

NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF EXEMPT RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 2. DEPARTMENT OF HEALTH SERVICES

TOBACCO TAX-FUNDED PROGRAMS

PREAMBLE

1. **Sections Affected**

Article 4	Rulemaking Action
R9-2-401	New Article
R9-2-402	New Section
R9-2-403	New Section
R9-2-404	New Section
R9-2-405	New Section
R9-2-406	New Section
R9-2-407	New Section
R9-2-408	New Section
R9-2-409	New Section
R9-2-410	New Section
R9-2-411	New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 36-136(F), 42-1241, and 42-1242.01

Implementing statute: Laws 1995, Ch. 275, § 9
3. **The effective date of the rules:**

February 10, 1997
4. **A list of all previous notices appearing in the Register addressing the exempt rule:**

None published.
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Terri Goens, Chief

Address: Bureau of Substance Abuse & General Mental Health
2122 East Highland, Suite 100
Phoenix, Arizona 85016

Telephone: (602) 381-8999

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6. **An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:**

Laws 1995, Ch. 275 was enacted to govern the expenditure of monies collected as a result of a tobacco tax. One Section of that legislation, A.R.S. § 36-3414(A)(5), requires that the Department of Health Services adopt standards for the type and delivery of behavioral health services to be provided. These rules effect that provision.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.
8. **The summary of the economic, small business and consumer impact:**

Not applicable.
9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

Not applicable.

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10. A summary of the principal comments and the agency response to them:
Not applicable.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.
12. Incorporations by reference and their location in the rules:
None.
13. Was this rule previously adopted as an emergency rule?
No.
14. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 2. DEPARTMENT OF HEALTH SERVICES
TOBACCO TAX-FUNDED PROGRAMS

ARTICLE 4. BEHAVIORAL HEALTH SERVICES

Section	
R9-2-401.	Definitions
R9-2-402.	Eligible Services
R9-2-403.	General Requirements
R9-2-404.	Crisis Services
R9-2-405.	Joint Regional Behavioral Health Authority and a Qualifying Community Health Center or a School Services
R9-2-406.	Wraparound Services for Children
R9-2-407.	Behavioral Health Promotion Services for the Elderly
R9-2-408.	Outpatient Dually Diagnosed Services
R9-2-409.	Regional Behavioral Health Authority and Juvenile Court Collaborative Services
R9-2-410.	Regional Behavioral Health Authority Alternative Services
R9-2-411.	Special Project Services

ARTICLE 4. BEHAVIORAL HEALTH SERVICES

R9-2-401. Definitions

In addition to the definitions prescribed in A.R.S. §§ 36-401, 36-501, 36-2021, and 36-3001, the terms in this Article mean:

1. "BHS" means the Division of Behavioral Health Services located in the Department of Health Services.
2. "Children" means persons who are under the age of 18 years.
3. "Crisis respite" means Department and BHS non-Title XIX, reimbursable services offering planned, short-term placement in a program contracted to provide crisis respite that provides a living environment with staff knowledgeable about how to de-escalate crisis situations and which meets the eligible individual's physical needs.
4. "Culturally relevant" means knowledge, attitudes, and policies within an agency which allows staff to work effectively in cross cultural situations. The knowledge, attitudes and policies include community-based values, traditions, and practices in developing and evaluating interventions, communication, and other activities.
5. "Department" means the Department of Health Services.
6. "Dually diagnosed" means a person, aged 18 or over, who has been determined to be an individual with Serious Mental Illness in accordance with R-9-21-301 and R9-21-303; and who additionally is diagnosed as substance abusive or substance dependent in accordance with the Diagnostic and Statistical Manual IV.

