

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the Register before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

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TITLE 2. ADMINISTRATION

CHAPTER 1. DEPARTMENT OF ADMINISTRATION

PREAMBLE

- | 1. Sections Affected | Rulemaking Action |
|-----------------------------|--------------------------|
| Article 7 | Repeal |
| R2-1-701 | Repeal |
| R2-1-702 | Repeal |
| R2-1-703 | Repeal |
| R2-1-704 | Repeal |
| R2-1-705 | Repeal |
| R2-1-706 | Repeal |
| R2-1-707 | Repeal |
| R2-1-708 | Repeal |
| R2-1-709 | Repeal |
| R2-1-710 | Repeal |
| R2-1-711 | Repeal |
| R2-1-712 | Repeal |
| R2-1-713 | Repeal |
| R2-1-714 | Repeal |
| R2-1-715 | Repeal |
| R2-1-716 | Repeal |
| R2-1-717 | Repeal |
| R2-1-718 | Repeal |
| R2-1-719 | Repeal |
| R2-1-720 | Repeal |
| R2-1-721 | Repeal |
| R2-1-722 | Repeal |
| R2-1-723 | Repeal |
| R2-1-724 | Repeal |
| R2-1-725 | Repeal |
| R2-1-726 | Repeal |
| R2-1-727 | Repeal |
| R2-1-728 | Repeal |
| R2-1-729 | Repeal |
| R2-1-730 | Repeal |
| R2-1-731 | Repeal |
| R2-1-732 | Repeal |
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing and implementing statutes: A.R.S. §§ 41-1001(18), 41-1022(A), and 49-322(D)

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3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Scott Cooley
Address: Department of Administration
1400 West Washington, Suite 270
Phoenix, Arizona 85007
Telephone: (602) 542-2015
Fax Number: (602) 542-1486
4. **An explanation of the rule, including the agency's reasons for initiating the rule:**
The Department of Administration (Department) is updating and reorganizing the rules of procedure for the Water Quality Appeals Board. The rules in 2 A.A.C. 1 are being repealed and replaced with new rules in a concurrent rulemaking, incorporating changes proposed in the last 5-year-review report.
5. **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.
6. **The preliminary summary of the economic, small business, and consumer impact:**
Modifications to the Chapter improving readability will make the rules easier to use. Individuals using the rules will benefit from this change.
7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
Name: Allen Malanowski
Address: Department of Administration
1400 West Washington, Suite 270
Phoenix, Arizona 85007
Telephone: (602) 542-2017
Fax Number: (602) 542-1486
8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**
No oral proceedings are scheduled. The Department will schedule an oral proceeding on the proposed rules if a written request for the proceeding is submitted to the agency personnel listed in question #3 of this preamble by at least 5 persons. Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement may be submitted to the person listed in question #7 no later than 5 p.m., September 24, 1997.
9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.
10. **Incorporations by reference and their location in the rules:**
Not applicable.
11. **The full text of the rules follows:**

TITLE 2. ADMINISTRATION

CHAPTER 1. DEPARTMENT OF ADMINISTRATION

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R2-1-710. Contents of an answer to a notice of appeal	R2-1-724.	Ex parte communications regarding matters related to a contested case
	R2-1-725.	Notification to each party of decisions and orders
	R2-1-726.	Recommendations of the hearing officer

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- R2-1-727. Decision of the Board
R2-1-728. Motion for rehearing
R2-1-729. Final decision of the Board
R2-1-730. Judicial review of the final decision of the Board
R2-1-731. Record
R2-1-732. Forms

ARTICLE 7. WATER QUALITY APPEALS BOARD RULES OF PROCEDURE

R2-1-701. Scope of Article; general considerations

- A.** These rules of procedure shall govern appeals to the Water Quality Appeals Board taken pursuant to A.R.S. § 49-323.
B. These rules shall be construed to secure the accurate, just, and speedy determination of every contested case.
C. The hearing officer may waive application of any of the rules in this Article upon a finding of good cause and if the waiver is not in conflict with the law and does not adversely affect the substantial interests of any party.
D. Where a procedure is set forth neither by law, by this Article, nor by an order of the hearing officer, the hearing officer may refer to the Arizona Rules of Civil Procedure for guidance, but the Arizona Rules of Civil Procedure shall not be binding upon the hearing officer or the parties unless so ordered by the hearing officer.

R2-1-702. Definitions

The definitions in A.R.S. § 41-1001, except for the definitions of "contested case" and "party," shall apply to this Article. In addition, the terms in this Article shall have the following meanings:

1. "Appellant" means the person who files a notice of appeal with the Clerk pursuant to A.R.S. § 49-323.
2. "Board" means the Water Quality Appeals Board appointed by the Governor pursuant to A.R.S. § 49-322.
3. "Clerk" means the Clerk of the Board. The Clerk shall be appointed by the Director.
4. "Contested Case" means any grant, denial, modification or revocation of any individual permit issued under A.R.S. Title 49, Chapter 2, or from the establishment of numeric values and data gap issues for pesticides pursuant to A.R.S. §§ 49-303 and 49-304 from which a person who is or may be adversely affected by such action files a notice of appeal pursuant to A.R.S. § 49-323 and this Article.
5. "Department" means the Arizona Department of Administration.
6. "Director" means the Director of the Department or a Deputy Director of the Department who is duly authorized by the Director to act on the Director's behalf.
7. "Documents" includes, but is not limited to, writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated through detection devices into reasonably usable form when translation is practicably necessary, books, documents, and other tangible things which constitute or contain matters within the scope of Rule 26(b) of the Arizona Rules of Civil Procedure, entitled "Discovery Scope and Limits."
8. "Hearing" means, generally, the full evidentiary hearing held on appellant's notice of appeal and includes any other hearing that the hearing officer may order relative to an appellant's notice of appeal.
9. "Hearing Officer" means a person appointed pursuant to this Article to hear a contested case and shall include the Board, if the Board elects to act as the hearing officer as provided in R2-1-712.

10. "Notice of appeal" is the notice of appeal filed by an appellant pursuant to A.R.S. § 49-323 and this Article.
11. "Party" means the appellant, the Department of Environmental Quality, all persons named by the appellant as interested persons as provided in R2-1-708(B)(5), and any interested person the hearing officer has permitted to intervene in the appeal as a matter of right.
12. "Record" shall have the meaning found in A.R.S. § 41-1061(E).

R2-1-703. Appearance and practice of parties before the Department

Unless otherwise provided by law, a party may appear on his or her own behalf or be represented by counsel. A corporation or partnership may appear through a duly authorized representative.

R2-1-704. Commencement of a contested case; copies

- A.** Commencement of a contested case. A contested case shall commence by the appellant filing a notice of appeal with the Clerk. The notice of appeal shall be delivered or mailed to the Clerk of the Water Quality Appeals Board, in care of the Director of the Department of Administration. The notice of appeal shall be filed with the Clerk within 30 days after receipt by the appellant of notice of the action being appealed. The date of filing shall be the date the Clerk receives the notice of appeal.
B. Copies of the form of notice of appeal and of this Article. The Clerk shall make available to all persons copies of the Notice of Appeal Form of R2-1-732 and copies of this Article. The Clerk shall charge a fee for the cost of copies.

R2-1-705. Docket; case number; information on pleadings, motions and other documents

- A.** A docket of all contested cases shall be maintained by the Clerk. Each contested case shall be assigned a case number by the Clerk.
B. All pleadings, motions or other documents shall contain the case number and the name, address and telephone number of the party or party's attorney filing the pleading, motion or other document.

R2-1-706. Service of pleadings, motions or other documents

- A.** The original of all pleadings, motions or other documents shall be filed with the Clerk within the time limits for such filing. A copy shall be filed with the Clerk for the hearing officer. A copy shall be served on each party.
B. Service of pleadings, motions or other documents under this Article, except for subpoenas, shall be made by personal service on, or by mail addressed to the party. Service on a party shall be deemed made at the time of personal service of the document or upon deposit of the document in the United States mails, postage prepaid, in a sealed envelope, and addressed to the party being served, at the last known address filed with the Clerk.
C. Proof of service shall be made by filing with the Clerk and hearing officer a statement in writing that service has been made, stating whether service was made in person or by mail, and signed by the party. Such statement may be included with the pleading, motion or other document being filed.
D. Upon receipt of either the Notice of Appeal or an Answer of any party, or at such other time that the hearing officer finds that the interest of justice so requires, the hearing officer may order any party to publish an appropriate notice in a newspaper of general circulation in the community or communities that may be adversely affected if the appellant is granted the relief requested by the appellant in the appellant's Notice of Appeal. Such publication shall be made as provided in Rule 4(e)(3) and 4(h) of the Arizona Rules of Civil Procedure unless the hear-

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ing officer finds and orders that some other method of publication is more appropriate.

R2-1-707. Time

Rule 6 of the Arizona Rules of Civil Procedure shall be followed unless the hearing officer or Board determines that a shorter time is required in order to comply with A.R.S. § 49-323.

R2-1-708. Contents of a notice of appeal

A. The notice of appeal shall:

1. State appellant's cause of action;
2. Provide the other parties with discovery as provided in this Section; and
3. Comply generally with the Notice of Appeal Form of R2-1-732.

The Notice of Appeal Form of R2-1-732 may be used by the appellant, and where there is not enough space on the Form, the appellant may attach additional sheets of paper.

B. For that purpose, the appellant's notice of appeal shall contain the following:

1. A statement substantially as follows:
"This notice of appeal is being filed by the appellant pursuant to A.R.S. § 49-323 with the Clerk of the Water Quality Appeals Board."
2. A statement substantially as follows:
"Pursuant to A.R.S. § 49-323 and A.A.C. R2-1-701 et seq., if you, a Respondent in this case, have an interest in the final decision that may result from this Notice of Appeal, you are required to file an Answer to this Notice of Appeal within 20 days from the date of service of this Notice of Appeal on you."
3. The name, address and telephone number of the appellant and, if the appellant is represented by an attorney, the name, address, telephone number and Arizona Bar number of the appellant's attorney. If appellant is a corporation, the appellant shall so state and shall name the state of incorporation; and if the appellant is not an Arizona corporation, whether the appellant is qualified to do business in the state by the Arizona Corporation Commission. If the appellant is a partnership, the appellant shall list the name, address and telephone number of each partner.
4. The names and mailing addresses of all the employees and agents of the Department of Environmental Quality known or believed by the appellant to be persons who may have participated in the action that is being appealed.
5. The names, mailing addresses and telephone numbers of all of the following interested persons:
 - a. The permittee, if the permittee is not the appellant; and
 - b. All persons who provided the appellant with a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing.
6. The names, addresses and telephone numbers of all witnesses the appellant believes the appellant may call at the hearing.
7. In reasonable detail, the specific action of the Department of Environmental Quality involving the grant, denial, modification or revocation of an individual permit issued under A.R.S. Title 49, Chapter 2, or the establishment of numeric values and data gap issues for pesticides pursuant to A.R.S. §§ 49-303 and 49-304, which are the bases of the appeal.
8. The date of such action by the Department of Environmental Quality.
9. The date the notice of such action by the Department of Environmental Quality was received by the appellant.

