of community developmental disability services at the central office of the Division for reference use during customary business hours.
- B.** When the rate for a service is established for the first time, the Assistant Director may implement the rate through a phase-in schedule not to exceed three years in duration.
1. When current rates are below the newly established rate, the Division may phase in the implementation of the new rates as follows:
    - a. In the first and second year of the new rate, providers may receive an incremental increase of the difference between their prior rate and the new rate;
    - b. In the third year, the providers shall receive the full rate.
  2. When current rates are above the newly established rate, the Division may phase in the implementation of the new rates as follows:
    - a. In the first and second year of the new rate, providers may receive an incremental rate decrease from their prior rate to the new rate;
    - b. In the third year, the providers shall receive the new rate.
- C.** For a negotiated rate agreement, the Division may:
1. Hold discussions with any or all applicants regarding their offers;
  2. Issue a written request for a final proposal revision to responsive applicants, which shall set forth the date, time, and place for the submission of the final proposal revision. If the applicant does not submit a notice of withdrawal or a final proposal revision in response to the Division's request, the Division shall use the applicant's most recent offer as the final proposal revision; and
  3. Determine that an additional final proposal revision is needed.
- D.** The Division shall include in a negotiated rate agreement the effective date of the negotiated rate.
- Historical Note**
- New Section made by exempt rulemaking at 9 A.A.R. 170, effective February 1, 2003 (Supp. 03-1). Amended by exempt rulemaking at 9 A.A.R. 4656, effective October 9, 2003 (Supp. 03-4).
- R6-6-2115. Legal and Contractual Remedies**
- A.** The remedies in this Section apply to protests of the posting of a Request for Qualified Vendor Applications, the denial of a Qualified Vendor Application in its entirety, or denial of one or more services included in the Qualified Vendor Application. An applicant or Qualified Vendor may protest by filing:
1. A written Request for Problem Solving with the Division Assistant Director, or
  2. A Notice of Protest with the Department procurement officer.
- B.** Request for Problem Solving.
1. The Qualified Vendor or Qualified Vendor Applicant shall include the following information in the Request for Problem Solving:
    - a. Name, address, and telephone number of the protester,
    - b. Signature of the protester or its representative,
    - c. Identification of the adverse action by the Division that is in dispute,
    - d. A statement of the legal and factual grounds of the intended protest, including copies of any relevant documents, and
    - e. The relief requested.
  2. The Qualified Vendor or Qualified Vendor Applicant shall file the Request for Problem Solving with the Division within 21 days of the date the Qualified Vendor or Applicant receives notice of the action.
  3. The Request for Problem Solving is deemed filed when the Division receives the written document.
  4. Within 21 days of the filing the Request for Problem Solving, the Assistant Director shall reach resolution or determine that resolution cannot be reached.
  5. If resolution is reached and documented, the Qualified Vendor or Qualified Vendor Applicant shall not be entitled to pursue further legal remedies with regard to the protested issue.
  6. If resolution cannot be reached, the Assistant Director shall issue written verification to the Qualified Vendor or Qualified Vendor Applicant that the matter was not resolved. To pursue further review, the Qualified Vendor or Applicant shall file a Notice of Protest with the Department procurement officer, within 14 days of the issuance of verification.
- C.** Notice of Protest.
1. The protester shall include the following information in the Notice of Protest:
    - a. Name, address, and telephone number of the protester,
    - b. Signature of the protester or its representative,
    - c. Identification of the action by the Division that is in dispute,
    - d. A statement of the legal and factual grounds of the intended protest including copies of any relevant documents, and
    - e. The relief requested.
  2. The protester shall file the Notice of Protest with the Department procurement officer within 21 days of the date the protester receives notice of the action or within 14 days of issuance of the verification of non-resolution through the Problem Solving process from the Assistant Director.
  3. The Notice of Protest is deemed filed when the Department procurement officer receives the written document.
  4. If a Notice of Protest is filed before the award of Qualified Vendor Agreements, the Division may enter into Qualified Vendor Agreements unless the Department procurement officer makes a written determination that there is reasonable probability that the protest will be sustained and that delay is consistent with the best interests of the state.
  5. If applicable, the protester shall include in the Notice of Protest a copy of the original Request for Problem Solving documentation and of the verification from the Assistant Director.
  6. If the Department procurement officer sustains the protest in whole or part, and determines that the Request for Qualified Vendor Applications, proposed Qualified Ven-

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- dor Agreement, or Qualified Vendor Agreement denial does not comply with applicable statutes and rules, the Department procurement officer shall implement an appropriate remedy as prescribed in subsection (C)(8).
7. In determining the appropriate remedy, the Department procurement officer shall consider the following:
    - a. Circumstances surrounding the procurement or proposed procurement,
    - b. The seriousness of the procurement deficiency,
    - c. The degree of prejudice to other interested parties,
    - d. The degree of prejudice to the integrity of the procurement system,
    - e. The good faith of the parties,
    - f. The extent of performance,
    - g. The costs to the state,
    - h. The urgency of the procurement, and
    - i. The impact of the relief on the Department's mission.
  8. The Department procurement officer may consider the following actions, alone or in combination, as an appropriate remedy:
    - a. Decline to exercise an option to renew under the Qualified Vendor Agreement,
    - b. Terminate the Qualified Vendor Agreement,
    - c. Reissue the Request for Qualified Vendor Applications,
    - d. Issue a new Request for Qualified Vendor Applications,
    - e. Include the Qualified Vendor in the list of respondents to a Vendor Call for Services,
    - f. Award a Qualified Vendor Agreement as provided in these procurement rules, or
    - g. Any other remedial action that is reasonable and appropriate under the circumstances.
  9. Within 21 days of receipt of the Notice of Protest, the Department procurement officer shall send a written decision to the protester by certified mail, return receipt requested, or by any other method that provides evidence of receipt and shall send a copy of the decision to the Division. The Department procurement officer shall explain the reasons for the conclusions reached in the decision.
  10. Upon receipt of the decision from the Department procurement officer, the protester may file an appeal with the Department's Office of Appeals as authorized in A.R.S. §§ 41-1991, 41-1992(A) through (C), excluding any references to review by the Appeals Board, and A.R.S. § 41-1993(A).
  11. The protester may proceed to the next level of appeal if the protester does not receive a response within 21 days.
  12. Upon receipt of the decision from the Department's Office of Appeals, the protester may seek relief through the Superior Court as provided in A.R.S. § 12-901 et seq.
- ject to subsection (C). Appeals from decisions of the Department procurement officer may be made to the Department Office of Appeals as authorized in A.R.S. §§ 41-1991, 41-1992(A) through (C), excluding any references to review by the Appeals Board, and A.R.S. § 41-1993(A).
- C. The settlement or resolution of a claim in excess of \$10,000 requires the prior written approval of the Department Director.
  - D. If a claim cannot be resolved by mutual agreement, the Department procurement officer shall, upon a written request by the Qualified Vendor for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the Department procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.
  - E. The Department procurement officer shall furnish a copy of the decision to the Qualified Vendor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The decision shall include:
    1. A description of the claim;
    2. A reference to the pertinent Qualified Vendor Agreement provision;
    3. A statement of the factual areas of agreement or disagreement;
    4. A statement of the Department procurement officer's decision, with supporting rationale; and
    5. A Statement of the Qualified Vendor's Appeal Rights and required time-frame for appeal.
  - F. The Department's procurement officer may extend the time limit for decisions set forth in R6-6-2116(D) for a reasonable time not to exceed 30 days. The Department procurement officer shall notify the Qualified Vendor in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
  - G. If the Department procurement officer fails to issue a decision within 60 days after the request is filed or within the time prescribed under subsection (F) of this rule, the Qualified Vendor may proceed as if the Department procurement officer had issued an adverse decision.
  - H. Upon receipt of the decision from the Department procurement officer, the protester may file an appeal with the Department's Office of Appeals as authorized in A.R.S. §§ 41-1991, 41-1992(A) through (C), excluding any references to review by the Appeals Board, and A.R.S. § 41-1993(A).

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 4656, effective October 9, 2003 (Supp. 03-4).

**R6-6-2117. Controversies Involving State Claims Against a Qualified Vendor**

All claims asserted by the state against a Qualified Vendor that are not resolved by mutual agreement shall promptly be referred by the Department procurement officer to the Department's Office of Appeals for a hearing without regard to the procedures set forth in these rules. The Department procurement officer shall provide notice to the Qualified Vendor that the claim has not been resolved by mutual agreement and is being referred to the Department's Office of Appeals.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 4656, effective October 9, 2003 (Supp. 03-4).

**R6-6-2118. Hearing**

Hearings on appeals of claims decisions shall be conducted as contested cases pursuant to these rules and the Arizona Administrative Procedure Act (Title 41, Chapter 6, Article 1, Arizona Revised Statutes).

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 170, effective February 1, 2003 (Supp. 03-1). Amended by exempt rulemaking at 9 A.A.R. 4656, effective October 9, 2003 (Supp. 03-4).

**R6-6-2116. Resolution of Agreement Claims and Controversies**

- A. Claims under Qualified Vendor Agreements shall be filed with the Department procurement officer within 12 months of the date the Department has denied payment.
- B. The Department procurement officer shall have the authority to settle and resolve Qualified Vendor Agreement claims sub-

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**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 4656, effective October 9, 2003 (Supp. 03-4).