7. "Early Intervention" means assessment and supportive services provided by a peer, behavioral health technician or other qualified behavioral health professional, including peer counseling and direct counseling to individuals, groups or family members, to assess and alleviate potential emerging behavioral health problems before they require difficult, costly or more intensive treatment.
8. "Eligible services" means those services in R9-2-402, to be implemented with funds authorized under A.R.S. 36-3414(A).
9. "Intensive Partial Care Services" means services licensed according to R9-20-1603.
10. "Level I or II residential facility" means a behavioral health facility licensed according to R9-20-601 through R9-20-605 or R9-20-701 and R9-20-702.
11. "Mobile Team" means 2 or more behavioral health professionals as defined in R9-20-101 who are trained to do psychiatric crisis intervention 24 hours a day in the community at locations other than a behavioral health treatment facility, and who are certified by the American Heart Association or the American Red Cross to provide cardiopulmonary resuscitation, first aid, and counsel clients experiencing acute distress due to behavioral health issues.
12. "Peer Counseling" means a method of counseling that pairs individuals who have been trained by the RBHA or provider and individuals at risk or involved in the behavioral health system with a similar sociodemographic, ethnic, language, cultural background or other relevant characteristics.
13. "Psychiatrist" means a physician licensed in Arizona under A.R.S. Title 32, Chapter 13 or 17, and Board certified or Board eligible under the standards of the American Board of Psychiatry and Neurology or the Osteopathic Board of Neurology and Psychiatry.
14. "Qualifying Community Health Center" means a community based primary care facility that provides medical care in medically underserved areas through the employment of physicians, professional nurses, physician assistants, or other health care technical and paraprofessional personnel.
15. "Regional Behavioral Health Authority" or "RBHA" means an organization undercontract with the Department to coordinate the delivery of behavioral health services in a specific service area of the state for eligible persons.
16. "Service area" means a geographic region of the state with boundaries established by the Department and BHS

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for the planning, monitoring, and delivery of behavioral health services.

17. "Service Matrix" means a list developed by BHS of Title XIX and Non-Title XIX covered services that may be reimbursed with Title XIX funds county, state, or federal funds for behavioral health disorders.
18. "Title XIX eligible" means a person who has been determined to qualify for Arizona Health Care Cost Containment Services (AHCCCS) Title XIX behavioral health services based upon the individual's income and resources, citizenship, residency, or medical condition.
19. "Underinsured" means an individual who is covered by an individual, family or group insurance plan from any public or private source which does not include or places a lifetime maximum amount of reimbursement for health care costs related to mental health services, including substance abuse treatment.
20. "Uninsured" means an individual who is not covered by an individual, family, or group insurance plan from any public or private source which includes reimbursement for health care costs related to mental health services including substance abuse treatment.
21. "Wraparound Services" mean a combination of behavioral health services included in the BHS service matrix which are used for the individual needs of children and their families without removal from the community setting.

R9-2-402. Eligible Services

- A. The following services shall be eligible for funding for purposes of A.R.S. § 36-3414:
 1. Crisis services,
 2. Joint RBHA and a Qualifying Community Health Center or a school service,
 3. Wraparound services for children,
 4. Behavioral health promotion services for the elderly,
 5. Dually diagnosed services,
 6. RBHA and juvenile court services,
 7. RBHA alternative services, and
 8. Special project services.

R9-2-403. General Requirements

- A. BHS shall provide RBHAs with a per capita allocation of available tobacco tax funds for eligible services except special project services.
- B. Upon request, a RBHA shall submit a plan to BHS for the expenditure of the allocated tobacco tax funds for eligible services except special project services. The plan shall include:
 1. Identification of the planning process used to develop the program and expenditure plan;
 2. Identification of the eligible services selected by the RBHA and an implementation schedule;
 3. A brief description of the need for each eligible service identified in the plan;
 4. Identification of population to be served, services included, and criteria for each eligible service selected;
 5. A description of the evaluation methodology to be used; and
 6. The expenditure limit for each program priority selected.
- C. A RBHA shall obtain prior Department approval to implement a plan for eligible services, except for special project services in R9-2-403 and R9-2-411.
- D. A RBHA shall solicit proposals from all interested providers of services for eligible services, except special project services.
- E. A RBHA shall submit any proposed changes to an approved plan to ADHS/BHS prior to implementation of the changes.

Upon receipt of the proposed changes, BHS shall approve or deny the request within 30 days.