10. The relief requested by the appellant.
11. The date of the notice of appeal.
12. The signature of the appellant or the appellant's attorney.
13. A verification that the appellant has served or caused to be served, before the date of the filing of the notice of appeal with the Clerk, a copy of the notice of appeal, including all documents, on the Department of Environmental Quality and all persons named by the appellant who may be adversely affected if the appellant is granted the relief requested by the appellant in the appellant's notice of appeal.

C. The appellant shall attach to the notice of appeal copies of all the documents in the possession of the appellant on or before the date of the filing of the notice of appeal that may be relevant to a decision on the appellant's appeal and which the appellant may want to introduce into evidence at the hearing. Such documents shall be a part of the notice of appeal.

R2-1-709. Time for filing an answer to a notice of appeal

The Department of Environmental Quality and all parties named by the appellant as persons who may be adversely affected if the appellant is granted the relief requested by the appellant in the appellant's notice of appeal shall file an answer to appellant's notice of appeal within 20 days from service of the notice of appeal on that party.

R2-1-710. Contents of an answer to a notice of appeal

A. The answer of each respondent shall:

1. State the answering party's response to appellant's cause of action; and
2. Provide the other parties with discovery as provided in this Section.

B. For that purpose, the answer of each respondent shall contain the following:

1. The name, address and telephone number of the respondent preparing the answer and, if the respondent is represented by an attorney, the name, address, telephone number and Arizona Bar number of the respondent's attorney. If the respondent is a corporation, the respondent shall so state and shall name the state of incorporation; and if the respondent is not an Arizona corporation, whether the respondent is qualified to do business in the state by the Arizona Corporation Commission. If the respondent is a partnership, the respondent shall list the name, address and telephone number of each partner.
2. The names and mailing addresses of all the employees and agents of the Department of Environmental Quality known or believed by the respondent to be persons who may have participated in the action that is being appealed.
3. The names, mailing addresses and telephone numbers of all of the following interested persons:
 - a. The permittee, if the permittee is not the appellant;
 - b. All persons who provided the Department of Environmental Quality with a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing; and
 - c. Chief officers of all communities who may be adversely affected if the appellant is granted the relief requested by the appellant in the appellant's notice of appeal, such as the mayor if the community is a city or town, or the chairman of the board of supervisors if the community is a county.
4. The names, addresses and telephone numbers of all witnesses the respondent believes the respondent may call at the hearing.
5. In reasonable detail a response to the appellant's allegations relating to the action taken by the Department of Environmental Quality involving the grant, denial, modi-

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fication or revocation of an individual permit issued under A.R.S. Title 49, Chapter 2, or the establishment of numeric values and data gap issues for pesticides pursuant to A.R.S. §§ 49-303 and 49-304, which are the bases of the appeal.

6. The relief requested by the respondent.
 7. The date of the answer.
 8. The signature of the respondent or the respondent's attorney.
 9. A verification that the respondent has served or caused to be served a copy of the answer, including all documents, on all other parties.
- C.** The respondent shall attach to the answer copies of all the documents in the possession of the respondent on or before the date of the filing of the answer that may be relevant to a decision on the appellant's appeal and which the respondent may want to introduce into evidence at the hearing. Such documents shall be a part of the answer.
- D.** In the case of the Department of Environmental Quality, it shall file with its answer a copy of all documents on which it based its action from which the appeal was taken.

R2-1-711. Depositions

The hearing officer may allow depositions to be taken, in the manner and upon the terms designated by the hearing officer, of a witness who cannot be subpoenaed or is unable to attend the hearing, if the hearing officer finds that:

1. The deposition will not prevent the hearing on appellant's notice of appeal from being conducted within 60 days after the appellant filed the notice of appeal;
2. The deposition is likely to reduce the time required for the hearing on the appellant's notice of appeal; and
3. The deposition is in the interest of arriving at a just decision on the appellant's notice of appeal.

R2-1-712. Appointment of a hearing officer

- A.** The Director shall appoint a hearing officer from a list of hearing officers previously appointed by the Director and approved by the Board.
- B.** The Board may direct the Director to delete a Hearing officer from the list of hearing officers.
- C.** The Board, on reviewing a notice of appeal, may elect to act as the hearing officer. In the event the Board elects to act as the hearing officer, the requirements of the hearing officer in this Article shall apply to the Board, except that the Board shall not make recommendations as required of the hearing officer but shall make its final decision.
- D.** In the event the Board is not acting as the hearing officer, the Board may elect to hear with the hearing officer such portions of the hearing that it determines necessary.

R2-1-713. Qualifications of a hearing officer

For an individual to be selected by the Board to be on a list of hearing officers, the individual shall have all the qualifications required by this Section. The Director may appoint the individuals from any list of hearing officers the Department may have for any state agency if the Arizona Procurement Code and rules promulgated thereunder permit.

1. The individual shall be a member of the State Bar of Arizona; and
2. The individual shall be free of any conflict of interest regarding all of the issues raised by the parties in the contested case to which the individual is to be appointed as the hearing officer.

R2-1-714. Duties of a hearing officer

- A.** The hearing officer shall have the following powers and duties:

1. Conduct the hearing in an impartial, orderly and informal manner.
 2. Regulate the course of the hearing and assure that the time limitations of A.R.S. § 49-323 are met.
 3. Rule upon procedural matters incidental to the hearing.
 4. Administer oaths to witnesses.
 5. Admit an oversized exhibit or an exhibit that cannot be photocopied only if the party offering the exhibit in evidence provides a duplicate of the exhibit. An oversized exhibit is an exhibit that is larger than 8 1/2 inches by 11 inches.
 6. Make written findings of fact and conclusions of law, separately stated, and recommendations to the Board. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
 7. Exercise the powers granted in A.R.S. §§ 41-1062(A) and 12-2212.
 8. Perform such other duties as requested by the Board.
- B.** The hearing officer may:
1. Exclude a witness from the hearing so the witness cannot hear the testimony of other witnesses.
 2. Set time limitations for arguments.
 3. Exclude a person from the hearing who is disruptive to the proceedings.
 4. Take judicial notice of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the hearing officer's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The hearing officer's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.
 5. Issue any orders necessary for the impartial, orderly and informal conduct of the hearing.
 6. Question any witness.

R2-1-715. Location of hearings

All hearings shall be held in the state in Maricopa County, unless the Board finds that it will be more cost effective for the Department and the parties to hold a hearing elsewhere, in which event the Board shall set the location of the hearing.

R2-1-716. Notice of hearing

- A.** Setting of the date of the hearing. Within 5 days from the filing of a notice of appeal, the Clerk shall set a date for the hearing, which date shall be within 35 to 45 days from the date of the filing of the appellant's notice of appeal. If the appellant requests the date to be set at the time the appellant files the notice of appeal, the Clerk may immediately prepare the notice of hearing. The Clerk may use the Notice of Hearing Form in R2-1-732.
- B.** Contents of the notice of hearing. The notice of hearing shall contain the following information:
1. The date, time and place of the hearing.
 2. That the hearing will be on the applicant's notice of appeal from an action of the Department of Environmental Quality.
 3. That A.R.S. § 49-323 provides the authority and jurisdiction under which the hearing shall be held.
 4. That the particular Sections of the statutes and rules involved are A.R.S. §§ 49-323 and 41-1061 through 41-1066, and R2-1-701 et seq.

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5. That the hearing shall be a full evidentiary hearing and shall be for the purpose of reviewing the action of the Department of Environmental Quality resulting from the grant, denial, modification or revocation of any individual permit issued under Chapter 2 of Title 49 of the Arizona Revised Statutes or from the establishment of numeric values and data gap issues for pesticides pursuant to A.R.S. §§ 49-303 and 49-304.
6. The date the appellant filed the appellant's notice of appeal.
7. The name of the hearing officer if known at the time the notice of hearing is served.
8. That the hearing officer may issue subpoenas on behalf of any party, and the party requesting the issuance of a subpoena shall be responsible for the service of that subpoena.
9. That all parties may be represented by counsel, may introduce evidence through witnesses and documents, may cross-examine witnesses of other parties, and may have a court reporter present, which is the responsibility of the party desiring a court reporter.

C. Service of notice of hearing:

1. The Clerk shall mail or deliver a copy of the notice of hearing to the Board and each party.
2. In the event a party notifies the Clerk of a change in that party's address, the Clerk shall mail the notice to the new address provided by that party.

R2-1-717. Consolidation

Upon the motion of any party or the hearing officer, the hearing officer may consolidate 2 or more contested cases involving a common question of law or fact or a common party other than the Department of Environmental Quality, when such consolidation may tend to avoid unnecessary costs or delay. No consolidation shall be made if the hearings for all consolidated cases cannot be conducted within 60 days after the Clerk received the notice of appeal for each contested case.

R2-1-718. Continuances

The hearing officer may order a change in the date for a hearing for good cause, but in no event can a continuance be granted which would result in the hearing not being conducted within 60 days after the appellant filed the notice of appeal as required by A.R.S. § 49-323(B).

R2-1-719. Subpoenas

- A.** Pursuant to A.R.S. § 12-2212, subpoenas may be issued by the hearing officer to compel attendance of witnesses and production of documentary evidence. The hearing officer may administer oaths to witnesses in like manner as in civil actions in the superior court.
- B.** A request for a subpoena shall be in writing, shall be filed at least 15 days prior to the date set for hearing, unless there is an accident or surprise which could not have been prevented by ordinary prudence, and shall clearly identify the person or documents to be subpoenaed.
- C.** The person to whom a subpoena is directed shall comply with its provisions unless, prior to the date set for the hearing, a written request to quash or modify such subpoena is filed. To be considered, the request shall state the reasons therefor.
- D.** Service of a subpoena is the responsibility of the party requesting the subpoena. Subpoenas shall be served as required by the Arizona Rules of Civil Procedure.

R2-1-720. Prehearing conferences

- A.** Upon a motion by a party or on the initiative of the hearing officer, the hearing officer may order a prehearing conference,

if the hearing officer finds that a prehearing conference will assist the hearing officer:

1. In conducting the hearing within the 60-day period prescribed by A.R.S. § 49-323(B), and
2. In reaching a just, speedy and less expensive determination of the contested case.

- B.** Any action taken by the hearing officer at or after a prehearing conference shall be a part of the record of the contested case.

R2-1-721. Hearing

- A.** The hearing shall be a full evidentiary hearing. Any party may introduce both evidence that was or was not considered by the Department of Environmental Quality when it took the action from which the notice of appeal was filed.

- B.** Pursuant to A.R.S. § 49-324(C), decisions by the Director of the Department of Environmental Quality shall be affirmed by the Board unless, considering the entire record before the Board, the Board concludes that the decision of the Director of the Department of Environmental Quality is arbitrary, unreasonable, unlawful, or based upon a technical judgment that is clearly invalid.

R2-1-722. Evidence

- A.** Generally. All witnesses at a hearing shall testify under oath or affirmation. Pursuant to A.R.S. § 41-1062(A)(1), all parties shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The hearing officer shall receive relevant, probative and material evidence, rule upon offers of proof, and exclude all evidence determined to be irrelevant, immaterial or unduly repetitious. As provided in A.R.S. § 41-1062(A)(2), copies of documentary evidence may be received in the discretion of the hearing officer. Upon request, parties shall be given an opportunity to compare the copy with the original.