**R6-6-2119. Appeals to Superior Court**

Upon receipt of the decision from the Department's Office of Appeals, the protester may seek relief through the Superior Court as provided in A.R.S. § 12-901 et seq.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 4656, effective October 9, 2003 (Supp. 03-4).

**ARTICLE 22. APPEALS AND HEARINGS****R6-6-2201. Right to Appeal**

- A. Any party aggrieved by a decision of the Department rendered in an administrative review in R6-6-1801 et seq. has the right to appeal under these rules.
- B. A DD/ALTCS member appealing an administrative review decision rendered in R6-6-1805 shall file a request for hearing with the AHCCCS Administration through the Department:
  1. The request shall be in writing and shall be filed within 15 days of the personal delivery or postmark date of the final decision.
  2. The Department shall forward the request directly to the AHCCCS Grievance and Appeals Division.
  3. The provisions of R6-6-2203 through R6-6-2216 do not apply to DD/ALTCS clients.

**Historical Note**

Section R6-6-2201 recodified from R6-6-2001 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4). R6-6-2201(B)(3) reference to R6-6-2003 through R6-6-2016 corrected to R6-6-2203 through R6-6-2216 at request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1).

**R6-6-2202. Filing an Appeal**

- A. Any party appealing under these rules shall file a written request for hearing with the Department within 15 days after the mailing date of the Department's decision.
- B. A document shall be considered received by and filed with the Department:
  1. If transmitted via the United States Postal Service, on the date it is mailed. The mailing date shall be:
    - a. As shown by the postmark; or
    - b. As shown by the postage meter mark of the envelope in which it is received if there is no postmark; or
    - c. The date entered on the document as the date of its completion, if there is no postmark, or no postage meter mark, or if the mark is illegible.
  2. On the date it is received by the Department, if transmitted by any means other than the United States Postal Service.
  3. The submission of any document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the Department that the delay in submission was due to Department error or misinformation, or to delay caused by the United States Postal Service.
- C. The Department shall advise the appellant of the right to counsel and, if asked, shall assist in completing the hearing request.

**Historical Note**

Section R6-6-2202 recodified from R6-6-2002 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2203. Service on Parties**

Any document mailed by the Department shall be considered as having been served on the addressee on the date it is mailed to the addressee's last known address. The date mailed shall be presumed to be the date of the document, unless otherwise indicated by the facts.

**Historical Note**

Section R6-6-2203 recodified from R6-6-2003 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2204. Time**

Any reference within this Article to "days" shall mean calendar days unless otherwise specified. In computing any period of time, the date of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be counted, unless it is a Saturday, a Sunday, or a legal holiday.

**Historical Note**

Section R6-6-2204 recodified from R6-6-2004 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2205. Representation of Parties**

The appellant may appear for himself, or be represented by an attorney, or be assisted by any other person he designates.

**Historical Note**

Section R6-6-2205 recodified from R6-6-2005 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2206. Continuation of Services**

Benefits may be reduced or terminated prior to a hearing decision only as provided by federal statute, regulation, state statute or rules. Notice of any change shall be given to the appellant as soon as possible, including written notice ten days prior to the change.

**Historical Note**

Section R6-6-2206 recodified from R6-6-2006 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2207. Scheduling and Notice of Hearing**

- A. Hearings shall be held at those regularly established hearing locations most convenient to the parties or, at the discretion of the hearing officer, by telephone. The parties shall be given no less than 20 days notice of hearing, except that the parties may waive the notice period or request a delay.
- B. The notice of hearing shall inform the appellant of the date, time, and place of the hearing, the name of the hearing officer, the issues involved, and the appellant's right to:
  1. Present the appellant's case in person or by telephone;
  2. Copy any documents in the appellant's case file and all documents and records to be used by the Department at the hearing at a reasonable time before the hearing;
  3. Obtain assistance from the Division in preparing the appellant's case;
  4. Make inquiry at the Division about availability of free legal resources which could provide representation at the hearing; and
  5. Request a change of hearing officer.
- C. If a party contacts the Department promptly after receiving the notice of hearing and requests a postponement for good cause, the hearing officer shall grant a postponement for a reasonable period. Good cause exists when the circumstances causing the request are beyond the reasonable control of the requesting party and failure to grant the postponement would result in undue hardship to the requesting party.
- D. All scheduling is the responsibility of the Appellate Services Administration/Long-term Care for ALTCS service provider appeals and the Office of Appeals for all others.

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**Historical Note**

Section R6-6-2207 recodified from R6-6-2007 at 9  
A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2208. Change of Hearing Officer**

Not less than five days before the date set for the hearing, any party may file a written request for change of hearing officer and the matter shall immediately be transferred to another hearing officer. A hearing officer may be challenged for cause at any time before a decision becomes final. Except for good cause, not more than one change of hearing officer shall be granted to any one party.

**Historical Note**

Section R6-6-2208 recodified from R6-6-2008 at 9  
A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2209. Failure of a Party to Appear**

- A. If there is no appearance on behalf of a party at a scheduled hearing, the hearing officer may adjourn the hearing to a later date or may make his decision on the record and on such evidence as may be presented at the scheduled hearing.
- B. If, within 15 days of the scheduled hearing, a party files a written request to reopen the proceedings and establishes good cause for failure to appear at the scheduled hearing, the hearing shall be rescheduled. Notice shall be given of the time, place, and the purpose of any continued, reopened, or rescheduled hearing to all parties. Good cause shall be established upon proof that both the failure to appear and failure to timely notify the hearing officer were beyond reasonable control of the nonappearing party.

**Historical Note**

Section R6-6-2209 recodified from R6-6-2009 at 9  
A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2210. Prehearing Summary**

- A. A prehearing summary of the facts and grounds for the action shall be prepared by the Division and must reach the Department no less than five days before the hearing.
- B. A copy of the summary shall be provided to the appellant at the same time that it is provided to the Department.
- C. The summary shall be typewritten. The summary shall contain:
  1. Appellant's name, Social Security number, and case name and number if different;
  2. The responsible Division;
  3. A brief summary of circumstances supporting the Department's action; and
  4. Exact manual references used by the Division in its determination.

**Historical Note**

Section R6-6-2210 recodified from R6-6-2010 at 9  
A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2211. Subpoena of Witnesses and Documents**

The hearing officer may subpoena any witnesses or documents requested by any party, or upon his own motion.

1. The request shall be in writing and shall state the name and address of the witness and the nature of his expected testimony. The nature of the witness' testimony must be relevant to the issues of the hearing; otherwise the hearing officer may deny the request.
2. A request for subpoena of documents shall describe the documents in detail and provide the name and address of the custodian of the documents.
3. The request for the issuance of a subpoena shall be filed a minimum of three working days before the hearing.

4. The Department shall prepare and serve all subpoenas. Service of the subpoena shall be accomplished by certified mail, return receipt requested.

**Historical Note**

Section R6-6-2211 recodified from R6-6-2011 at 9  
A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2212. Conduct of Hearing**

- A. Hearings shall be conducted in an orderly and dignified manner. All hearings shall be open to the public, but the hearing officer conducting a hearing may close the hearing to everyone other than the parties to the extent necessary to protect the interests and rights of the parties.
- B. Hearings shall be opened, conducted and closed by the hearing officer who shall rule on the admissibility of evidence, and shall direct the order of proof. He shall have the power to administer oaths and affirmations, take depositions, certify official acts, and issue subpoenas to compel the attendance of witnesses and the production of any documents he deems necessary as evidence in connection with a hearing.
- C. The hearing is a de novo proceeding. The Department has the initial burden of going forward with presentation of evidence.
- D. Evidence not related to the issue shall not be allowed to become a part of the record.
- E. The hearing officer may, on his own motion, or at the request of a party, exclude witnesses from the hearing room.
- F. The case manager, supervisor, licensing worker, or other appropriate person may be designated Department spokesperson for the hearing. The Department spokesperson may testify and present written evidence on behalf of the Department.
- G. The parties may present evidence, cross-examine witnesses and present arguments.
- H. The parties to an appeal, with the consent of the hearing officer, may stipulate to facts involved in writing or on the record.
- I. At the conclusion of a hearing, the parties shall be granted a reasonable opportunity to present argument on all issues of fact and law to be decided. The hearing officer shall afford the parties an opportunity to present oral argument or to file briefs, or both.
- J. A full and complete record shall be kept of all proceedings in connection with an appeal. The record shall be open for inspection by the appellant or his representative at a place accessible to him. A transcript of the proceedings need not be made unless it is required for further proceedings.

**Historical Note**

Section R6-6-2212 recodified from R6-6-2012 at 9  
A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2213. Hearing Decision**

- A. The hearing decision shall be rendered exclusively on the evidence and testimony produced at the hearing, appropriate state and federal law, and Department rules governing the issue in dispute.
- B. The decision shall set forth the pertinent facts involved, the conclusions drawn from such facts, the sections of applicable law or rule, the decision and the reasons therefore. A copy of the decision, together with an explanation of the appeal rights, shall be delivered or mailed to each party or designated representative not more than 60 days from the date of filing the request for hearing unless the delay was caused by the appellant, in which case the time limit for delivery is extended by the number of days attributable to the appellant.
- C. In those cases where the Division must take additional action as a result of the decision, the action shall be taken immediately.