- F. For special project services, BHS shall provide to the RBHA a summary of special project services. Special project services shall be limited to 3 years in duration contingent upon available funds.
- G. For a RBHA to receive special project service funds:
 1. BHS shall notify the RBHAs of its intent to award special project services funds;
 2. Within 30 days of the date of the BHS letter of intent to award special project services funds, a RBHA shall submit a letter of interest to BHS regarding implementation of the special project services in its service area. The letter of interest shall include the following:
 - a. Identification of unmet need for the service being proposed, specifying the population that will be served;
 - b. Summary of proposed implementation plan and time table; and
 - c. Objectives to be achieved by the services;
 3. A RBHA shall be notified within 30 days of the submittal deadline of the award of special project services funds.
- H. A RBHA shall not use funding for eligible services to supplant existing funding. All alternative funding sources should have been or shall be exhausted during the fiscal year of the award for eligible services.
- I. A RBHA shall ensure that all eligible services provided are culturally relevant.
- J. The RBHA shall ensure that all eligible services are provided by qualified staff in accordance with 9 A.A.C. 20.
- K. Reporting and evaluation information shall be forwarded to BHS at intervals established by ADHS/BHS. Requirements include:
 1. RBHAs and their subcontractors shall account for Tobacco Tax expenditures separate from other funding sources in a manner prescribed by ADHS/BHS;
 2. RBHAs and their subcontractors funded by the Department shall provide the following utilization information:
 - a. Level and scope of services being offered,
 - b. Type of services being used,
 - c. Frequency of service being used,
 - d. Personal characteristics of the program participants, and
 - e. Demographic characteristics of the program participants.
 3. RBHAs and their subcontractors funded by the Department shall provide the following service evaluation information:
 - a. The number of participants,
 - b. Names of agencies providing eligible services,
 - c. Service revenues and expenditures, and
 - d. The average cost for each service recipient.

R9-2-404. Crisis Services

- A. Crisis services, as defined in R9-20-901 through R9-20-903, shall be designed to de-escalate crisis situations and provide alternatives to inpatient behavioral health care assessment, stabilization and treatment or incarceration.
- B. Crisis services shall be available from a provider licensed by the Department to any non-Title XIX eligible person who is determined by a behavioral health professional as defined in R-9-20-101 to be in a crisis situation and in need of the crisis service.
- C. Crisis services may include any agency licensed by the Department to provide crisis services such as urgent care centers, crisis stabilization units, crisis respite, mobile teams, or peer counseling.

- D. A program shall provide crisis services, including the following:
1. Twenty-four hour response, including phone and face-to-face assessment, for a behavioral health crisis through presentation of the individual needing the service at a facility or through a mobile team.
 2. Transportation services for an individual in crisis to receive required crisis services;
 3. A psychiatrist accessible 24 hours a day;
 4. An initial assessment of an individual in crisis as provided in R9-20-402;
 5. A treatment plan for an individual in a crisis as provided in R9-20-404;
 6. Client record keeping requirements in accordance with R9-20-407;
 7. Security, evaluation, and monitoring of an individual's prescribed medication(s); and
 8. Follow-up care, once the individual's crisis situation is alleviated, including:
 - a. A referral of the individual to a licensed behavioral health agency if the individual is not already being treated; and
 - b. Notification of the individual's behavioral health treatment agency and the case manager, if assigned, if the individual is currently a client of a licensed behavioral health agency.

R9-2-405. Joint Regional Behavioral Health Authority and a Qualifying Community Health Center or a School Services

- A. Joint RBHA and Qualifying Community Health Center or school services shall provide on-site behavioral health assessments to individuals identified by a behavioral health technician or behavioral health professional as defined in R9-20-101 as having potential behavioral health problems.
- B. Joint RBHA and Qualifying Community Health Center or school services shall provide referral to a behavioral health treatment agency licensed by the Department.
- C. Joint RBHA and Qualifying Community Health Center or school services shall provide education and information about behavioral health to staff at Qualifying Community Health Centers or schools.
- D. Joint RBHA and Qualifying Community Health Center or school services shall serve non-Title XIX eligible individuals who are uninsured or underinsured and who present at Qualifying Community Health Centers or school programs and who may have a behavioral health problem.
- E. Joint RBHA and Qualifying Community Health Center or school services shall be offered at a Qualifying Community Health Center or at a school.

R9-2-406. Wraparound Services for Children

- A. A program that provide wraparound services for children shall provide flexible funding to purchase services and items to assist in maintaining a child in the least costly and least restrictive treatment setting.
- B. Wraparound services for children shall be provided to non-Title XIX eligible children who are uninsured or underinsured and who are being served by more than 1 state agency, at a minimum including ADHS/BHS through the RBHAs or their provider network.
- C. Wraparound services for children shall include 1 or more of the following categories:
 1. Personal items for the child or family,
 2. Instructional expenses,
 3. Transportation,
 4. Health and safety items, and
 5. Special activities for the child or family.

- D. A program for wraparound services for children shall place an established limit on the amount of funds spent per family per year. The RBHA shall submit the established limit in their plan in accordance with R9-2-403(B).
- E. In providing wraparound services for children a RBHA shall prepare the following:
 1. Documentation in the clinical record as to how the service or item is required to maintain the child in the least restrictive treatment setting;
 2. Documentation in the clinical record of the relationship between treatment plan goals and items or services provided with wraparound funding;
 3. A plan to assure that an effective interagency collaborative process is in place for the use of the funds;
 4. Documentation that case managers and others involved in program administration have received training in the wraparound services concept.