- B.** Undisclosed witnesses and documents. Any party may call additional witnesses or introduce into evidence additional documents not disclosed by the party in its notice of appeal or answer if that witness or document was not or could not reasonably have been known to that party at the time the party filed its notice of appeal or answer.

- C.** Arizona Rules of Evidence. The hearing officer may follow such portion of the Arizona Rules of Evidence as the hearing officer deems appropriate.

R2-1-723. Recording hearings

- A.** The hearing shall be tape recorded by the hearing officer, unless the hearing officer determines there will be a court reporter and is able to obtain the funds for the cost of the court reporter. Proceedings held by the hearing officer shall be transcribed and the transcript shall be made available to the Board at the time the Board meets to consider its decision on the appeal.

- B.** Any party at a hearing may use a court reporter that is acceptable to the hearing officer, but that party is responsible to make all arrangements for the court reporter to be present and is responsible for all costs of the court reporter. In such an event the court reporter's record shall be the record of the hearing.

R2-1-724. Ex parte communications regarding matters related to a contested case

- A.** During a contested case a party shall not make or knowingly cause to be made an oral or written ex parte communication regarding any matter related to that contested case to the Board or hearing officer.

- B.** During a contested case the Board or hearing officer shall not make or knowingly cause to be made an oral or written ex

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parte communication regarding any matter related to that contested case to a party.

- C. Any person who receives an oral or written communication prohibited by this Section shall file a notice of the communication with the Department and serve a copy on the hearing officer, the Attorney General, and all parties to the contested case. The notice shall include a copy of the communication, if written, or a summary of the communication, if oral.
- D. Upon receipt of a notice described in subsection (C), the hearing officer shall give all other parties reasonable opportunity to respond to the communication. The Board shall decide what, if any, action is required to be made as a result of such communication.

R2-1-725. Notification to each party of decisions and orders
The Clerk shall notify each party promptly by either delivering copies or mailing copies to each party's last known address of all decisions and orders, including the findings of fact, conclusions of law and recommendations of the hearing officer and the final decision of the Board.

R2-1-726. Recommendations of the hearing officer

- A. Within 2 days after the conclusion of the hearing, the hearing officer shall notify the Clerk in writing of the day the hearing concluded. Within 3 days after the date the Clerk receives notice of the day the hearing concluded, the Clerk shall notify the members of the Board so that the Board can set a date to meet to consider the hearing officer's findings of fact, conclusions of law and recommendations, and the transcript of the hearing.
- B. Within 15 days from the conclusion of the hearing, the hearing officer shall file the original of the hearing officer's findings of fact, conclusions of law (and) recommendations with the Clerk and shall mail or deliver a copy to each member of the Board.

R2-1-727. Decision of the Board

- A. Upon receipt by the Board of the findings of fact, conclusions of law and recommendations of the hearing officer, and the transcript of the hearing, if the Board finds that an issue of fact or law remains to be addressed by the hearing officer, the Board may order the contested case remanded to the hearing officer. In such an event the Board shall specifically identify the issue or issues of fact or law the Board wants clarified. An order of remand must be made by the Board within 30 days after the hearing. Such an order of remand shall re-open the hearing. Upon receipt of the order of remand, the hearing officer may hold additional hearings. Upon the conclusion of the hearing, the hearing officer shall proceed as required by R2-1-726 and shall file an amended findings of fact, conclusions of law and recommendations.
- B. Within 30 days after the hearing, the Board shall meet and render its decision on the appeal in writing. The Board's decision shall contain its findings of facts and conclusions of law, separately stated, and its final decision. The Clerk shall mail or deliver a copy of the decision to the hearing officer.
- C. The Board's decision rendered pursuant to this Section shall contain a paragraph substantially as follows:
"This is the decision of the Water Quality Appeals Board made pursuant to A.R.S. § 49-323(B). You may file a motion for rehearing of this decision pursuant to A.A.C. R2-1-728. If you file a motion for rehearing, you must file your motion within 15 days from the date a copy of this decision is served upon you. If you do not, this decision automatically shall become final. Unless a motion for rehearing is filed, no interested party may file an action to review by the Superior Court

pursuant to the Judicial Review of Administrative Decisions Act, A.R.S. § 12-901 et seq."

R2-1-728. Motion for rehearing

- A. Pursuant to A.R.S. § 41-1062(B) and Rule 59 of the Arizona Rules of Civil Procedure, the following rules apply to rehearings:
1. Procedure; grounds. A decision of the Board may be vacated and new hearing granted on motion of the aggrieved party for any of the following causes materially affecting that party's rights:
 - a. Irregularity in the proceedings of the Board, hearing officer or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing.
 - b. Misconduct of the prevailing party.
 - c. Accident or surprise which could not have been prevented by ordinary prudence.
 - d. Material evidence, newly discovered, which with reasonable diligence could not have been discovered and produced at the hearing.
 - e. Excessive or insufficient damages or penalties.
 - f. Error of law occurring at the hearing or during the progress of the proceeding.
 - g. That the findings of fact or decision is not justified by the evidence or is contrary to law.
 2. Scope. A rehearing may be granted to all or any of the parties and on all or part of the issues in the proceeding for any of the reasons for which rehearings are authorized by law or rule of court. On a motion for a rehearing, the Board or on its direction, its hearing officer, may open the decision, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new decision.
 3. Contents of motion; amendment; rulings reviewable.
 - a. The motion for rehearing shall be in writing, shall specify generally the grounds upon which the motion is based, and may be amended at any time before it is ruled upon by the Board.
 - b. Upon the general ground that the Board or the hearing officer erred in admitting or rejecting evidence, the hearing officer shall review all rulings during the hearing upon objections to evidence.
 - c. Upon the general ground that the findings of fact or decision is not justified by the evidence, the hearing officer shall review the sufficiency of the evidence.
 4. Time for motion for rehearing. A motion for rehearing shall be filed not later than 15 days after entry of the decision.
 5. Time for serving affidavits. When a motion for rehearing is based upon affidavits, they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the hearing officer for good cause shown or by the parties by written stipulation. The hearing officer may permit reply affidavits.
 6. On initiative of the Board. Not later than 15 days after the date of the decision, the Board of its own initiative may order a rehearing for any reason for which it might have granted a rehearing on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Board may grant a motion for a rehearing, timely served, for a reason not stated in the motion. In either case, the Board shall specify in the order the grounds therefor.

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7. Questions to be considered in rehearing. A rehearing, if granted, shall be only a rehearing of the question or questions with respect to which the decision is found erroneous, if separable.
8. Number of motions for rehearing. Not more than 2 motions for rehearing shall be granted to any party in the same action.
9. Specifications of grounds of rehearing in order. An order granting a motion for rehearing shall specify with particularity the ground or grounds on which the rehearing is granted.

"This is the final decision of the Water Quality Appeals Board made pursuant to A.R.S. § 49-323. This decision may be reviewed by the Superior Court by the filing of an action to review pursuant to the Judicial Review of Administrative Decisions Act, A.R.S. § 12-901 et seq., within 35 days from the date when a copy of this final decision is served upon the party affected pursuant to A.R.S. § 12-904."

R2-1-729. Final decision of the Board

- A. If a motion for rehearing is denied, the final decision denying the motion for rehearing shall be sent within 5 days after the denial to all parties.
- B. If the motion for rehearing was granted, after the rehearing is completed, a final decision shall be made and shall be sent within 5 days after the conclusion of the rehearing to all parties.
- C. A final decision of the Board shall contain:
 1. Findings of facts and conclusions of law, separately stated, and the decision; and
 2. A paragraph substantially as follows:

R2-1-730. Judicial review of the final decision of the Board
 The final decision of the Board is the "administrative decision" of the Board as defined in A.R.S. § 12-901(2) and may be reviewed as provided by A.R.S. § 49-323 and Title 12, Chapter 7, Article 6, Judicial Review of Administrative Decisions Act, A.R.S. § 12-901 et seq.

R2-1-731. Record
 The Clerk shall keep the record. The record shall be preserved for a minimum of 3 years.

R2-1-732. Forms
 A. Notice of appeal form. The Notice of Appeal Form is as follows:

(If this form does not give you adequate space, attach additional sheets of paper.)

**BEFORE THE WATER QUALITY APPEALS BOARD
 DEPARTMENT OF ADMINISTRATION
 IN AND FOR THE STATE OF ARIZONA**

Appellant,)	
)	
vs.)	CASE NO. _____
)	
<u>DEPARTMENT OF ENVIRONMENTAL QUALITY.</u>)	<u>NOTICE OF APPEAL</u>
)	
)	
<u>Respondents.</u>)	

1. This Notice of Appeal is being filed by me, the appellant pursuant to A.R.S. § 49-323 and A.A.C. R2-1-701 et seq., with the Clerk of the Water Quality Appeals Board.
2. Pursuant to A.R.S. § 49-323 and A.A.C. R2-1-701 et seq., if you, a Respondent in this case, have an interest in the final decision that may result from this Notice of Appeal, you are required to file an Answer to this Notice of Appeal within 20 days from the date of service of this Notice of Appeal on you.
3. The name, address and telephone number of the appellant is:
 - Name:
 - Address:

Telephone: _____

If I, the appellant, am represented by an attorney, the name, address, telephone number and Arizona Bar number of the appellant's attorney is:

Name: _____

Address: _____

Telephone: _____ Bar No. _____

Is the appellant a corporation? Yes _____ No _____ If the appellant is a corporation, the state of incorporation is _____ If the appellant is not an Arizona corporation, is the corporation qualified to do business in the state by the Arizona Corporation Commission? Yes _____ No _____ Is the appellant a partnership? Yes _____ No _____ If the appellant is a partnership, the following is a list of the names, addresses and telephone numbers of all the partners in the partnership:

Name: _____

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Address:

Telephone:

Name:

Address:

Telephone:

4. ~~The following is a list of the names and mailing addresses of all the employees and agents of the Department of Environmental Quality known or believed by me to be persons who may have participated in the action that is being appealed:~~

~~Name:~~

~~Address:~~

~~Name:~~

~~Address:~~

5. The following is a list of names, mailing addresses and telephone numbers of all of the following interested persons:
- a. ~~The permittee, if the permittee is not the appellant, and~~
 - b. ~~All persons who provided the appellant with a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing.~~

~~Name:~~

~~Address:~~

~~Telephone:~~

~~Name:~~

~~Address:~~

~~Telephone:~~

6. ~~In addition to myself, the following is a list of the names, addresses and telephone numbers of all witnesses I believe I may call at the hearing:~~

~~Name:~~

~~Address:~~

~~Telephone:~~

~~Name:~~

~~Address:~~

~~Telephone:~~

7. ~~The specific action of the Department of Environmental Quality which is the basis of this appeal is the following:~~

~~a.~~

~~b.~~

8. ~~The date of the action complained of in the previous paragraph (7) is , 19~~
9. ~~The date the appellant received notice of the action complained of in the previous paragraph 7 is _____, 19____. This Notice of Appeal is being filed with the Clerk of the Water Quality Appeals Board within 30 days of the date the appellant received notice of the action complained of in the previous paragraph (7).~~