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- D. All decisions in favor of the appellant apply retroactively to the date of the action being appealed or to the date the hearing officer specifically finds appropriate.
- E. The decision of the hearing officer shall become the final decision of the Department 15 days after it is issued unless a written petition for review to the Appeals Board or the AHCCCS Grievance and Appeals Division has been filed or the case has been removed to the Appeals Board for review.

**Historical Note**

Section R6-6-2213 recodified from R6-6-2013 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2214. Termination of Appeal**

An appeal may be terminated as follows:

1. By voluntary withdrawal if the appellant submits a signed letter or on the record at any time before the decision is issued.
2. By default when a party fails to appear at a scheduled hearing and fails to request a rescheduled hearing within 15 days. An appeal will not be considered abandoned if the appellant provides notification up to the time of the hearing that he is unable, due to good cause, to appear and that he still wishes a hearing, or that the matter be considered on the record.

**Historical Note**

Section R6-6-2214 recodified from R6-6-2014 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2215. Review by the Appeals Board**

- A. An appellant who is a non-DD/ALTCS client or non-ALTCS service provider may request review of an adverse hearing decision within 15 days after the decision is mailed or otherwise delivered to him.
  1. The request for review shall be in writing, signed and dated. It shall set forth the grounds for the request and may be filed personally or by mail through the Division's Office of Compliance and Review or the Office of Appeals to the Appeals Board.
  2. If the request for review is filed in a timely manner, the Division shall make no change in the case action until the Appeals Board decision is issued.
- B. The Department may request review by the Appeals Board before a hearing officer's decision becomes final. The request shall be in writing, signed by an Assistant Attorney General, and shall specifically state the error which forms the basis for the request for review.
- C. The Appeals Board may remove to itself any matter before a hearing officer before the issuance of a decision, or, if a decision has been issued, before the decision has become final. Upon removal, the Appeals Board shall notify all parties of the removal.
- D. In case of removal or review, the Appeals Board shall notify the Office of Appeals that it has accepted jurisdiction, and the Office of Appeals shall prepare a complete record of the case, including a transcript which shall be provided without cost to all parties upon request.
- E. A copy of the Appeals Board decision, together with a statement specifying the rights for further review, shall be distributed to each party.

**Historical Note**

Section R6-6-2215 recodified from R6-6-2015 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**R6-6-2216. Review by AHCCCS of ALTCS-related Matters**

- A. A party may request review of an adverse hearing decision within 15 days after the decision is mailed or otherwise delivered.
- B. The request for review shall be in writing, signed, and dated. It should set forth the grounds for the request and may be filed personally or by mail through the Appellate Services Administration/Long-term Care to the AHCCCS Grievance and Appeals Division.
- C. A copy of the AHCCCS decision, together with a statement specifying the rights for further review, shall be distributed to each party.

**Historical Note**

Section R6-6-2216 recodified from R6-6-2016 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

**ARTICLE 23. DEEMED STATUS****R6-6-2301. Definitions**

- A. "Accreditation" means a status conferred on a provider by a nationally recognized agency that indicates the provider meets the professional standards of the reviewing body.
- B. "Applicant" means a provider requesting deemed status from the Department.
- C. "Application" means the letter, documents, and additional information relating to the accreditation that the Department requires an applicant to submit to request deemed status.
- D. "Complete application" means an application that conforms to the requirements of this Article and that provides sufficient information under R6-6-2302(A) for the Department to determine that the standards of the accrediting agency meet Department standards.
- E. "Day" means a calendar day.
- F. "Department" means the Arizona Department of Economic Security.
- G. "Deemed status" means that the Department has determined that a provider has been accredited by a nationally recognized agency whose accreditation standards meet Department standards for the program or service offered by the provider to Department consumers.
- H. "Division" means the Division of Developmental Disabilities within the Arizona Department of Economic Security.
- I. "Department standards" means programmatic and contractual requirements provided in statute, rule, contract, policy, and procedure for the program or service to which the standard applies.
- J. "Documentation" means written information in any medium.
- K. "Nationally recognized agency" or "accrediting agency" means a nationally recognized accrediting body for organizations, programs, and services that correspond to organizations, programs, and services for which a provider seeks deemed status under this Article. A list of nationally recognized agencies approved by the Department for purposes of deemed status is available on the Division's web site at: <http://www.azdes.gov/ddd>.
- L. "Provider" means an individual, agency, or other organization that provides or seeks to provide programs and services to Division consumers.

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1454, effective July 12, 2011 (Supp. 11-3).

**R6-6-2302. Deemed Status: Eligibility, Application, and Limitations**

- A. To be eligible for deemed status, the provider shall:
  1. Have a current accreditation from a nationally recognized agency for organizations, programs, and services the provider offers or seeks to offer to Division consumers.

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2. Submit a letter to the Department's Division of Developmental Disabilities applying for deemed status. The letter shall:
  - a. Name the accrediting agency,
  - b. Specify the applicant's programs or services that the nationally recognized agency has accredited,
  - c. Include documentation of:
    - i. The current accreditation certificate;
    - ii. Correspondence between the provider and the accrediting agency relating to the accreditation, including attachments, corrective action plans, survey/credentialing reports, notices of deficiency, quality improvement plans, and any similar document, correspondence, or information that pertains to the programs, services, and staff providing the programs and services for which the provider seeks deemed status; and
  - d. State that the provider agrees to adhere to and be accountable for meeting all Department standards.
- B. The Department shall only grant deemed status to providers who apply and satisfy the eligibility criteria in subsection (A).

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1454, effective July 12, 2011 (Supp. 11-3).

**R6-6-2303. Time-frame for Department Review of Application**

- A. Within 30 days of receiving an application for deemed status, the Department shall:
  1. Review the application for completeness, and
  2. Send written notification to the applicant if the application is incomplete. The written notification shall state:
    - a. The reason the Department considers the application to be incomplete,
    - b. The information the Department requires the applicant to submit to complete the application,
    - c. The time-frame for submitting the additional information.
- B. Within 45 days of receipt of a complete application, the Division shall notify the applicant in writing whether the application satisfies Department requirements for deemed status.

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1454, effective July 12, 2011 (Supp. 11-3).

**R6-6-2304. Responsibilities of a Provider with Deemed Status**

- A. A provider with deemed status shall adhere to and be accountable for meeting all Department standards.
- B. A provider with deemed status shall provide the Department timely and complete copies of any correspondence or documents relating to the accreditation, including attachments, on file with or sent between the provider and the accrediting agency that pertain to the programs, services, and staff providing the programs and services for which the Department has granted deemed status to the provider. Timely and complete documentation means that the provider shall send the Division a complete copy of all correspondence between the provider and the accrediting agency within 10 days of sending or receiving the correspondence.

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1454, effective July 12, 2011 (Supp. 11-3).

**R6-6-2305. Expiration and Renewal of Deemed Status**

- A. Deemed status shall expire on the earlier of the expiration date of the provider's accreditation at the time of application for deemed status, or three years from the date deemed status is granted by the Department.
- B. The Department shall renew deemed status using the same procedures in this Article for initial application.

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1454, effective July 12, 2011 (Supp. 11-3).

**R6-6-2306. Notice of Change in Accreditation**

- A. The provider with deemed status shall advise the Department of any change in the provider's accreditation within 10 days of the change.
- B. Failure to provide timely notice of a change in accreditation is grounds for revocation of deemed status.

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1454, effective July 12, 2011 (Supp. 11-3).

**R6-6-2307. Non-assignability of Deemed Status**

Deemed status is not assignable or transferable.

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1454, effective July 12, 2011 (Supp. 11-3).

**R6-6-2308. Programmatic and Contractual Monitoring of Provider with Deemed Status**

- A. The Department shall reduce its required monitoring visits for residential care service providers described in A.R.S. § 36-557(G)(2) from two times a year to one time a year for a residential care service provider with deemed status.
- B. If the Department determines that there is reasonable cause to believe the provider with deemed status is not adhering to Department standards, as required this Article, the Department or its designee may enter the premises at any reasonable time for the purpose of determining the state of the provider's compliance with the programmatic or contractual requirements of the Department.
- C. A provider's deemed status shall not limit the Department's ability to conduct a full investigation, including site visits, at any time in response to complaints, incidents, or health and safety concerns, or to require corrective action or impose other sanctions in accordance with contract and law.
- D. The Department shall report all complaints, findings, and required corrective action to the accrediting agency.

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1454, effective July 12, 2011 (Supp. 11-3).

**R6-6-2309. Revocation of Deemed Status**

- A. The Department shall revoke deemed status:
  1. When the accrediting agency finds one or more instances of uncorrected noncompliance with accreditation standards that affect health and safety;
  2. When the accreditation status of the provider, program, or service expires without renewal;
  3. When the accrediting agency withdraws the provider's accreditation or downgrades the provider's accreditation to a level or category that does not meet Department standards;
  4. When the Department finds that the provider is not adhering to Department standards;
  5. When the Department finds that the standards of the accrediting agency no longer meet Department standards;
  6. If the accrediting agency ceases to exist; or

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7. If the Department determines that the provider has not timely reported a change in its accreditation under this Article.
- B.** The Department shall give a provider with deemed status written notice of the Department's decision to revoke deemed status. The written notice shall inform the provider of the right to administrative review if the provider disagrees with the Department's revocation decision.
- B.** The Division shall review the request for an administrative review and render a written decision within 30 calendar days of receipt of the request.
- C.** The procedures in 6 A.A.C. 6, Article 22 shall govern an appeal of any administrative review decision. These procedures provide for a hearing before the Department's Office of Appeals and further review by the Department's Appeals Board.