R9-2-407. Behavioral Health Promotion Services for the Elderly

- A. Behavioral health promotion services for the elderly shall maximize the opportunity for elderly individuals to remain in their current living situation.
- B. Behavioral health promotion services for the elderly shall serve non-Title XIX eligible individuals age 60 or over with a behavioral health problem or at risk of experiencing a behavioral health problem who are uninsured and underinsured.
- C. Behavioral health promotion services for the elderly shall be individualized and may include any service included on the BHS service matrix to meet the needs of the population to be served. The RBHA may also propose to BHS other specialized services which may not be currently included on the matrix. The RBHA's plan, submitted to BHS in accordance with R9-2-403(B), shall identify both service matrix and other specialized services for the elderly. Other specialized services may include:
 1. Assistance in the performance of activities of daily living,
 2. Nutrition monitoring,
 3. Cognitive interventions associated with geriatric related conditions such as dementia and depression,
 4. Coordination of physical health needs and direct assistance if required,
 5. Medication monitoring,
 6. Recreational and socialization activities,
 7. Transportation,
 8. Financial management assistance,
 9. Caregiver respite, and
 10. Other services identified by the RBHA and approved by BHS. RBHAs requesting other services must submit a letter of request to BHS.
- D. A RBHA which provides behavioral health promotion services for the elderly shall:
 1. Consult with professionals who have specialized training and skills in gerontology relative to the design of the program and in ongoing monitoring; and
 2. Document in the clinical record the linkage between behavioral health services and medical needs of the elderly person receiving services, with documentation of communication and collaboration occurring with all caregivers and agencies, including the Area Agency on Aging.

R9-2-408. Outpatient Dually Diagnosed Services

- A. A program shall provide outpatient dually diagnosed services to assist individuals who are both Seriously Mentally Ill and substance abusers in the management of their mental illness and recovery from their substance abuse.

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- B. Outpatient dually diagnosed services shall serve non-title XIX eligible adults aged 21 to 64 who are uninsured or underinsured and also have a dual diagnosis of Serious Mental Illness in accordance with 9 A.A.C. 21 and substance abuse or substance dependence in accordance with the DSM IV.
- C. A RBHA providing outpatient dually diagnosed individuals shall include the availability of intensive partial care in accordance with R9-20-1603 followed by outpatient services in accordance with R9-20-1001 through R9-20-1003.
- D. A RBHA or program providing outpatient dually diagnosed services shall:
1. Submit written bi-weekly reports to the individual's case manager. The report shall include an assessment of the progress in meeting treatment plan goals and recommendations for continued placement. The recommendations shall be generated from a face-to-face staffing which includes the primary counselor, the clinical director, and the psychiatrist.
 2. Document medication monitoring administration and adjustment in the individual's clinical record and submitted as part of the bi-weekly report to the individual's case manager.
 3. Within 30 days of BHS approval of the plan referenced in R9-20-303(B), the RBHA shall submit for review and approval to BHS, the admission, continued stay and discharge criteria for individuals who will be treated in this eligible service.
 4. Require at least 1 full time staff person shall be certified as a substance abuse counselor by the Arizona Board of Behavioral Health Examiners pursuant to A.R.S. Title 32, Chapter 33 or by the Arizona Board of Certification of Addiction Counselors. Certification shall be documented in the substance abuse counselor's personnel file.
- E. The program providing outpatient dually diagnosed services shall provide and document monthly 4-hour specialized training sessions. Staff shall be required to attend 1/2 of the training sessions for a total of 24 hours annually. Specialized training shall include:
1. Pharmacological information about illicit and licit drugs including alcohol,
 2. Coping skills for dually diagnosed individuals,
 3. Treatment research information on dually diagnosed individuals,
 4. Relapse prevention,
 5. Communicable diseases including HIV/AIDS, and
 6. Any other topic approved by the RBHA.