10. I request the following relief:

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 17. WATER QUALITY APPEALS BOARD

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| Article I | New Article |
| R2-17-101 | New Section |
| R2-17-102 | New Section |
| R2-17-103 | New Section |
| R2-17-104 | New Section |
| R2-17-105 | New Section |
| R2-17-106 | New Section |
| R2-17-107 | New Section |
| R2-17-108 | New Section |
| R2-17-109 | New Section |
| R2-17-110 | New Section |
| R2-17-111 | New Section |
| R2-17-112 | New Section |
| R2-17-113 | New Section |
| R2-17-114 | New Section |
| R2-17-115 | New Section |
| R2-17-116 | New Section |
| R2-17-117 | New Section |
| R2-17-118 | New Section |
| R2-17-119 | New Section |
| R2-17-120 | New Section |
| R2-17-121 | New Section |
| R2-17-122 | New Section |
| R2-17-123 | New Section |
| R2-17-124 | New Section |
| R2-17-125 | New Section |
| R2-17-126 | New Section |
| R2-17-127 | New Section |
| R2-17-128 | New Section |
| R2-17-129 | New Section |
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing and implementing statute: A.R.S. § 49-322(D)
3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Scott Cooley
Address: Department of Administration
1400 West Washington, Suite 270
Phoenix, Arizona 85007
Telephone: (602) 542-2015
Fax Number: (602) 542-1486
4. An explanation of the rule, including the agency's reasons for initiating the rule:
The Department of Administration (Department) is updating and reorganizing the rules of procedure for the Water Quality Appeals Board. The old rules in 2 A.A.C. 1 are being repealed in a concurrent rulemaking. The new rules incorporate changes proposed in the last 5-year-review report. All rule Sections have been updated to reflect current rule drafting style.
5. 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.
6. The preliminary summary of the economic, small business, and consumer impact:
Modifications to the Chapter improving readability will make the rules easier to use. Individuals using the rules will benefit from this change.

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7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
Name: Allen Malanowski
Address: Department of Administration
1400 West Washington, Suite 270
Phoenix, Arizona 85007
Telephone: (602) 542-2017
Fax Number: (602) 542-1486
8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**
No oral proceedings are scheduled. The Department will schedule an oral proceeding on the proposed rules if a written request for the proceeding is submitted to the agency personnel listed in question #3 of this preamble by at least 5 persons. Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement may be submitted to the person listed in question #7 no later than 5 p.m., September 24, 1997.
9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.
10. **Incorporations by reference and their location in the rules:**
Not applicable.
11. **The full text of the rules follows:**

TITLE 2. ADMINISTRATION

CHAPTER 17. WATER QUALITY APPEALS BOARD

ARTICLE 1. APPEALS

ARTICLE 1. APPEALS

Section

R2-17-101.	Scope of Article; General Considerations
R2-17-102.	Definitions
R2-17-103.	Commencement of a Contested Case; Copies
R2-17-104.	Docket; Case Number; Information on Documents
R2-17-105.	Filing and Service of Pleadings, Motions, or Other Documents
R2-17-106.	Computation of Time; Additional Time After Service by Mail
R2-17-107.	Contents of a Notice of Appeal
R2-17-108.	Time for Filing an Answer to a Notice of Appeal
R2-17-109.	Contents of an Answer to a Notice of Appeal
R2-17-110.	Prehearing Disclosure
R2-17-111.	Depositions
R2-17-112.	Motions
R2-17-113.	Duties of the Board During a Hearing
R2-17-114.	Location of Hearings
R2-17-115.	Notice of Hearing
R2-17-116.	Consolidation
R2-17-117.	Continuances
R2-17-118.	Subpoenas
R2-17-119.	Prehearing Conferences
R2-17-120.	Hearing
R2-17-121.	Evidence
R2-17-122.	Recording Hearings
R2-17-123.	Ex Parte Communications
R2-17-124.	Notification of Decisions and Orders
R2-17-125.	Decision of the Board
R2-17-126.	Rehearing or Review of Decision
R2-17-127.	Judicial Review
R2-17-128.	Record
Appendix A.	Notice of Appeal Form
Appendix B.	Notice of Hearing Form

R2-17-101. Scope of Article; General Considerations

- A.** These rules of procedure govern all appeals to the Water Quality Appeals Board taken under A.R.S. § 49-323.
- B.** Where a procedure is not established by law, this Article, or an order of the Board, the Board may refer to the Arizona Rules of Civil Procedure for guidance, but the Arizona Rules of Civil Procedure are not binding on the Board or the parties unless the Board issues an order to that effect.

R2-17-102. Definitions

The definitions in A.R.S. §§ 41-1001 and 41-1092 apply to this Article. In addition, the terms in this Article have the following meanings:

1. "Appellant" means the person who files a notice of appeal with the Clerk under A.R.S. § 49-323.
2. "Board" means the Water Quality Appeals Board appointed by the Governor according to A.R.S. § 49-322 and includes an individual Board member or administrative law judge acting on behalf of the Board according to a lawful delegation of authority.
3. "Clerk" means the person designated as Clerk of the Board.
4. "Department" means the Department of Administration.
5. "Director" means the Director of the Department or a Deputy Director of the Department.
6. "Ex parte communication" means an oral or written communication, not on the public record, made without sufficient prior notice to permit all parties to participate in the communication.
7. "Party" means the appellant, the Department of Environmental Quality, all persons named by the appellant as interested persons as provided in R2-17-107(B)(2), and any interested person the Board has permitted to intervene in the appeal as a matter of right.
8. "Record" has the meaning found in A.R.S. § 41-1092.10(C).

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R2-17-103. Commencement of a Contested Case; Copies

- A.** To commence a contested case, the appellant shall file a notice of appeal with the Clerk. The notice of appeal shall be delivered or mailed to the Clerk of the Water Quality Appeals Board. The appellant shall file the notice of appeal within 30 days after receiving notice of the agency action. The date of filing is the date the Clerk receives the notice of appeal.
- B.** The Clerk shall make available to all persons copies of the Notice of Appeal Form in R2-17-129 and copies of this Article. The Clerk shall charge a reasonable fee for the cost of copies.

R2-17-104. Docket; Case Number; Information on Documents.

- A.** The Clerk shall maintain a docket of all contested cases and assign each contested case a case number. For each contested case, the Clerk shall enter all of the following information on the docket:
1. The case number;
 2. The case name;
 3. The receipt date of the notice of appeal;
 4. The receipt date of any answer;
 5. The receipt date of any disclosures;
 6. The receipt date of prehearing motions, responses, and replies;
 7. The dates of the evidentiary hearing;
 8. The dates of orders by the Board and the Board's decision;
 9. The receipt date of any motion for rehearing or review;
 10. The Board's decision on any motion for rehearing or review and the date of the decision; and
 11. The Board's final decision and the date of the final decision.
- B.** A party shall place the case number and the name, address, and telephone number of the party or party's attorney on all pleadings, motions, or other documents filed with the Board.

R2-17-105. Filing and Service of Pleadings, Motions or Other Documents.

- A.** Within the time limits for filing, a party shall file the original and 1 copy of all pleadings, motions, or other documents with the Clerk and serve a copy on each party and the administrative law judge, if the Board has delegated hearing powers and duties to the Office of Administrative Hearings.
- B.** A party shall serve documents other than subpoenas by personal service or by regular mail. A party is considered served at the time of personal service of the document or upon deposit of the document in the United States mail, postage prepaid, in a sealed envelope, addressed to the party being served, at the party's last address of record with the Department of Environmental Quality or the Board. If there is a discrepancy between the records of these agencies, the party serving a document shall use the last address of record with the Board. Each party shall inform the Board of any change of address within 5 days of the change.
- C.** A party shall demonstrate proof of service by filing with the Clerk a written statement, signed by the party, indicating that service was made in person or by mail. The statement shall be attached to the pleading, motion, or other document being filed.
- D.** After receiving the Notice of Appeal or an Answer of a party, or when the Board finds that the interest of justice so requires, the Board may order any party to publish an appropriate notice in a newspaper of general circulation in the community or communities that may be adversely affected if the appellant is granted the relief requested in the appellant's Notice of Appeal. The party shall publish the notice in the manner pre-

scribed by the Arizona Rules of Civil Procedure, unless the Board determines that another method of publication is more appropriate.

R2-17-106. Computation of Time; Additional Time After Service by Mail

- A.** In computing any period of time prescribed or allowed by these rules or by order of the Board, 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, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, not including the time for mailing permitted in subsection (B), intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation. When that period of time is 11 days or more, not including the time for mailing permitted in subsection (B), intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.
- B.** Whenever a party has a right or is required to do some act or proceed within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served by mail, 5 calendar days shall be added to the prescribed period. This subsection does not apply when time is counted from the date that a party receives the notice or other paper.

R2-17-107. Contents of a Notice of Appeal

- A.** The appellant may use the Notice of Appeal Form in Appendix A and, where there is not enough space on the Form, the appellant may attach additional sheets of paper. The notice of appeal shall contain the following statements:
1. "The appellant files this notice of appeal with the Clerk of the Water Quality Appeals Board according to A.R.S. § 49-323."
 2. "Under A.R.S. § 49-323 and A.A.C. R2-17-101 et seq., if you, a Respondent in this case, have an interest in the final decision that may result from this Notice of Appeal, you are required to file an Answer to this Notice of Appeal within 20 days from the date of service of this Notice of Appeal on you."
- B.** The notice of appeal shall contain the following information:
1. The name, address, and telephone number of the appellant and, if the appellant is represented by an attorney, the name, address, telephone number, and Arizona Bar number of the appellant's attorney;
 2. The names, mailing addresses, and telephone numbers of all of the following interested parties:
 - a. The permittee, if the permittee is not the appellant;
 - b. All persons who filed a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing; and
 - c. The Department of Environmental Quality;
 3. The specific action of the Department of Environmental Quality involving the grant, denial, modification, or revocation of an individual permit issued under A.R.S. Title 49, Chapter 2, or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§ 49-303 and 49-304;
 4. The date of the action by the Department of Environmental Quality;
 5. The date the notice of action by the Department of Environmental Quality was received by the appellant;
 6. The relief requested by the appellant;
 7. The date of the notice of appeal;
 8. The signature of the appellant or the appellant's attorney;

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9. A verification that the appellant has served, or caused to be served, a copy of the notice of appeal on the Department of Environmental Quality and all parties named by the appellant.

R2-17-108. Time for Filing an Answer to a Notice of Appeal

The Department of Environmental Quality and all parties named by the appellant shall file an answer to appellant's notice of appeal within 20 days from service of the notice of appeal on that party.

R2-17-109. Contents of an Answer to a Notice of Appeal

The answer of each respondent shall contain the following information:

1. The name, address, and telephone number of the respondent preparing the answer and, if the respondent is represented by an attorney, the name, address, telephone number, and Arizona Bar number of the respondent's attorney;
2. A response to the appellant's allegations relating to the action taken by the Department of Environmental Quality involving the grant, denial, modification, or revocation of an individual permit issued under A.R.S. Title 49, Chapter 2, or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§ 49-303 and 49-304;
3. The relief requested by the respondent;
4. The date of the answer;
5. The signature of the respondent or the respondent's attorney;
6. A verification that the respondent has served or caused to be served a copy of the answer on all other parties.