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1454, effective July 12, 2011 (Supp. 11-3).

**R6-6-2310. Administrative Review, Appeal, and Hearing**

- A.** A provider seeking administrative review of the Department's decision to revoke deemed status may, within 35 calendar days of the decision, file a written request with the Division.

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1454, effective July 12, 2011 (Supp. 11-3).

**R6-6-2311. Judicial Review**

- Any person adversely affected by an Appeals Board decision may seek judicial review as prescribed in A.R.S. § 41-1993.

**Historical Note**

New Section made by final rulemaking at 17 A.A.R. 1454, effective July 12, 2011 (Supp. 11-3).

#### 41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

(a) Employment services, including manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.

(d) Rehabilitation services, including vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as amended, and other related federal acts and titles.

(e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.

(f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.

(g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.

(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act (P.L. 91-517) and other related federal acts and titles.

(i) Nonmedical home and community based services and functions, including department-designated case management, housekeeping services, chore services, home health aid, personal care, visiting nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.

2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.

3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.
4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
5. Employ and determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons subject to chapter 4, article 4 and, as applicable, article 5 of this title as may be necessary in the performance of its duties, contract for the services of outside advisors, consultants and aides as may be reasonably necessary and reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business.
6. Make contracts and incur obligations within the general scope of its activities and operations subject to the availability of funds.
7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of its purposes, objectives and programs.
8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.
9. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.
10. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of its duties subject to the departmental rules on the confidentiality of information.
11. Establish and maintain separate financial accounts as required by federal law or regulations.
12. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.
13. Have an official seal that is judicially noticed.
14. Annually estimate the current year's population of each county, city and town in this state, using the periodic census conducted by the United States department of commerce, or its successor agency, as the basis for such estimates and deliver such estimates to the economic estimates commission before December 15.
15. Estimate the population of any newly annexed areas of a political subdivision as of July 1 of the fiscal year in which the annexation occurs and deliver such estimates as promptly as is feasible after the annexation occurs to the economic estimates commission.
16. Establish and maintain a statewide program of services for persons who are both hearing impaired and visually impaired and coordinate appropriate services with other agencies and organizations to avoid duplication of these services and to increase efficiency. The department of economic security shall enter into agreements for the utilization of the personnel and facilities of the department of economic security, the department of health services and other appropriate agencies and organizations in providing these services.
17. Establish and charge fees for deposit in the department of economic security prelayoff assistance services fund to employers who voluntarily participate in the services of the department that provide job service and retraining for persons who have been or are about to be laid off from employment. The department shall charge only those fees necessary to cover the costs of administering the job service and retraining services.
18. Establish a focal point for addressing the issue of hunger in this state and provide coordination and assistance to public and private nonprofit organizations that aid hungry persons and families throughout this state. Specifically such activities shall include:

- (a) Collecting and disseminating information regarding the location and availability of surplus food for distribution to needy persons, the availability of surplus food for donation to charity food bank organizations, and the needs of charity food bank organizations for surplus food.
- (b) Coordinating the activities of federal, state, local and private nonprofit organizations that provide food assistance to the hungry.
- (c) Accepting and disbursing federal monies, and any state monies appropriated by the legislature, to private nonprofit organizations in support of the collection, receipt, handling, storage and distribution of donated or surplus food items.
- (d) Providing technical assistance to private nonprofit organizations that provide or intend to provide services to the hungry.
- (e) Developing a state plan on hunger that, at a minimum, identifies the magnitude of the hunger problem in this state, the characteristics of the population in need, the availability and location of charity food banks and the potential sources of surplus food, assesses the effectiveness of the donated food collection and distribution network and other efforts to alleviate the hunger problem, and recommends goals and strategies to improve the status of the hungry. The state plan on hunger shall be incorporated into the department's state comprehensive plan prepared pursuant to section 41-1956.
- (f) Establishing a special purpose advisory council on hunger pursuant to section 41-1981.

19. Establish an office to address the issue of homelessness and to provide coordination and assistance to public and private nonprofit organizations that prevent homelessness or aid homeless individuals and families throughout this state. These activities shall include:

- (a) Promoting and participating in planning for the prevention of homelessness and the development of services to homeless persons.
- (b) Identifying and developing strategies for resolving barriers in state agency service delivery systems that inhibit the provision and coordination of appropriate services to homeless persons and persons in danger of being homeless.
- (c) Assisting in the coordination of the activities of federal, state and local governments and the private sector that prevent homelessness or provide assistance to homeless people.
- (d) Assisting in obtaining and increasing funding from all appropriate sources to prevent homelessness or assist in alleviating homelessness.
- (e) Serving as a clearinghouse on information regarding funding and services available to assist homeless persons and persons in danger of being homeless.
- (f) Developing an annual state comprehensive homeless assistance plan to prevent and alleviate homelessness.
- (g) Submitting an annual report to the governor, the president of the senate and the speaker of the house of representatives on the status of homelessness and efforts to prevent and alleviate homelessness. The department shall provide a copy of this report to the secretary of state.

20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

21. Exchange information, including case specific information, and cooperate with the department of child safety for the administration of the department of child safety's programs.

B. If the department of economic security has responsibility for the care, custody or control of a child or is paying the cost of care for a child, it may serve as representative payee to receive and administer social security and United States department of veterans affairs benefits and other benefits payable to such child. Notwithstanding any law to the contrary, the department of economic security:

1. Shall deposit, pursuant to sections 35-146 and 35-147, such monies as it receives to be retained separate and apart from the state general fund on the books of the department of administration.
2. May use such monies to defray the cost of care and services expended by the department of economic security for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.
3. Shall maintain separate records to account for the receipt, investment and disposition of funds received for each child.
4. On termination of the department of economic security's responsibility for the child, shall release any funds remaining to the child's credit in accordance with the requirements of the funding source or in the absence of such requirements shall release the remaining funds to:
  - (a) The child, if the child is at least eighteen years of age or is emancipated.
  - (b) The person responsible for the child if the child is a minor and not emancipated.

C. Subsection B of this section does not pertain to benefits payable to or for the benefit of a child receiving services under title 36.

D. Volunteers reimbursed for expenses pursuant to subsection A, paragraph 5 of this section are not eligible for workers' compensation under title 23, chapter 6.

E. In implementing the temporary assistance for needy families program pursuant to Public Law 104-193, the department shall provide for cash assistance to two-parent families if both parents are able to work only on documented participation by both parents in work activities described in title 46, chapter 2, article 5, except that payments may be made to families who do not meet the participation requirements if:

1. It is determined on an individual case basis that they have emergency needs.
2. The family is determined to be eligible for diversion from long-term cash assistance pursuant to title 46, chapter 2, article 5.

F. The department shall provide for cash assistance under temporary assistance for needy families pursuant to Public Law 104-193 to two-parent families for no longer than six months if both parents are able to work, except that additional assistance may be provided on an individual case basis to families with extraordinary circumstances. The department shall establish by rule the criteria to be used to determine eligibility for additional cash assistance.

G. The department shall adopt the following discount medical payment system for persons who the department determines are eligible and who are receiving rehabilitation services pursuant to subsection A, paragraph 1, subdivision (d) of this section:

1. For inpatient hospital admissions and outpatient hospital services the department shall reimburse a hospital according to the rates established by the Arizona health care cost containment system administration pursuant to section 36-2903.01, subsection G.

2. The department's liability for a hospital claim under this subsection is subject to availability of funds.
3. A hospital bill is considered received for purposes of paragraph 5 of this subsection on initial receipt of the legible, error-free claim form by the department if the claim includes the following error-free documentation in legible form:
  - (a) An admission face sheet.
  - (b) An itemized statement.
  - (c) An admission history and physical.
  - (d) A discharge summary or an interim summary if the claim is split.
  - (e) An emergency record, if admission was through the emergency room.
  - (f) Operative reports, if applicable.
  - (g) A labor and delivery room report, if applicable.
4. The department shall require that the hospital pursue other third-party payors before submitting a claim to the department. Payment received by a hospital from the department pursuant to this subsection is considered payment by the department of the department's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.
5. For inpatient hospital admissions and outpatient hospital services rendered on and after October 1, 1997, if the department receives the claim directly from the hospital, the department shall pay a hospital's rate established according to this section subject to the following:
  - (a) If the hospital's bill is paid within thirty days of the date the bill was received, the department shall pay ninety-nine percent of the rate.
  - (b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the department shall pay one hundred percent of the rate.
  - (c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the department shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.
6. For medical services other than those for which a rate has been established pursuant to section 36-2903.01, subsection G, the department shall pay according to the Arizona health care cost containment system capped fee-for-service schedule adopted pursuant to section 36-2904, subsection K or any other established fee schedule the department determines reasonable.
- H. The department shall not pay claims for services pursuant to this section that are submitted more than nine months after the date of service for which the payment is claimed.
- I. To assist in the location of persons or assets for the purpose of establishing paternity, establishing, modifying or enforcing child support obligations and other related functions, the department has access, including automated access if the records are maintained in an automated database, to records of state and local government agencies, including:
  1. Vital statistics, including records of marriage, birth and divorce.
  2. State and local tax and revenue records, including information on residence address, employer, income and assets.