R9-2-409. Regional Behavioral Health Authority and Juvenile Court Collaborative Services

- A. RBHA and juvenile court collaborative services shall coordinate behavioral health services and criminal justice requirements. Coordination shall be documented by:
1. The prevention or reduction of the length of stay in detention;
 2. The provision of alternative placements for children with behavioral health needs, and
 3. The reduction of the time required to assess, determine eligibility, and access services for children in detention who have behavioral health needs.
- B. RBHA and juvenile court collaborative services shall serve non-Title XIX eligible children who are uninsured or underinsured and who are both in need of behavioral health services and involved in, or at immediate risk for involvement in, the Juvenile Court system. Title XIX eligible children who are in detention and whose behavioral health services are therefore not Title XIX reimbursable shall also be eligible for these services.

- C. RBHA and juvenile court collaborative services shall include the following:
1. Assessment for children in detention, or referred to Juvenile Court by parents, who have behavioral health needs as determined by at least the level of personnel identified in R9-20-406(C), behavioral health technician,
 2. Alternative placement in lieu of detention;
 3. Training and education for behavioral health and detention professionals in topics approved by the RBHA;
 4. Parent training to prevent or reduce further involvement of children in the juvenile court system; and
 5. Case management for children with behavioral health needs who are leaving incarceration;

R9-2-410. Regional Behavioral Health Authority Alternative Services

- A. In addition to the services identified in R9-2-404 through R9-2-409, the RBHA may identify and propose alternative services.
- B. The RBHA shall submit with their program plan identified in R9-2-403(B) any proposed alternative services.
- C. The RBHA shall obtain approval from BHS before implementing the plan.

R9-2-411. Special Project Services

- A. Special project services shall be identified by BHS.
- B. The following special project services have been identified:
1. Services for ethnic minority children.
 - a. Services for ethnic minority children shall assist individuals in accessing behavioral health treatment.
 - b. Services for ethnic minority children shall serve non-title XIX eligible who are uninsured or underinsured and who self-assess as non-Anglo who are at risk for or experiencing behavioral health problems.
 - c. Services for ethnic minority children shall include prevention and outreach services.
 - d. Special project services shall include:
 - i. The services shall be available in communities with predominately non-Anglo residents;
 - ii. The services shall be located in a RBHA area with a multiple risk factors including: Non-homicide crime rate higher than the state average, homicide rate higher than the state average, teenage pregnancy rate higher than the state average, school drop-out rate higher than the state average; or any other factor approved by ADHS/BHS.
 - iii. The services shall be managed and provided by an agency with demonstrated experience in serving ethnic minority children;
 - iv. The services shall be provided by an agency with a governing board membership which is culturally reflective of the populations served by the agency and the community in which the agency is located.
 2. Substance abuse residential treatment services for children.
 - a. Substance abuse residential treatment for children shall assist children in becoming alcohol and drug free.
 - b. Substance abuse residential treatment for children shall serve non-Title XIX eligible children who are uninsured or underinsured and who have a primary substance abuse diagnosis and who have at least 1 documented failure in a less intensive level of substance abuse treatment.
 - c. Substance abuse residential services for children

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shall include residential treatment in accordance with R9-20-601 through R9-20-605 or R9-20-701 through R9-20-702, followed by outpatient treatment in accordance with R9-20-1001 through R9-20-1003. The residential treatment services shall emphasize family interventions, family involvement, the individual's progress in meeting treatment plan goals and outcome monitoring. Specific short-term residential services shall include the following:

- i. Assessment, not less than monthly;
 - ii. Individual counseling with a minimum of 1 counseling session per week;
 - iii. Group or family group counseling with a minimum of five counseling sessions per week;
 - iv. Pharmacologic interventions, as appropriate; and
 - v. Any other service on the BHS service matrix allowable in a residential setting.
- d. Outpatient services shall be provided to individuals who have completed the residential treatment. Outpatient services following residential treatment shall emphasize community supports and in-home services, with on-going family involvement. Outpatient services following residential treatment shall be

delivered in the community where the individual lives, when possible. Specific outpatient services following residential treatment shall include the following:

- i. Individual counseling at least once per week;
 - ii. Group counseling at least twice per week;
 - iii. Family counseling at least once per week;
 - iv. A duration of individual, group and family counseling for a minimum of 2 months;
 - v. Following the regimen described in R9-2-411(B)(2)(d), the individual will receive individual counseling at least once per month, group counseling at least once per week, and family counseling for at least once per month for a duration of at least 2 months.
- e. The agency providing residential services for children shall employ at least 1 full time staff person certified as a substance abuse counselor by the Arizona Board of Behavioral Health Examiners pursuant to A.R.S. Title 32, Chapter 33 or certified by the Arizona Board of Certification of Addiction Counselors. Certification shall be documented in the substance abuse counselor's personnel file.