R2-17-110. Prehearing Disclosure

A. Within the times set forth in subsection (B), each party shall disclose in writing to every other party;

1. The factual basis of the appeal or response;
2. The legal theory upon which the appeal or response is based, including citations of pertinent legal authorities;
3. The names, addresses, and telephone numbers of all witnesses the party expects to call at the hearing, with a description of the substance of each witness' expected testimony;
4. If a party is a corporation, the name of the state of incorporation. If the party is not an Arizona corporation, the party shall state whether it is qualified to do business in the state by the Arizona Corporation Commission;
5. If the party is a partnership, the name, address, and telephone number of each partner;
6. The names, mailing addresses, and telephone numbers of all of the following interested persons:
 - a. The permittee, if the permittee is not the appellant;
 - b. All persons who filed a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing;
 - c. The mayor of any city or town or the chair of the board of supervisors of any county that may be affected if the appellant is granted the relief requested;
7. The name and address of each person whom the party expects to call as an expert witness at the hearing, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness, and the name and address of the custodian of copies of any reports prepared by the expert;
8. A list of documents which indicates the location, custodian, and a general description of any tangible evidence

or relevant documents that the party plans to use during the hearing. Unless good cause is stated for not doing so, a copy of each document listed shall be served with the disclosure. If production is not made, the party shall indicate the name and address of the custodian of the document. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.

- B.** The parties shall make the initial disclosure required by subsection (A) at least 15 days prior to the date set for hearing, unless the parties otherwise agree, or the Board shortens or extends the time for good cause. If feasible, counsel shall meet to exchange disclosures; otherwise, the parties shall serve the disclosures as prescribed in R2-17-105. At the same time, the parties shall file with the Clerk the disclosures and 1 copy of each document listed.
- C.** The duties described in subsections (A) and (B) are continuing duties, and each party shall make additional or amended disclosures whenever new or different information is discovered or revealed. A party shall make additional or amended disclosures seasonably, but in no event later than 3 days before the hearing, except by leave of the Board.
- D.** A party shall include in its disclosure information and data in the possession, custody, and control of the parties as well as that which can be ascertained, learned, or acquired by reasonable inquiry and investigation.
- E.** Each party shall make the disclosure in writing under oath and sign the disclosure.
- F.** When information is withheld from disclosure or discovery on a claim that it is privileged or subject to protection as trial preparation materials, the party making the claim shall do so expressly and shall support the claim with a description of the nature of the documents, communications, or things not produced or disclosed that is sufficient to enable other parties to contest the claim.

R2-17-111. Depositions

The Board may allow the deposition of a witness who cannot be subpoenaed or is unable to attend the hearing, in the manner and upon the terms designated by the Board. The party requesting a deposition shall bear the expense of the deposition.

R2-17-112. Motions

- A.** To obtain an order or other relief from the Board, a party shall make a motion. Unless the motion is made during a hearing, the party shall make the motion in writing. For all motions, the party shall state the grounds on which the motion is based and the relief or order sought. The Board shall decide prehearing motions based on the written materials submitted by the parties.
- B.** Any party may file a response to a prehearing motion within 5 days after service of the motion and serve the response on all parties. The moving party has 2 days after service of a response to file a reply.
- C.** A party's supporting memorandum shall not exceed 15 pages, exclusive of pages containing the table of contents, the table of cases, statutes or other authorities, and the appendix, if any. A reply memorandum shall not exceed 5 pages.
- D.** A party shall support motion documents by affidavit or other satisfactory evidence if they contain facts not apparent in the record or facts that are not cognizable through judicial notice.
- E.** When the Board directly conducts an administrative hearing, the Board shall rule on all motions. When the Board uses the services of the Office of Administrative Hearings, the administrative law judge shall rule on all motions.

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R2-17-113. Duties of the Board During a Hearing

- A. The Board shall:**
1. Conduct the hearing in an impartial, orderly, and informal manner;
 2. Regulate the course of the hearing;
 3. Rule upon procedural matters incidental to the hearing;
 4. Designate the order in which parties introduce their evidence; and
 5. Exercise the powers granted in A.R.S. §§ 41-1092.07 and 12-2212.
- B. The Board may:**
1. Exclude a witness from the hearing so the witness cannot hear the testimony of other witnesses;
 2. Set time limitations for arguments;
 3. Exclude a person from the hearing who is disruptive to the proceedings;
 4. Administer oaths and affirmations to witnesses; and
 5. Issue any orders necessary for the impartial, orderly, and informal conduct of the hearing.

R2-17-114. Location of Hearings

All hearings shall be held in Arizona, in Maricopa County, unless the Board finds that it will be more cost effective for the Department and the parties to hold a hearing elsewhere, in which event the Board shall set the location of the hearing.

R2-17-115. Notice of Hearing

- A. When the Board conducts an administrative hearing, the Clerk shall set a date for the hearing no later than 60 days from the date the appellant filed the notice of appeal. The Clerk shall prepare and serve a notice of hearing as prescribed in A.R.S. § 41-1092.05. The Clerk may use the Notice of Hearing Form in Appendix B. When the Board uses the services of the Office of Administrative Hearings, the Clerk shall set the hearing date in consideration of and in conjunction with the Office of Administrative Hearings.**
- B. The notice of hearing shall contain the following information and statements:**
1. The date, time, and place of the hearing;
 2. The hearing will be on the appellant's notice of appeal from an action of the Department of Environmental Quality;
 3. A.R.S. § 49-323 provides the authority and jurisdiction under which the hearing will be held;
 4. The particular sections of the statutes and rules involved in the substantive appeal are A.R.S. § 49-323 and R2-17-101 et seq. The parties should also refer to procedural statutes which may be applicable to this appeal, including A.R.S. §§ 41-1092.04, 41-1092.05, and 41-1092.07 through 41-1092.11;
 5. The hearing will be a full evidentiary hearing for the purpose of reviewing the grant, denial, modification, or revocation of any individual permit issued under A.R.S. Title 49, Chapter 2 or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§ 49-303 and 49-304;
 6. The date the appellant filed the notice of appeal;
 7. The name of the administrative law judge, if any, when known at the time the notice of hearing is served;
 8. The Board may issue subpoenas on behalf of any party;
 9. All parties may be represented by counsel, may introduce evidence through witnesses and documents, and may cross-examine witnesses of other parties;
 10. Notification that reasonable accommodation will be made for the disabled.

- C. At least 30 days prior to the date of the hearing, the Clerk shall serve a copy of the notice of hearing on each Board member and each party.**

R2-17-116. Consolidation

Upon the motion of a party, the Board may consolidate 2 or more contested cases involving a common question of law or fact when consolidation will avoid unnecessary costs or delay.

R2-17-117. Continuances

- A. A party applying for a continuance of a hearing shall file a motion with the Clerk and serve all parties no later than 10 days before the scheduled date of the hearing. The Board may accept a motion filed later than 10 days before the hearing for good cause. The motion shall state why the continuance is being requested, why a stipulation from adverse parties was not obtained, and the amount of time requested.**
- B. Any opposing party may, within 5 days after service of the motion, file and serve a response. The Board may permit a reply.**
- C. The parties may stipulate to a continuance. The Board is not required to accept such a stipulation.**

R2-17-118. Subpoenas

- A. A party shall make a written request for a subpoena which clearly identifies the person, documents, or other evidence desired and the reason the evidence is relevant to the proceeding. The party requesting the subpoena shall file the request at least 15 days prior to the date set for hearing, provide the Board with a proposed subpoena for signature, and serve any subpoena issued in the manner prescribed by the Arizona Rules of Civil Procedure.**
- B. The person to whom a subpoena is directed shall comply with its provisions unless the person, at least 10 days prior to the date set for the hearing, files a motion to quash or modify the subpoena and the motion is granted in whole or in part, prior to the hearing, or the party serving the subpoena has failed to comply with subsection (A) of this rule.**

R2-17-119. Prehearing Conferences

- A. Upon a motion by a party or on the initiative of the Board, the Board may order a prehearing conference, if the Board finds that a prehearing conference will assist the Board to:**
1. Conduct the hearing within the 60-day period prescribed by A.R.S. § 41-1092.05(A); or
 2. Reach a just, speedy, and less expensive determination of the contested case.
- B. If the Board takes any action at or after the prehearing conference, the Board shall prepare a written order reciting the action taken, which becomes a part of the record of the contested case.**

R2-17-120. Hearing

- A. The Board shall conduct a full evidentiary hearing. A party may introduce evidence that was considered by the Department of Environmental Quality when it took the action being appealed or new evidence.**
- B. The Board shall use the standard of review prescribed in A.R.S. § 49-324(C) to decide an appeal.**
- C. Noncompliance with any order of the Board or disruption of any hearing is improper conduct and grounds for exclusion from the hearing.**

R2-17-121. Evidence

- A. All witnesses at a hearing shall testify under oath or affirmation. All parties shall have the right to present such evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The Board shall receive relevant, probative, and material evidence, rule upon offers of**

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proof, and exclude all evidence determined to be irrelevant, immaterial, or unduly repetitious.

- B.** Any party may call additional witnesses or introduce into evidence additional documents not disclosed by the party in its notice of appeal, answer, initial prehearing disclosure, or an additional or amended disclosure if that witness or document was not or could not reasonably have been known to that party at the time the party filed its notice of appeal, answer, initial prehearing disclosure, and an additional or amended disclosure.
- C.** The Board may conduct a hearing in an informal manner and without adherence to the rules of evidence required in judicial proceedings or follow that portion of the Arizona Rules of Evidence that the Board deems appropriate.
- D.** The Board may question any witness.
- E.** The Board may take judicial notice of judicially cognizable facts. In addition, the Board may take notice of generally recognized technical or scientific facts within the board members' specialized knowledge. The Board shall notify the parties either before or during the hearing, by reference in a preliminary report or otherwise, of the material noticed, including any staff memoranda or data. The parties shall be afforded an opportunity to contest the noticed material. The board members' experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

R2-17-122. Recording Hearings

- A.** The Board shall tape-record the hearing unless it determines there will be a court reporter and is able to obtain state funds for the cost of the court reporter.
- B.** Any party may use a court reporter to produce a record of the hearing, but that party shall pay for all costs of the court reporter. Where a hearing is recorded by a party's court reporter, the Board shall determine whether the tape recording or the court reporter's recording will be used to prepare the hearing transcript. The Clerk shall ensure that the proceedings are transcribed and provide copies of the transcript to the Board at the time the Board meets to consider its decision on the appeal.
- C.** Any party that requests a transcript of the proceeding from the Board shall pay the Clerk the fee for the cost of copying the transcript.

R2-17-123. Ex Parte Communications

- A.** In any contested case before the Board, except to the extent required for disposition of ex parte matters as authorized by law or these rules of procedure:
 - 1.** An interested person shall not make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to any Board member, administrative law judge, or employee of the state of Arizona who is or may reasonably be expected to be involved in the decision-making process.
 - 2.** A Board member, administrative law judge, or employee of the state of Arizona who is or may reasonably be expected to be involved in the decision-making process shall not make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to any interested person.
- B.** A Board member, administrative law judge, or employee of the state of Arizona who is or may reasonably be expected to be involved in the decision-making process and receives, makes, or knowingly causes to be made a communication prohibited by this Section shall place all written communications and all written responses to the communications in the public record of the proceeding and by oral testimony on the record state the substance of all oral communications.