3. Records concerning real and titled personal property.
4. Records of occupational and professional licenses.
5. Records concerning the ownership and control of corporations, partnerships and other business entities.
6. Employment security records.
7. Records of agencies administering public assistance programs.
8. Records of the motor vehicle division of the department of transportation.
9. Records of the state department of corrections.
10. Any system used by a state agency to locate a person for motor vehicle or law enforcement purposes, including access to information contained in the Arizona criminal justice information system.

J. Notwithstanding subsection I of this section, the department or its agents shall not seek or obtain information on the assets of an individual unless paternity is presumed pursuant to section 25-814 or established.

K. Access to records of the department of revenue pursuant to subsection I of this section shall be provided in accordance with section 42-2003.

L. The department also has access to certain records held by private entities with respect to child support obligors or obligees, or individuals against whom such an obligation is sought. The information shall be obtained as follows:

1. In response to a child support subpoena issued by the department pursuant to section 25-520, the names and addresses of these persons and the names and addresses of the employers of these persons, as appearing in customer records of public utilities, cable operators and video service providers.
2. Information on these persons held by financial institutions.

M. Pursuant to department rules, the department may compromise or settle any support debt owed to the department if the director or an authorized agent determines that it is in the best interest of this state and after considering each of the following factors:

1. The obligor's financial resources.
2. The cost of further enforcement action.
3. The likelihood of recovering the full amount of the debt.

N. Notwithstanding any law to the contrary, a state or local governmental agency or private entity is not subject to civil liability for the disclosure of information made in good faith to the department pursuant to this section.

#### 46-134. Powers and duties; expenditure; limitation

The state department shall:

1. Administer all forms of public relief and assistance except those that by law are administered by other departments, agencies or boards.
2. Develop a section of rehabilitation for the visually impaired that shall include a sight conservation section, a vocational rehabilitation section in accordance with the federal vocational rehabilitation act, a vending stand section in accordance with the federal Randolph-Sheppard act and an adjustment service section that shall include rehabilitation teaching and other social services deemed necessary, and shall cooperate with similar agencies already established. The administrative officer and staff of the section for the blind and visually impaired shall be employed only in the work of that section.
3. Assist other departments, agencies and institutions of the state and federal governments, when requested, by performing services in conformity with the purposes of this title.
4. Act as agent of the federal government in furtherance of any functions of the state department.
5. Carry on research and compile statistics relating to the entire public welfare program throughout this state, including all phases of dependency and defectiveness.
6. Cooperate with the superior court in cases of delinquency and related problems.
7. Develop plans in cooperation with other public and private agencies for the prevention and treatment of conditions giving rise to public welfare and social security problems.
8. Make necessary expenditures in connection with the duties specified in paragraphs 5, 6, 7, 13 and 14 of this subsection.
9. Have the power to apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this chapter.
10. Make rules, and take action necessary or desirable to carry out the provisions of this title, that are not inconsistent with this title.
11. Administer any additional welfare functions required by law.
12. If a tribal government elects to operate a cash assistance program in compliance with the requirements of the United States department of health and human services, with the review of the joint legislative budget committee, provide matching monies at a rate that is consistent with the applicable fiscal year budget and that is not more than the state matching rate for the aid to families with dependent children program as it existed on July 1, 1994.
13. Furnish a federal, state or local law enforcement officer, at the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient is a fugitive felon or a probation, parole or community supervision violator or has information that is necessary for the officer to conduct the official duties of the officer and the location or apprehension of the recipient is within these official duties.
14. In conjunction with Indian tribal governments, request a federal waiver from the United States department of agriculture that will allow tribal governments that perform eligibility determinations for temporary assistance for needy families programs to perform the food stamp eligibility determinations for persons who apply for services pursuant to section 36-2901, paragraph 6, subdivision (a). If the waiver is approved, the state shall provide the

state matching monies for the administrative costs associated with the food stamp eligibility based on federal guidelines. As part of the waiver, the department shall recoup from a tribal government all federal fiscal sanctions that result from inaccurate eligibility determinations.

### 36-554. Powers and duties of director

#### A. The director shall:

1. Be responsible for developing and annually revising a statewide plan and initiating statewide programs and services for persons with developmental disabilities in locations where the programs and services are necessary, which shall include:

(a) Child services, which may include infant stimulation, developmental training for pre-school children and special education at Arizona training program facilities for school-age, children with developmental disabilities residing at Arizona training program facilities who do not attend public school.

(b) Adult services, in coordination with the vocational rehabilitation services of the department, which may include but not be limited to job training and training and adjustment services, job development and placement, sheltered employment and other nonvocational day activity services for adults.

(c) Residential services, including various community residential settings, Arizona training program facilities and state operated service centers which provide varying levels of supervision in accordance with the developmental disability levels of the persons placed at such settings, facilities or centers. The department shall contract with private profit or nonprofit agencies to provide appropriate residential settings for persons with developmental disabilities which provide for regular assistance and supervision of such persons and which provide varied developmental disability programs and services on or near the community residential setting.

(d) Resource services, which may include comprehensive evaluation services, information and referral services and outpatient rehabilitation and social development services. The department in providing developmental disability programs and services shall whenever practicable utilize qualified private contractors. In selecting private contractors, the department shall utilize those contractors which can clearly demonstrate an ability to perform such contract in accordance with standards and specifications adopted by the department.

2. Establish standards, provide technical assistance, and supervise all developmental disability programs and services operated by or supported by the department.

3. Coordinate the planning and implementation of developmental disability programs and activities, institutional and community, of all state agencies, provided this shall not be construed as depriving other state agencies of jurisdiction over, or the right to plan for, control, and operate programs that pertain to developmental disability programs but that fall within the primary jurisdiction of such other state agencies.

4. Periodically assess the effectiveness of the quality assurance system as required by 42 Code of Federal Regulations section 434.34 as it pertains to developmental disabilities programs.

5. License community residential settings pursuant to this chapter.

6. Develop rules establishing a procedure for handling complaints about community residential settings.

7. Inform in writing every parent or guardian of a client with a developmental disability residing at or transferring to a community residential setting of the complaint handling procedure.

8. As new community residential settings are developed over a period of time, reduce the clientele at Arizona training program facilities to those persons with developmental disabilities who are required to be in Arizona training program facilities because the community lacks an appropriate community residential setting that meets their individual needs or whose parents or legal guardians want them in an Arizona training program facility.

9. In conjunction with the division, individuals with developmental disabilities and their families, advocates, community members and service providers, develop, enhance and support environments that enable individuals

with developmental disabilities to achieve and maintain physical well-being, personal and professional satisfaction, participation as family and community members and safety from abuse and exploitation.

10. Do all other things reasonably necessary and proper to carry out the duties and the provisions of this chapter.

11. Adopt rules regarding procurement procedures similar to those found in title 41, chapter 23.

B. Programs and services offered pursuant to subsection A, paragraph 1 of this section shall be provided in cooperation with public and private resources that can best meet the needs of persons with developmental disabilities and that are located in the community and in proximity to the persons being served.

C. The director may:

1. Establish nonresidential outpatient programs for placement, evaluation, care, treatment and training of persons with developmental disabilities residing in the community who are not eligible for public school programs, and who do not have access to other state supported programs providing equivalent services.

2. Develop cooperative programs with other state departments and agencies, political subdivisions of the state, and private agencies concerned with and providing services for persons with developmental disabilities.

3. Contract for the purchase of services with other state and local governmental or private agencies. Such agencies are authorized to accept and expend funds received pursuant to such contracts.

4. Stimulate research by public and private agencies, institutions of higher learning, and hospitals in the interest of the prevention of developmental disabilities and improved methods of care and training for persons with developmental disabilities.

5. Apply for, accept, receive, hold in trust or use in accordance with the terms of the grant or agreement any public or private funds or properties, real or personal, granted or transferred to it for any purpose authorized by this chapter.

6. Make and amend rules from time to time as deemed necessary for the proper administration of programs and services for the treatment of persons with developmental disabilities, for the admission of persons with developmental disabilities to the programs and services and to carry out the purposes of this chapter.

### 36-557. Community developmental disability services; service providers

A. The department may use state and federal monies appropriated or otherwise available to it for this purpose to assist in the establishment and maintenance of local developmental disability services by public or private nonprofit or profit agencies. The monies may be expended as professional fees for service, in contracts for advancement or reimbursement or in another appropriate manner and may be used for any purpose necessary to the provision of local developmental disability services. The monies may not be used for departmental salaries, care of persons with developmental disabilities by the department or any other purpose within the department, but may be used for consultation to the department in the interest of local programs.

B. A local public or private nonprofit or profit agency providing or intending to provide community developmental disability services and desiring to contract with the department for the furnishing of these services shall submit a program plan and budget to the department on the forms and in the manner required by the department. If the program meets departmental standards and is consistent with the state plan of the department and the individualized service program plan of the client, the department, notwithstanding the provisions of title 41, chapter 23, relating to procurement and including services pursuant to section 36-2943, may contract with that agency for required services on terms the department requires. The contracts shall provide that the provider of services is subject to a continuing program evaluation by the department through progress reports, expenditure reports, program audits or other appropriate evaluation techniques to assure that the provider of service is in continued compliance with the terms of the contract and the department's community developmental disability service standards and requirements.

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

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

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

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

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

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

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

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

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

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

1. Provide for mandatory inspection by the department every two years for facilities other than group homes.
2. Provide for mandatory monitoring by the department for health, safety, contractual and programmatic standards at least every six months, unless the department has granted deemed status to the service provider or the service provider received a score of at least ninety-five percent on the most recent monitoring visit. If the department has granted deemed status or awarded the service provider with a score of at least ninety-five percent on the most recent monitoring visit, it shall monitor that provider once each year. On determination by the department that there is reasonable cause to believe a service provider is not adhering to the department's programmatic or contractual requirements, the department and any duly designated employee or agent of the department may enter on and into the premises at any reasonable time for the purpose of determining the state of compliance with the programmatic or contractual requirements of the department.
3. Provide for mandatory investigation by the department in response to complaints within ten working days, except that in those instances that pose a danger to the client, the department shall conduct the investigation immediately. Health and safety complaints related to group homes shall be referred to the department of health services on receipt. The department of health services shall share all incident reports related to health and safety with the division of developmental disabilities.
4. Except for group homes licensed by the department of health services, specify the health and safety and sanitation codes and other codes or standards applicable to the facility or to the operation of the facility by the contractor other than group homes.
5. Provide for mandatory periodic reports to be filed by the provider contractor with the department with respect to the operation of the facility.
6. Provide that the facility and the books and records of the facility and of the provider are subject to inspection at any time by employees of the department or designees of the department.
7. Provide that parents and guardians of persons with developmental disabilities residing at the facility, members of the developmental disabilities advisory council, and members of other recognized and ongoing advocacy groups for persons with developmental disabilities may inspect the facility at reasonable times.

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

I. Contracts for the purchase of day program or employment services, in addition to the other general requirements applicable to the purchase of client services, must provide for mandatory monitoring by the department for health, safety, contractual, programmatic and quality assurance standards at least once every six months, unless the department has granted deemed status to the service provider. If the department has granted deemed status to the service provider, the department shall monitor that provider once each year. The department and any duly designated employee or agent of the department may enter on or into the service provider's premises at any reasonable time for the purpose of determining the state of compliance with the department's programmatic, contractual and quality assurance requirements.

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

K. Contracts for client services issued by the department shall include language outlining the provisions for a grievance and appeal procedure. The director shall provide notice to providers not less than thirty days before the issuance of an amendment to a qualified vendor agreement. The decision of the director regarding qualified

vendor agreement amendments may be appealed pursuant to title 41, chapter 6, article 10. The grievance process applicable to these contracts shall comply with title XIX requirements.

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

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

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

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

1. Administer medications, including assisting with the client's self-administration of medications.
2. Log, store, remove and dispose of medications.
3. Maintain medications and protocols for direct care.
4. Serve as the client's representative payee if requested by the client or the client's guardian and approved by the payer.

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

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

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

### 36-560. Admission

- A. Persons shall be admitted to developmental disabilities programs or services operated by or supported by the department only pursuant to the procedures prescribed in this chapter. An application for admission shall be submitted on forms provided by the department in accordance with the rules and procedures adopted by the department.
- B. Admission into any developmental disabilities program or service operated by the department or supported by the department is subject to availability of space in any program or service and is subject to annual legislative appropriation and other available funding.
- C. A person shall not receive developmental disabilities services unless proof of the requirements set forth in section 36-559 is provided.
- D. An application shall be signed by the responsible person. An admission or assignment of any client to a program, service or facility shall not be made without the consent of the responsible person. If an application for admission to a residential program is made for a client who is fourteen to eighteen years of age and who is capable of giving voluntary informed consent, that client and the client's parent or guardian shall jointly apply, unless it appears to the department that the client is manifestly incapable of giving consent. An adult capable of giving consent may apply for admission and may be assigned to programs, services or facilities.
- E. If an adult applicant applies for admission, or when a minor client served directly or indirectly by the department becomes eighteen years of age, and the applicant or client reasonably appears to be impaired by developmental disabilities to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, the department shall require that prior to receiving or continuing to receive developmental disabilities programs or services the applicant have a guardian appointed pursuant to title 14, chapter 5, or shall have had a judicial determination made that it is not necessary to appoint a guardian for that person.
- F. There shall be no judicial admissions except pursuant to section 8-242 and as stipulated in section 36-559, subsection D.
- G. No person may be admitted or assigned to any developmental disabilities facility, program or service unless the person has received a placement evaluation to determine the need for the developmental disabilities programs and services which are appropriate for that person and the admittance or assignment is consistent with the recommendation or placement evaluation. Each placement evaluation shall be governed by the following conditions:
1. The placement evaluation team shall consist of a group assigned by the department which shall include a department employee to serve as the case manager, the parent or guardian of the applicant and appropriate program staff of the department. Counsel for the applicant and a friend or advocate of the applicant designated in the application for admission may also attend the evaluation sessions for the applicant.
  2. A placement evaluation report shall be prepared within thirty days after the placement evaluation is initiated which shall recommend the assignment of the applicant to certain designated types of developmental disabilities programs or services operated by or supported by the department. In this process the specific assignment request of the responsible person shall be given strong consideration.
  3. A placement evaluation conducted by the department for the purpose of determining appropriate developmental disabilities programs and services shall not include an evaluation of a child for placement in a special education program in a school district.
  4. The procedure prescribed in section 36-559, subsection D constitutes a placement evaluation for the purposes of this chapter.

H. The standards for determining the assignment for the applicant to a particular service shall be in the best interest of the client, taking into consideration the age, the degree or type of developmental disability, the presence of other disabling conditions of the applicant, the ability to provide the applicant with the maximum opportunity to develop the person's maximum potential, to provide a minimally structured residential program and environment for the applicant and to provide a safe, secure and dependable residential and program environment for the applicant and the particular desires of the applicant. In making this determination, the placement evaluation team shall consider the reports of all previous placement-type evaluations performed for such applicant, the medical and program history of the applicant and the services and programs available from this state, contractors of this state and other providers.

I. After the placement evaluation report has been issued and the responsible person accepts the assignment of all programs or services, the department shall enroll the applicant in the programs or services within thirty days, subject to the provisions of subsection B of this section. If the applicant cannot be enrolled within thirty days, written and oral notice, subject to the requirements of section 36-551.01, subsection P, shall be given to the applicant and the responsible person, within ten days of the department's determination that the applicant cannot be enrolled, informing such persons of the department's determination. The notice shall also include the appropriate procedures, which the applicant or the responsible person should follow to assure that the applicant is enrolled.

J. The department may attach conditions to the direct or indirect provision of services with which the client would be required to comply in order to receive the services. These conditions may include requiring the client to participate in appropriate day programs as a condition of providing residential services and residential facilities. A client assigned to a residential program may be required to assist in daily housework in maintaining the facility as part of the client's individual program.

K. The department may refuse to provide specific services that are requested by the client but that are not recommended for the client as a result of the evaluation.

L. Application for admission shall be one of the following types:

1. "Regular admission" for placement of a person with a developmental disability for developmental disabilities programs and services after a placement evaluation has been conducted for such person.
2. "Emergency admission" for placement of a person with a developmental disability when there is an immediate and compelling need for short-term developmental disabilities programs and services.

M. Regular admission shall be permitted only after a placement evaluation has been conducted and only if space is available at the facility or in the program or service in which placement is requested.

N. Emergency admission for applicants with developmental disabilities shall be permitted even though a placement evaluation has not been performed, if:

1. Space is available at the facility or in the program or service in which placement is requested.
2. The department determines that the facility, program or service will meet the needs of the client.
3. The client has an urgent need for short-term placement and care which the facility, program or service provides and is otherwise eligible for services pursuant to the requirements set forth in section 36-559.

O. Developmental disabilities programs and services may be provided to a person with developmental disabilities admitted pursuant to an emergency admission for a period not to exceed sixty consecutive days following admission or until a placement evaluation is performed, whichever period first occurs.

**36-561. Prohibiting certain treatment or drugs; use of aversive stimuli**

A. No psychosurgery, insulin shock or electroshock treatment or experimental drugs shall be administered by the department to any client, nor shall the department license, approve or support any program or service which uses such treatment or drugs.

B. The department shall adopt rules and regulations specifying the aversive stimuli used for any developmental disabilities program or service provided directly by, licensed and supervised by, or supported by the department. Copies of such rules and regulations shall be made available to all parents, guardians, applicants and clients participating in placement evaluations. The department shall provide at least sixty days notice to all responsible persons prior to implementing any modification to such rules and regulations. No aversive stimuli shall be used or permitted by the department in any such program or service except in accordance with the adopted rules and regulations and the client's individual program plan.