- C.** Any interested person who receives a communication prohibited by this Section shall file a notice of the communication with the Clerk and serve a copy on the Solicitor General and all parties to the contested case. The person shall attach to the notice a copy of the communication, if written, or a summary of the communication, if oral.
- D.** When the Board is made aware under subsections (B) or (C) of a communication prohibited by this Section, the Board shall give all parties a reasonable opportunity to respond to the communication. The Board, to the extent consistent with the interests of justice and the policy of the underlying statutes and rules, may require the person responsible for the communication to show cause why the person's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.
- E.** The provisions of this Section apply in a contested case from the date the notice of appeal is filed to the date on the Board's final administrative decision, unless the person responsible for the communication knew the appeal would be noticed, in which case the prohibition applies from the time that the person acquired the knowledge.

R2-17-124. Notification of Decisions and Orders

The Clerk shall notify each party promptly by either delivering or mailing copies of all decisions and orders, including the findings of fact, conclusions of law, and the final administrative decision of the Board to each party's last known address.

R2-17-125. Decision of the Board

- A.** When the Board uses the services of the Office of Administrative Hearings, it will receive a copy of the administrative law judge's decision under A.R.S. § 41-1092.08(B). Within 30 days after receipt, the Board may review the decision and accept, reject, or modify it.
 - 1.** If the Board does not make a decision within 30 days, the Board has accepted the administrative law judge's decision as the final administrative decision.
 - 2.** When the Board reviews the administrative law judge's decision, it shall request the record of the hearing, described in A.R.S. § 41-1092.10(C), and may accept, reject, or modify the decision. If the Board rejects or modifies the decision, the Board shall file with the Office of Administrative Hearings a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification. Under the circumstances in this subsection, the decision of the Board is the final administrative decision.
- B.** When the Board directly conducts an administrative hearing, the Board shall meet and render its final administrative decision on the appeal in writing within 15 days after the hearing. The Board's decision shall contain its findings of fact and conclusions of law, separately stated, and its decision.
- C.** The Board's final administrative decision shall contain the following statement:

"This is a final administrative decision of the Water Quality Appeals Board, made according to A.R.S. § 49-323. You may file a motion for rehearing or review of this decision under A.A.C. R2-17-126. If you file a motion for rehearing or review, you shall file your motion within 30 days after receiving this decision. This decision may be reviewed by the Superior Court if you file a complaint in the manner prescribed in A.R.S. §§ 41-1092.10 and 41-1092.11."
- D.** The Board may incorporate by reference findings, conclusions, or a decision previously made by an administrative law judge.

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E. When the Board has rendered a final administrative decision, it shall serve a copy of the decision on all parties.

R2-17-126. Rehearing or Review of Decision

A. Except as provided in subsection (H), any party in a contested case before the Board may file a motion for rehearing or review within 30 days after receiving the final administrative decision. The party shall attach a supporting memorandum, specifying the grounds for the motion. 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.

B. Any other party may file a response within 5 days after service of a motion for rehearing or review. The party shall support the response with a memorandum, discussing legal and factual issues.

C. Either party or the Board may request oral argument.

D. The Board may grant a rehearing or review for any of the following causes materially affecting a party's rights:

1. Irregularity in the proceedings of the Board, or any order or abuse of discretion, which deprived the moving party of a fair hearing;
2. Misconduct of the Board, its staff, an administrative law judge, or the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Newly discovered material evidence which could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding; or
6. That the findings of fact or decision is not justified by the evidence or is contrary to law.

E. The Board may affirm or modify the decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons set forth in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.

F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 5 days after such service, serve opposing affidavits.

G. Not later than 15 days after the date of the decision, the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.

H. If the Board makes specific findings that the immediate effectiveness of a decision is necessary for the preservation of the public health and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue a final administrative decision without an opportunity for rehearing or review. A party may seek judicial review of such a decision under A.R.S. §§ 41-1092.10 and 41-1092.11.

I. The Board shall rule on the motion for rehearing or review within 15 days after it has been received. If a rehearing is granted, the Board shall hold the rehearing within 90 days after the issue date on the order granting the rehearing.

J. If a motion for rehearing or review is denied, the Clerk shall serve the final administrative decision on all parties within 15 days after the denial.

K. If the motion for rehearing or review is granted, the Clerk shall serve the Board's final administrative decision on all parties within 15 days after the Board renders the decision.

R2-17-127. Judicial Review

The final administrative decision of the Board may be reviewed as provided by A.R.S. §§ 41-1092.10, 41-1092.11, 49-323 and A.R.S. § 12-901 et seq. (Title 12, Chapter 7, Article 6, Judicial Review of Administrative Decisions Act).

R2-17-128. Record

The Clerk shall keep the record and ensure that it is preserved for a minimum of 5 years from the date of the final administrative decision.

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Appendix A. Notice of Appeal Form

(If this form does not give you adequate space, attach additional sheets of paper.)

BEFORE THE WATER QUALITY APPEALS BOARD
DEPARTMENT OF ADMINISTRATION
IN AND FOR THE STATE OF ARIZONA

Appellant.)

CASE NO. _____

vs.)

NOTICE OF APPEAL

DEPARTMENT OF ENVIRONMENTAL)
QUALITY.)

Respondents.)

1. The appellant files this Notice of Appeal with the Clerk of the Water Quality Appeals Board according to A.R.S. § 49-323.
2. Under A.R.S. § 49-323 and A.A.C. R2-17-101 et seq., if you, a Respondent in this case, have an interest in the final decision that may result from this Notice of Appeal, you are required to file an Answer to this Notice of Appeal within 20 days from the date of service of this Notice of Appeal on you.
3. The name, address, and telephone number of the appellant is:

Name:
Address:

Telephone:

If I, the appellant, am represented by an attorney, the name, address, telephone number, and Arizona Bar number of my attorney is:

Name:
Address:

Telephone:

Bar No. _____

4. The following is a list of names, mailing addresses, and telephone numbers of all of the following interested parties:
 - a. The permittee, if the permittee is not the appellant;
 - b. All persons who filed a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing; and
 - c. The Department of Environmental Quality.

Name:
Address:

Telephone:

Name:
Address:

Telephone:

Name:
Address:

Telephone:

5. The specific action of the Department of Environmental Quality which is the basis of this appeal is the following:
 - a.
 - b.

6. The date of the action complained of in the previous paragraph (5) is (month)(day), (year).
7. The date the appellant received notice of the action complained of in the previous paragraph (5) is (month)(day), (year).
8. I request the following relief:

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DATED (month)(day), (year)

Signature of the Appellant or
the attorney for the Appellant

VERIFICATION

I verify that I have served or caused to be served a copy of this Notice of Appeal on the Department of Environmental Quality and all the persons listed in paragraph (4) above.

DATED (month)(day), (year)

Signature of the Appellant or
the attorney for the Appellant

Appendix B. Notice of Hearing Form

BEFORE THE WATER QUALITY APPEALS BOARD
DEPARTMENT OF ADMINISTRATION
IN AND FOR THE STATE OF ARIZONA

Appellant,)

vs.)

DEPARTMENT OF ENVIRONMENTAL)
QUALITY.)

Respondent.)

CASE NO. _____

NOTICE OF HEARING

_____)
TO ALL PARTIES:

1. The date of the hearing is (month)(day), (year), at _____ o'clock _____ M. at the following address:
2. The hearing will be on the appellant's notice of appeal from an action of the Department of Environmental Quality.
3. A.R.S. § 49-323 provides the authority and jurisdiction under which the hearing will be held.
4. The particular Sections of the statutes and rules involved in the substantive appeal are A.R.S. § 49-323 and A.A.C. R2-17-101 et seq. The parties should also refer to procedural statutes which may be applicable to this appeal, including A.R.S. §§ 41-1092.04, 41-1092.05, and 41-1092.07 through 41-1092.11.
5. The hearing will be a full evidentiary hearing for the purpose of reviewing the grant, denial, modification or revocation of any individual permit issued under A.R.S. Title 49, Chapter 2 or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§ 49-303 and 49-304.
6. The date the appellant filed the notice of appeal is (month)(day), (year).
7. If known, the name of the administrative law judge, if any, is _____
8. The Board may issue subpoenas on behalf of any party.
9. All parties may be represented by counsel, may introduce evidence through witnesses and documents, and may cross-examine witnesses of other parties.

DATED this (month)(day), (year)

Signature of the Clerk of the
Water Quality Appeals Board

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ADMINISTRATION

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| R9-22-501 | Amend |
| R9-22-502 | Amend |
| R9-22-503 | Amend |
| R9-22-504 | Amend |
| R9-22-505 | Amend |
| R9-22-506 | Repeal |
| R9-22-507 | Amend |
| R9-22-508 | Amend |
| R9-22-509 | Amend |
| R9-22-510 | Amend |
| R9-22-511 | Amend |
| R9-22-512 | Amend |
| R9-22-513 | Amend |
| R9-22-514 | Amend |
| R9-22-515 | Repeal |
| R9-22-518 | Amend |
| R9-22-519 | Repeal |
| R9-22-520 | Amend |
| R9-22-521 | Amend |
| R9-22-522 | Amend |
| R9-22-523 | Amend |
| R9-22-524 | Amend |
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. § 36-2903.01
Implementing Statute: A.R.S. §§ 36-2903, 36-2906, and 36-2907
3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Cheri Tomlinson
Address: AHCCCS
801 East Jefferson, MD 4200
Phoenix, Arizona 85034
Telephone: (602) 417-4198
Fax Number: (602) 256-6756
4. An explanation of the rule, including the agency's reasons for initiating the rule:
The Administration made revisions to improve the clarity, conciseness, and understandability of the rules. In addition, the Administration wanted to open this Article so that it could be run parallel with the ALTCS rules in an effort to improve the consistency between the 2 Chapters and to make it easier for the providers to provide the Administration written comment on the rule language.
5. 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.
6. The preliminary summary of the economic, small business, and consumer impact:
There is a nominal to minimal economic impact upon a limited number of AHCCCS providers as a result of the removal of the language regarding the current provider-to-member ratio of 1 primary care physician per 2,500 adults in R9-22-504. The change will require providers to comply with the provider-to-member ratio stipulated in contract. The current provider-to-member ratio in contract is 1 primary care physician to 1,800 adults or 1,200 children age 12 or younger.

Relatively few physicians have provider-to-member ratios that exceed the ratio in rule and in contract. Depending upon the type of payment arrangement physicians have with contractors, physicians whose provider-to-member ratio exceeds the ratio permitted in rule and in contract may be impacted in terms of the total capitation payment they receive. It is unlikely that AHCCCS contractors

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will have to expand their provider networks as a result of the change since there are relatively few primary care physicians impacted by the change. However, if AHCCCS contractors do need to expand their provider network, the impact will be minimal. Conversely, the change will be of benefit because it will:

- Provide greater assurance that providers meet appointment standards as defined in contract;
- Permit AHCCCS greater flexibility in adjusting provider-to-member ratios in the future; and
- Benefit AHCCCS-eligible persons and members because the provider-to-member ratios in contract is more favorable.