### 36-562. Schedule of financial contribution; review of payment order

- A. Money for the support of a person with a developmental disability in a residential program operated or supported by the department, except for children placed in special foster homes as described in section 36-558.01, pursuant to sections 8-242, 8-514.01 and 8-845, shall be paid to the department, and by it deposited, pursuant to sections 35-146 and 35-147, and shall continue to be paid unless the person is terminated from such residential program.
- B. The financial contribution by the parent of a minor with a developmental disability shall terminate on the eighteenth birthday of such person. The financial contribution by parents on behalf of two or more persons with developmental disabilities receiving developmental disabilities programs or services shall not exceed the maximum amount such parents would be required to pay if only one of such children was receiving the programs or services.
- C. The department by rule shall prescribe a fee schedule for developmental disability residential programs provided directly or indirectly by the department. The amount of annual liability of a person with a developmental disability or parent for residential programs and services provided shall be based on the percentage of gross income of the person with a developmental disability or parent, as defined by section 61 of the United States internal revenue code, except that part of the gross income of a self-employed person that results from the operation of the person's business shall be adjusted by the deductions allowed in the internal revenue code relating to such income in computing adjusted gross income.
- D. For a person with a developmental disability or a parent of a minor with a developmental disability with an estate, trust or annuity, the amount of annual liability for residential programs and services shall be based on the actual cost of services until the individual meets the financial eligibility requirements for federal social security supplemental income benefits or the financial eligibility requirements for the Arizona long-term care system. In billing a trust, the department is not limited to trust income, but shall also bill the trust corpus.
- E. The director shall review the order for payment for residential care and services at least annually, and shall require the responsible person to update the financial information provided annually or at any time on request by the county board of supervisors or by the parent, guardian, or other person making such payments. Section 36-563 applies to any order or change in order for payment.
- F. The responsible person shall furnish current financial information to the director and to the appropriate county board of supervisors at the times and on the forms and in the manner prescribed by the director, provided that such information shall be held by the director and the county board of supervisors to be strictly confidential, and it shall not be divulged except in the instance where it is necessary in connection with legal action.
- G. A financial contribution, which shall not exceed the actual cost of the programs and services provided, may be required from the client or the parent, spouse or estate of a person with a developmental disability for the cost of any nonresidential developmental disability program or service operated by or supported by the department. The department by rule shall adopt a fee schedule for financial contributions. The amount of liability of a client or the parent, spouse or estate of a client for nonresidential services and programs or any combination of residential and nonresidential services and programs shall not exceed the amount of the fee prescribed for residential services in subsection C of this section. Counties are not required to contribute to the cost of nonresidential services or programs provided to clients.
- H. The amount payable by the person with a developmental disability or the person's parent or estate for residential services shall be fixed by the director in accordance with the fee schedule prescribed in this section.
- I. Money paid by a client, parent or guardian shall be paid to the director and deposited, pursuant to sections 35-146 and 35-147, in the state general fund.
- J. The department shall provide monthly, or more frequent, billings, as required, to all persons responsible for paying for developmental disability residential or nonresidential services and programs provided directly or

indirectly by the department. The department shall require all purchase of care providers to provide current lists of all persons receiving residential or nonresidential services and programs in facilities operated by such providers. The department shall forward reports of delinquent billings for residential and nonresidential services and programs provided by the department or by contractors to the attorney general for collection.

K. The department shall notify each client and the parent or guardian of such client for whom it has determined that contributions are required for the cost of residential or nonresidential services and programs that it reserves the right to terminate developmental disability residential or nonresidential services and programs to a client for nonpayment of fees required to be paid pursuant to this section.

L. Any person affected by an order of the director for payment of costs of care may contest such order and request an administrative hearing pursuant to section 36-563. Any person liable for the costs of care of a client may appeal to the director, pursuant to section 36-563, for a reduction in the amount of payment for such costs of care on the basis of hardship.

M. Notwithstanding subsections C and H of this section, the department may require clients who are receiving residential programs and who receive income or benefits to contribute to the cost of their support and maintenance, subject to the provisions of federal laws and regulations. Such contributions shall not be subject to subsections A and I of this section. The department shall adopt rules that determine the amount and means of payment of such contributions, except that in no event shall the combined contribution made on behalf of a client by a client or the client's parent or estate exceed the actual cost of the residential programs provided. A minimum of thirty per cent of the client's income or benefits shall be retained for the client's personal use.

36-563. Review and appeal; hearing

A. This section governs the review and appeal procedure for decisions relating to the admission, evaluation, assignment to programs and services, care and treatment, discharge from a program or service provided through the department and contributions for residential programs or services provided through the department.

B. Notice of the appeal rights provided pursuant to this section shall be given to all parties to each placement evaluation and to each interested person upon request.

C. The director shall adopt rules to establish procedures for initial, informal administrative review and redetermination by the department of the decisions specified in subsection A of this section. These rules shall specify the manner by which requests for administrative reviews are filed, the person with whom requests are filed, whether and under what circumstances meetings of department representatives and the person filing the request are required to be held to consider requests for review and the time periods governing requests and which govern decisions on these requests. These rules may prescribe forms to be used in initiating requests for administrative review.

D. Further administrative appeals from decisions of the department subject to the procedures specified in subsection C of this section and on other contested cases are governed by title 41, chapter 14, article 3.

E. Services required pursuant to section 36-559, subsection D shall be directed by the courts.

### 36-565. Periodic evaluations of persons with developmental disabilities

A. Evaluations of the client's placement shall be made at six-month intervals after a client with a developmental disability has been enrolled in a developmental disabilities program or services operated by or supported by the department. The department, upon such evaluation, shall recommend to the responsible person any change in the developmental disabilities program or service for the person with a developmental disability, in accordance with the results of such evaluations.

B. If an evaluation has been conducted, and it is determined that the client is in a program or service no longer appropriate to his individual needs or that he can be better treated and habilitated in another facility, program or service, the department shall transfer the client to another developmental disabilities program or service or terminate the client from the developmental disabilities program or service pursuant to this chapter or the department may recommend additional services for the client as reported by the evaluation, and enroll the client in such additional services.

C. The client, parent and guardian shall be given thirty days' written notice of the proposed transfer, termination or substantial change of services under this chapter. The client, parent and guardian shall also be informed in writing of the right to an administrative review pursuant to section 36-563 for the purposes of contesting the proposed action. If an administrative review is requested, no transfer, termination or substantial change of services shall be made until the decision resulting from the review is issued.

D. The department shall establish rules and regulations concerning the standards of placement of clients from one program setting to another.

36-568. Group homes; intermediate care facilities; electronic monitoring; rules; policies; definition

A. A service provider that operates a group home or an intermediate care facility for persons with an intellectual disability may install, oversee and monitor electronic monitoring devices in common areas, including hallways, of the group home or intermediate care facility. The service provider may contract with a third party to install, oversee and monitor the electronic monitoring device.

B. The director shall adopt rules regarding the use of electronic monitoring in group homes and intermediate care facilities that include at a minimum:

1. Consent requirements consistent with section 13-3019.
2. Public disclosure that an electronic monitoring device is in use on the property.
3. The maintenance, storage and retention schedule of the electronic record.
4. Who may access the electronic record and under what circumstances.
5. How confidentiality and privacy are maintained.
6. How often the electronic monitoring device is monitored or reviewed by the service provider or the service provider's designee.
7. Ensuring that all staff who have access to the electronic record are properly trained in the facility policies and the protection of client rights.
8. Ensuring that adherence to the facility policies is monitored and the risks or breaches of the facility policies are promptly addressed.

C. The rules adopted pursuant to subsection B of this section may not:

1. Prohibit accessing the electronic record from the service provider, the member or the member's family or guardian unless the electronic record contains evidence of a suspected criminal offense.
2. Require a service provider to be financially responsible for purchasing, installing, maintaining or monitoring an electronic monitoring device that is not voluntarily installed by the service provider in the group home or intermediate care facility.

D. If a service provider has installed and uses an electronic monitoring device before August 27, 2019, the service provider shall establish policies consistent with rules adopted pursuant to subsection B of this section and submit the policies to the department within ninety days after the rules are adopted.

E. For the purposes of this section, "electronic monitoring device":

1. Means a video surveillance camera or audio device that is installed in a common area, including a hallway, of a group home or intermediate care facility.
2. Does not include an electronic, mechanical or other device that is specifically used for the nonconsensual interception of wire or electronic communications.

36-592. Adult developmental homes; child developmental homes; license applications; investigation and operation; third-party contractors; rules; definitions

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

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

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

D. A licensee who holds an adult developmental home or child developmental home license shall:

1. Comply with applicable health, safety and sanitation codes or standards and document its compliance.
2. File reports as prescribed by the department.
3. Allow the department to inspect or monitor its services and facility and the facility's books and records.
4. Comply with rules adopted by the department.
5. Provide for the health, safety and welfare of the licensee's clients.
6. Allow the inspection of the developmental home at reasonable times pursuant to section 36-595.01.