The following entities will benefit from the enhanced clarity and conciseness of the changes:

- AHCCCS;
- AHCCCS health plans;
- AHCCCS providers; and
- AHCCCS-eligible persons and members.

Other entities considered, but which will not be directly impacted include:

- The larger business community;
- Other governmental entities and political subdivisions; and
- The general public, including taxpayers and private individuals.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Cheri Tomlinson
Address: AHCCCS
801 East Jefferson, MD 4200
Phoenix, Arizona 85034
Telephone: (602) 417-4198
Fax Number: (602) 256-6756

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: September 5, 1997
Time: 9 a.m.
Location: Industrial Commission Auditorium
800 West Washington, First Floor
Phoenix, Arizona
Nature: Public Hearing

A person may submit written comments on the proposed rules. The written comments should be submitted not later than 5 p.m., September 25, 1997, to the person listed in question #7.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

10. Incorporation by reference and their location in the rules:

1634 Agreement, dated October 1, 1982, incorporated at R9-22-512(F)(5)
42 CFR 455, Subpart B, September 30, 1986, incorporated at R9-22-520(B)(4)

11. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

Section			<u>Inducements; Misrepresentations; Discrimination; Sanctions</u>
Article 5	General Provisions and Standards		
R9-22-501	Pre-existing conditions Conditions	R9-22-505	Approval of advertisements Advertisements and marketing materials Marketing Materials
R9-22-502	Availability and accessibility Accessibility of service Service	R9-22-506	Provider Registration Repealed
R9-22-503	Reinsurance	R9-22-507	Member records Record and systems
R9-22-504	Marketing; prohibition Prohibition against inducements; misrepresentation; discrimination; sanctions	R9-22-508	Limitation of benefit coverage Benefit Coverage for illness Illness or injury Injury Due to catastrophe

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R9-22-509	Catastrophe Transition and coordination <u>Coordination of patient care</u> Member Care
R9-22-510	Transfer of members <u>Members</u>
R9-22-511	Fraud or abuse <u>Abuse</u>
R9-22-512	Release of <u>Safeguarded Information by the Administration and Contractors</u>
R9-22-514.	Equal opportunity <u>Opportunity</u>
R9-22-515	Filing notices and appeals <u>Repealed</u>
R9-22-518	Information to enrolled members <u>Enrolled Members</u>
R9-22-519	Periodic reports and information <u>Repealed</u>
R9-22-520	Financial statements <u>Statements, Periodic Reports, and Information</u>
R9-22-521	Medical audits <u>Program Compliance Audits</u>
R9-22-522	Contractor's Internal Utilization Control System <u>Quality Management/Utilization Management (QM/UM) Requirements</u>
R9-22-523	Financial resources <u>Resources</u>
R9-22-524	Continuity of care <u>Care</u>

ARTICLE 5. GENERAL PROVISIONS AND STANDARDS

R9-22-501. Pre-existing conditions Conditions

- A. Except as otherwise provided in Article 3 of these rules, ~~this Chapter~~, a contractor shall be responsible for providing the full scope of AHCCCS covered services to each enrolled member from the effective date of enrollment eligibility until the time of notification of termination, suspension, or transfer of such enrollment. Liability shall include treatment for all of an enrolled member's pre-existing conditions.
- B. ~~An AHCCCS~~ A contractor or subcontractor shall not adopt or utilize any procedure to identify individuals who have existing or anticipated medical or psychiatric problems in order to discourage or exclude individuals from enrolling in such a contractor's health plan or encourage individuals to enroll in another health plan.

R9-22-502. Availability and accessibility Accessibility of service Service

Contractors shall provide available, accessible and adequate numbers of institutional facilities, service locations, service sites, professional, allied and paramedical personnel for the provision of covered services, including all emergency medical care on a 24-hours-a-day, 7-days-a-week basis. The contractor shall have or provide the following as a minimum:

1. ~~One full-time equivalent primary care physician per 2,500 patients. Practitioners, as defined in these Rules, shall be designated as .5 primary care physicians in determining equivalency requirements.~~
 2. ~~A designated emergency services facility, providing care on a 24-hours-a-day, 7-days-a-week basis, accessible to members in each contracted service area. One or more physicians and 1 nurse shall be on call or on duty at such facility at all times.~~
 3. ~~An emergency services system employing at least 1 physician, registered nurse, physician's assistant or nurse practitioner, accessible to members by telephone 24-hours-a-day, 7-days-a-week, for information in the event of an emergency, as defined by these rules, and to providers who need verification of patient membership and treatment authorization.~~
 4. ~~An emergency services call log containing: member's name, address, telephone number, date of call, time of call, nature of complaint or problem, and instructions given each member.~~
- A. A contractor shall provide available, accessible and adequate numbers of:

1. Institutional facilities;
 2. Service locations;
 3. Service sites; and
 4. Professional, allied, and paramedical personnel for the provision of covered services, including all emergency medical care on a 24-hours-a-day, 7-days-a-week basis.
- B. A contractor shall minimally provide the following:
1. A ratio of primary care providers to adults and children, as specified in contract;
 2. A designated emergency services facility, providing care on a 24-hours-a-day, 7-days-a-week basis, accessible to members in each contracted service area. One or more physicians and 1 nurse shall be on call or on duty at the facility at all times;
 3. An emergency services system employing at least 1 physician, registered nurse, physician's assistant, or nurse practitioner, accessible to members by telephone 24 hours a day, 7 days a week, for information in the event of an emergency, and to providers who need verification of patient membership and treatment authorization;
 4. An emergency services call log or database to track the following information:
 - a. Member's name,
 - b. Address and telephone number,
 - c. Date and time of call,
 - d. Nature of complaint or problem, and
 - e. Instructions given to each member;
 5. A written procedure plan for the communication of emergency services information to the member's primary care physician provider, and other appropriate organizational units;
 6. An appointment system for each of its service locations. The appointment system shall assure that:
 - a. Members with acute or urgent problems shall be triaged and provided same-day service when necessary,
 - b. Time-specific appointments for routine medically necessary care from the primary care physician shall be available within 3 weeks of a member's request and on the same day for emergency care. Referral appointments to specialists must be the same day for emergency care, within 3 days for urgent care and within 30 days for routine care.
 - c. Waiting times for members with appointments shall not exceed 45 minutes except when the provider is unavailable due to an emergency.
 6. The contractor shall have appointment standards as specified in contract for the following:
 - a. Emergency appointments,
 - b. Urgent care appointments, and
 - c. Routine care appointments;
 7. One primary care physician who an enrolled member may select or to whom the member may be assigned. This physician is responsible for supervising, coordinating and providing initial and primary care to patients; initiating referrals for specialty care; and maintaining continuity of patient care. Contractors whose organization does not ordinarily include primary care physicians shall enter into an affiliation or subcontract with organizations or individuals to provide such primary care; the contractor shall agree to provide services under the primary care physician's guidance and direction.
 7. Waiting times for members with appointments shall not exceed 45 minutes, except when the provider is unavailable due to an emergency;

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8. One primary care provider whom an enrolled member may select or to whom the member may be assigned.
- a. This primary care provider is responsible for:
 - i. Supervising, coordinating, and providing initial and primary care to patients;
 - ii. Initiating referrals for specialty care;
 - iii. Maintaining continuity of patient care; and
 - iv. Maintaining an individual medical record for each assigned member.
 - b. A contractor shall have an affiliation with or subcontract with organizations or individuals to provide primary care services. The contractor shall agree to provide services under the primary care provider's guidance and direction.
- 8.9. Primary care physicians and specialists providing inpatient services to members must have staff privileges in a minimum of ~~one~~ 1 general acute care hospital under subcontract with the contracting health plan, within the service area of the contractor.

R9-22-503. Reinsurance

- A. Contractor-acquired reinsurance. A contractor may obtain reinsurance for coverage of prepaid capitated members. A contractor shall not obtain reinsurance to reduce liability below 25% of the applicable deductible level during any AHCCCS contract year. This limitation shall not apply to reinsurance obtained by a contractor to cover the cost of services provided by noncontracting providers and nonproviders to members under emergency circumstances.
- B. Administration reinsurance. For purposes of the Administration's reinsurance program, the insured entity shall be a prepaid plan with which the Administration contracts.
1. Costs qualifying for reinsurance shall have been incurred during the contract year or such part of that year in which the individual member is enrolled with the contractor. Any movement of a member from membership with one 1 contractor to membership with another contractor shall be cause for the resetting of the deductible level unless waived by the Administration.
 2. The contractor shall notify the AHCCCS Administration when an individual member's incurred costs for inpatient, emergency and certain outpatient services, as prescribed in subsection (C), reach 60% of the applicable deductible level.
- C. Coinsurance and deductibles for eligible members.
1. Coinsurance. As set forth stated in the contract, the Administration shall pay a percentage of costs in excess of the applicable deductible level incurred in the provision of, or payment for, AHCCCS covered inpatient, emergency and certain outpatient services services for hospitalization and, when applicable, for nursing facilities, for acute medical and psychiatric episodes approved by the Director pursuant to A.R.S. § 36-2906(D). These include dialysis services not covered by Title XVIII, total parenteral nutrition, and other ambulatory services.
 2. Deductible. The contractor is responsible for payment of the deductible.
- D. Computation of the deductible level. The deductible level shall be calculated as charges are paid by the contractor or the AHCCCS fee schedule, if the costs were paid under a subcapitated arrangement.
- E. Costs in excess of the deductible level shall be paid based upon charges adjudicated or paid by the contractor or the AHCCCS fee schedule, whichever is less, minus the applicable coinsurance, and 3rd-party reimbursements unless the costs were paid under a subcapitated arrangement. In those subcapitated cases, reimbursement of reinsurance claims will

be based on the calculated AHCCCS-allowed amount less Medicare/TPL payments, and applicable quick-pay discounts.