E. A license expires one year from the date of issuance.

F. For each adult developmental home and child developmental home, the department shall:

1. Conduct an annual licensing home visit.
2. Monitor the settings for compliance with health, safety, contractual, programmatic and quality assurance standards at least two times per year. The department shall maintain a system of independent oversight of monitoring. The department may enter into a contract with third parties to perform services in connection with oversight and monitoring. The department may not contract with the same third party for both oversight and monitoring under this paragraph.
3. Investigate a complaint within ten working days after receiving notice of the complaint, except that if there is a danger to a client, the department shall conduct the investigation immediately.

G. The department shall establish by rule minimum qualifications, responsibilities and oversight for the licensing and monitoring of adult developmental homes and child developmental homes. The rules regarding minimum qualifications shall address professional judgment, conflicts of interest and training. The rules shall establish the frequency and type of visits for licensing and monitoring, maximum caseload ratios for those performing licensing and monitoring services and a system for appropriate public access to information regarding licensing and monitoring findings.

H. The department may contract with the same third party to perform services in connection with the licensing and monitoring of an adult developmental home or a child developmental home.

I. For the purposes of this section:

1. "Licensing" includes recruiting and verifying qualifications of applicants.

2. "Monitoring" includes monitoring health, safety, contractual, programmatic and quality assurance standards of an adult developmental home or child developmental home.

**36-595. Programmatic and contractual monitoring; deemed status**

A. The department of economic security shall perform programmatic and contractual monitoring of the services it provides or for which it contracts.

B. The department shall promulgate rules that provide for deemed status. The department shall grant deemed status to a service provider that presents evidence that it maintains a current accreditation from a nationally recognized agency that the department determines maintains accreditation standards that meet the standards established by the department. On determination by the department that there is reasonable cause to believe a service provider is not adhering to the programmatic or contractual requirements of the department, the department and any duly designated employee or agent of the department may enter on and into the premises at any reasonable time for the purpose of determining the state of compliance with the programmatic or contractual requirements of the department. The department may revoke deemed status based on the findings of programmatic and contractual monitoring.

C. The department of health services may deny, suspend or revoke a license for a violation of this article or department rules. At least thirty days before the department denies, revokes or suspends a license it shall mail the applicant or licensee a notice of that person's right to a hearing. The department shall issue this notice by certified mail, return receipt requested. The notice shall state the hearing date and the facts constituting the reasons for the department's action and shall cite the specific statute or rule violated.

D. If the person does not respond to the written notice, the department of health services, at the expiration of the time fixed in the notice, shall take the action prescribed in the notice. If the person, within the period fixed in the notice, conforms the application or the operation of the facility to the applicable statute or rule, the department may grant the license or withdraw the notice of suspension or revocation.

36-596.01. Liens; perfection; recording; assignment; notice of lien; compromise

A. The department is entitled to a lien for the charges for hospital or medical care and treatment paid by the department on behalf of an injured person with a developmental disability on any and all claims of liability or indemnity for damages accruing to the person with a developmental disability on account of injuries giving rise to the claims and which necessitated the hospital or medical care and treatment.

B. The department shall perfect a lien by filing a verified written statement in the office of the county recorder in the county in which the injury occurred. This statement shall contain the following information:

1. The name and address of the injured person. The department shall not include this information if department records indicate that the injuries may be the result of a public offense as defined in section 13-105.

2. The name and address of the department.

3. The date of admission to the hospital and the date of discharge.

4. All dates on which medical or long-term care was provided.

5. The amount the department knows to be due for hospitalization, medical care and treatment including the amount for which the department is responsible.

6. The names and addresses of all persons, firms and corporations, including insurance carriers, alleged to be liable for the injuries.

C. The department shall record this information within thirty days after the injured person is discharged from a hospital or otherwise treated for injuries.

D. Within five days of its recording, the department shall mail a copy of the lien to each person, firm or corporation, including an insurance carrier listed in the lien and the person, or the parent or guardian of the person, receiving services pursuant to this article.

E. The recording of the lien is notice to all persons, firms and corporations, including insurance carriers, that are liable for damages whether or not specifically named in the lien.

F. The department may assign the lien in whole or in part to a provider that is responsible for hospital, medical or long-term care services.

G. The director shall establish by rule procedures for a provider to notify the department concerning the delivery of hospital, medical or long-term care services to a person who may have claims for damages.

H. The department may amend a lien to reflect current charges, except the department may not amend a lien after the time of final settlement of a claim pursuant to subsection A if the department is given notice of an impending settlement at least five days excluding Saturdays and holidays before the final settlement.

I. A public entity shall compromise a claim it has pursuant to section 11-291, 12-962, 36-596, 36-2903, 36-2935, 36-2956 or this section if, after considering the following factors the public entity determines that the compromise provides a settlement of the claim that is fair and equitable:

1. The nature and extent of the person's injury or illness.

2. The sufficiency of insurance or other sources of indemnity available to the person.

3. Any other factor relevant for a fair and equitable settlement under the circumstances of a particular case.



**F**

**CONSIDERATION AND DISCUSSION OF REQUESTING A FIVE YEAR REVIEW REPORT FROM THE DEPARTMENT OF ECONOMIC SECURITY FOR TITLE 6, CHAPTER 13, ARTICLE 8 OUTSIDE THE FIVE YEAR REVIEW REPORT PROCESS**



DEPARTMENT OF ECONOMIC SECURITY

Your Partner For A Stronger Arizona

Douglas A. Ducey  
Governor

Michael Wisehart  
Director

August 5, 2020

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

Re: Title 6, Chapter 13, State Assistance Programs

Dear Ms. Sornsin:

This letter is to notify the Governor's Regulatory Review Council that the Department of Economic Security has identified rules for expiration under Title 6, Chapter 13, State Assistance Programs and is requesting Council review. The Department has identified all rules in Article 8, Short-Term Crisis Services for expiration, which includes:

- R6-13-801 Definitions
- R6-13-802 Application Procedures
- R6-13-803 General Eligibility Requirements
- R6-13-804 Financial Eligibility Requirements; Countable Income
- R6-13-805 Emergent Need Eligibility Requirements
- R6-13-806 Types of Assistance; Duration
- R6-13-807 Payments
- R6-13-808 Notification
- R6-13-809 Complaints, Hearings, and Appeals

If you have any questions or require additional information, please contact me at (602) 542-9199.

Sincerely,

Christian Eide  
Legal/Administrative Rules Analyst

**G**

**CONSIDERATION AND DISCUSSION OF THE 2021 COUNCIL CALENDAR**

GOVERNOR'S REGULATORY REVIEW COUNCIL DEADLINES FOR 2021 (MEETING DATES ARE SUBJECT TO CHANGE)

DEADLINE FOR PLACEMENT ON AGENDA *	FINAL MATERIALS SUBMITTED TO COUNCIL	DATE OF COUNCIL STUDY SESSION	DATE OF COUNCIL MEETING
<i>Tuesday</i> December 29, 2020	<i>Tuesday</i> January 19, 2021	<i>Tuesday</i> January 26, 2021	<i>Tuesday</i> February 2, 2021
<i>Tuesday</i> January 19, 2021	<i>Tuesday</i> February 16, 2021	<i>Tuesday</i> February 23, 2021	<i>Tuesday</i> March 2, 2021
<i>Tuesday</i> February 16, 2021	<i>Tuesday</i> March 23, 2021	<i>Tuesday</i> March 30, 2021	<i>Tuesday</i> April 6, 2021
<i>Tuesday</i> March 23, 2021	<i>Tuesday</i> April 20, 2021	<i>Tuesday</i> April 27, 2021	<i>Tuesday</i> May 4, 2021
<i>Tuesday</i> April 20, 2021	<i>Tuesday</i> May 18, 2021	<b>Wednesday</b> May 26, 2021	<i>Tuesday</i> June 1, 2021
<i>Tuesday</i> May 18, 2021	<i>Tuesday</i> June 23, 2021	<i>Tuesday</i> June 29, 2021	<b>Wednesday</b> July 7, 2021
<i>Tuesday</i> June 22, 2021	<i>Tuesday</i> July 20, 2021	<i>Tuesday</i> July 27, 2021	<i>Tuesday</i> August 3, 2021
<i>Tuesday</i> July 20, 2021	<i>Tuesday</i> August 24, 2021	<i>Tuesday</i> August 31, 2021	<b>Wednesday</b> September 8, 2021
<i>Tuesday</i> August 24, 2021	<i>Tuesday</i> September 21, 2021	<i>Tuesday</i> September 28, 2021	<i>Tuesday</i> October 5, 2021
<i>Tuesday</i> September 21, 2021	<i>Tuesday</i> October 19, 2021	<i>Tuesday</i> October 26, 2021	<i>Tuesday</i> November 2, 2021
<i>Tuesday</i> October 19, 2021	<i>Tuesday</i> November 23, 2021	<i>Tuesday</i> November 30, 2021	<i>Tuesday</i> December 7, 2021
<i>Tuesday</i> November 23, 2021	<i>Tuesday</i> December 21, 2021	<i>Tuesday</i> December 28, 2021	<i>Tuesday</i> January 4, 2022
<i>Tuesday</i> December 21, 2021	<i>Tuesday</i> January 18, 2022	<i>Tuesday</i> January 25, 2022	<i>Tuesday</i> February 1, 2022

\* Materials must be submitted by **5 PM** on dates listed as a deadline for placement on a particular agenda. Placement on a particular agenda is not guaranteed.