1. The contractor shall provide maintain evidence that costs incurred have been adjudicated paid by the contractor prior to submitting reinsurance claims encounters. This information is subject to AHCCCS Administration review.
 2. Third-First- and 3rd-party collections shall reduce the reinsurance claim encounters submitted on a dollar-for-dollar basis.
 3. Payments made by contractor-purchased reinsurance are not considered third-1st- and 3rd-party collections for the purpose of Administration reinsurance.
- F. Claims Encounter submission. A contractor shall be responsible for the preparation, review, verification, certification, and submission of reinsurance-claims encounters for consideration to the Administration.
1. The contractor shall certify the validity of services rendered and that the services were medically necessary and within the scope of AHCCCS benefits.
 2. The contractor shall submit reinsurance claims on the forms encounters in the format prescribed by the Administration.
 3. The contractor shall initiate and adjudicate all claims encounters for probable third 1st-and 3rd-party liability prior to submitting a reinsurance claim an encounter for reinsurance consideration to the Administration, except for claims encounters involving liability of underinsured or uninsured motorist insurance, third- 1st- and 3rd-party liability insurance and tort-feasors.
- G. Claims Encounter processing. The Administration shall be responsible for processing the Administration reinsurance claims associated or related encounters submitted by the contractor.
1. The Administration shall accept for processing only those claims encounters which are submitted directly by an AHCCCS contractor and which comply with the conditions set forth in subsections (B), (C), (E), and (F).
 2. The Administration shall establish and maintain separate records of all reinsurance claims submitted cases established and reviewed and of all payments and reviews made to the contractor as a result of such claims these cases.
 3. Contractors shall be subject to utilization of services and other evaluative reviews by the Administration of care provided to a member which results in a reinsurance claim case.
- H. Payment of claims cases. The Administration shall reimburse the contractor for costs incurred in excess of the applicable deductible level calculated according to the provisions of subsection (E) and in accordance with R9-22-703(B)(2).
- I. The Administration may limit reinsurance reimbursement to reimbursement for lower or alternative levels of care when the Director or his designee determines such less costly alternatives could and should have been utilized by a contractor. A contractor whose claims cases are reduced or denied shall be notified in writing by the Administration. Such The notification shall include the cause for reduction or denial and describe the applicable grievance and appeal process pursuant according to Article 8 of these rules, this Chapter.
- J. The Administration may require or its contractors may arrange special contractual terms that prescribe special reinsurance requirements for catastrophic cases for cases which are catastrophic in nature. Catastrophic cases include, but are not limited to, organ and bone marrow transplants (excluding kidney and cornea transplants which are covered under regular rein-

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urance), and hemophiliac cases. The contractor shall notify the AHCCCS Administration when an individual member is identified for possible reimbursement of AHCCCS-approved catastrophic cases. The determination of whether a case or type of case is catastrophic shall be made by the Director based on the following criteria:

1. Severity of medical condition, including prognosis, prognosis; and
2. Average cost and/or length of hospitalization and medical care in Arizona for the type of case under consideration.
3. Average cost of hospitalization and medical care in Arizona for the type of case under consideration.

R9-22-504. Marketing; prohibition Prohibition against inducements; misrepresentation; discrimination; sanctions Inducements; Misrepresentations; Discrimination; Sanctions

- A. Contractors A contractor and their the contractor's marketing representatives representative shall neither offer nor give any form of compensation or reward, or engage in any behavior or activity that may be reasonably construed as coercive, to induce or procure AHCCCS enrollment. Any marketing solicitation offering benefits, goods, or services services, in excess of those covered services set forth in Article 2, of these rules shall be deemed inducements.
- B. Marketing representatives A marketing representative shall not misrepresent themselves, the contracting health plan plan, or the AHCCCS program, through false advertising, false statements, or in any other manner in order to induce an eligible persons person and members a member of other contracting entities to enroll in a given health plan.
1. Violations of this subsection shall include, but not be limited to, false or misleading claims, inferences, or representations that:
 - a. An AHCCCS-eligible person or member will lose benefits under the AHCCCS program or any other health or welfare benefits to which he the eligible person or member is legally entitled, if such the person does not enroll in a given contracting health plan. plan;
 - b. Marketing representatives who are employees of the state or representatives of the Administration, a county county, or any health plan other than the health plan with whom they are employed, or by whom they are reimbursed, ; and
 - c. The health plan is recommended or endorsed as superior to its completion competition by any state, or county agency, or any other organization which has not certified its endorsement in writing to such the health plan and the Administration.
- C. Marketing representatives shall not engage in any marketing or other pre-enrollment practices that discriminate against an eligible person or a member because of race, creed, age, color, sex, religion, national origin, ancestry, marital status, sexual preference, physical or mental handicap, or health status.
- D. Contractors A contractor shall bear responsibility for the performance of any marketing representative, subcontractor, or agent, program, or process under its employ or direction and shall be subject to the contract sanctions set forth in Sections R9-22-405 and R9-22-406 of these rules for any failure to comply with the specifications of Section R9-22-505 and this Section. this Chapter.

R9-22-505. Approval of advertisements Advertisements and marketing materials Marketing Materials

- A. Contractor A contractor's proposed advertisements, marketing strategies, materials, and paraphernalia shall be reviewed and

approved by the Director Administration prior to distribution of materials or implementation of activities.

- B. All The contractor shall submit all proposed materials and strategies shall be submitted in writing to the Director Administration.
- C. The Director Administration will review all materials and strategies for approval or disapproval. A notice of disapproval will be accompanied by a statement of objections and recommendations.
- D. To minimize the expense of revising advertising or other copy, material may be submitted in draft form subject to final approval and filing of a proof or final copy. The contractor may submit a draft to the Administration, subject to final approval and filing of a proof or final copy, to minimize the expense of revising advertising or other copy.
- E. Two copies of the proof or final approved copy of materials shall be submitted to and maintained by the Administration. The contractor shall provide 2 copies of the proof or final approved copy of marketing materials to the Administration.

R9-22-506. Provider Registration Repealed

In order to be reimbursed by the AHCCCS program, either by a contractor or directly by the Administration, individuals providing covered services shall be registered with the Administration.

R9-22-507. Member records Record and systems

Each contractor shall maintain a member service record that will contain encounter data, grievances, complaints and service information for each member. Each contractor shall maintain a member service record that at a minimum contains:

1. Encounter data,
2. Any grievances,
3. Any complaints, and
4. Service information for each member.

R9-22-508. Limitation of benefit coverage Benefit Coverage for illness Illness or injury Injury Due to catastrophe Catastrophe

The Director may limit the scope of health care benefits provided by a prepaid capitated contractor to exclude the care of illness or injury which results from, or is greatly aggravated by, a catastrophic occurrence, including an act of war, declared or undeclared, and which occurs subsequent to enrollment.

R9-22-509. Transition and coordination Coordination of patient care Member Care

- A. The Administration will coordinate and implement disenrollment and re-enrollment procedures when a member's change of residency requires a change in contractor.
- B. Each contractor shall assist the Administration in the transition of members to and from other AHCCCS contractors. Such assistance and coordination shall include, but not be limited to, the forwarding of medical and other records and the facilitation and scheduling of transitional, medically necessary appointments for care and services within 30 working days of the Administration's request. Cost of reproducing and forwarding medical charts and other materials shall be borne by the contractor with which the member was previously enrolled.
1. Both the receiving and relinquishing contractors shall:
 - a. Coordinate with the other contractor to facilitate and schedule appointments for transitioning medically necessary services within the Administration's timelines as specified in the contract. These policies and procedures shall be subject to review and approval by the Administration;
 - b. Assist in the referral of members to other community health agencies or county medical assistance

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programs for medically necessary services not covered by the Administration, as appropriate:

- c. Develop policies and procedures to be followed when transitioning members that have significant medical conditions, are receiving ongoing services, or have, at the time of the transition, received prior authorization or approval for specific services;
 2. The relinquishing contractor shall notify the receiving contractor of relevant information about the member's medical condition and current treatment regimens within timelines as defined in contract;
 3. The relinquishing contractor shall forward medical and other records to the receiving contractor. The cost of reproducing and forwarding medical records and other materials shall be borne by the relinquishing contractor from which the member is transitioning;
 4. Within contract-specified timelines, the receiving contractor shall ensure the member selects or is assigned to a primary care provider and provide the member with:
 - a. Information regarding the contractor's providers;
 - b. Emergency numbers; and
 - c. Instructions about how to obtain new services.
- ~~C.~~ Each contractor shall assist in the coordination of medical services provided its members. Such assistance shall include the referral of members, for medically necessary services not covered by AHCCCS, to other community health agencies or county medical assistance programs when the member may be eligible for residual care services.
- ~~D.C.~~ Contractors are prohibited from utilizing county or nonprovider health resource alternatives which diminish the contractor's contractual responsibility and accountability for providing the full scope of AHCCCS-covered services. Referrals made to other health agencies, primarily for the purpose of reducing the contractor's financial expenditures incurred on behalf of its members, may result in the application of sanctions as specified in Article 4 of these rules, described in this Chapter.
- ~~E.D.~~ Contractors Contractor may transfer members a member from a noncontracting provider to a contracting provider's facility at the earliest time time, when such a transfer shall not be harmful to the a member's health as authorized by the a member's primary care physician or the contractor's Medical Director. The cost of such transfer shall be the responsibility of the a member's plan.

R9-22-510. Transfer of members Members

~~Contractors Contractor shall implement procedures to allow dissatisfied members a member to transfer from the primary care physician-provider of record to another primary care physician provider within the same contracting organization. Criteria for the transfer shall include, but not be limited to, identification of those problems between the member and the physician, resulting in serious deterioration of the physician-patient relationship to:~~

1. A change in the member's health, requiring a different medical focus;
2. A change in the member's residency resulting in difficulty in obtaining services from the assigned primary care provider; or
3. Identification of those any problems between the member and the physician primary care provider, resulting in serious deterioration of the physician-primary care provider - patient member relationship.

R9-22-511. Fraud or abuse Abuse

All contractors, providers, and nonproviders shall advise the Director or his designee immediately in writing of any cases of suspected fraud or abuse.

R9-22-512. Release of Safeguarded Information by the Administration and Contractors

- ~~A. Information to be safeguarded concerning applicants, eligible persons or members of AHCCCS includes:~~
1. ~~Names, addresses and Social Security numbers;~~
 2. ~~Social and economic conditions or circumstances;~~
 3. ~~Agency evaluation of personal information;~~
 4. ~~Medical data and services, including diagnosis and past history of disease or disability;~~
 5. ~~State Data Exchange (SDX) tapes from the U.S. Social Security Administration.~~
 6. ~~Information system tapes from the Arizona Department of Economic Security.~~
- ~~B. Unrestricted information. The restrictions upon disclosure of information shall not apply to summary data, statistics, utilization data, and other information which do not identify an individual applicant, eligible person, or member.~~
- ~~C. The use or disclosure of information concerning an eligible person, applicant or member, shall be limited to:~~
1. ~~The person concerned;~~
 2. ~~Individuals authorized by the person concerned, and~~
 3. ~~Persons or agencies for official purposes.~~
- ~~Safeguarded information may be released to these parties only under the conditions specified in subsections (D), (E), and (F) below.~~
- ~~D. Safeguarded information may be released to the applicant, eligible person, or member concerned only under the conditions herein specified:~~
1. ~~Eligibility case record. An applicant, eligible person or member may view the contents of his or her eligibility case record at any time, provided a county eligibility official or responsible caseworker is present during the examination of the eligibility record. An unemancipated minor may view the eligibility case record in which he or she is included with the written permission of a parent or person standing in a parental relationship.~~
 2. ~~Medical record. The eligible person, member or authorized representative may view his or her medical record after written notification to the provider and at a reasonable time and place.~~
- ~~E. Release to individual(s) authorized by the individual concerned. Eligibility case records, medical records, and any other AHCCCS-related confidential and secured information of eligible persons or applicants may be released to individuals authorized by the eligible person or applicant only under the following conditions:~~
1. ~~Authorization for release of information must be obtained from the client/applicant or designated representative.~~
 2. ~~Authorization used for release must be a written document, separate from any other document, and must specify the following:~~
 - a. ~~Information or records, in whole or in part, which are authorized for release;~~
 - b. ~~To whom the release shall be made;~~
 - c. ~~The period of time for which the authorization is valid, if limited; or~~
 - e. ~~The dated signature of the adult and mentally competent client/applicant or designated legal representative. In the case of a minor client/applicant, signature of a parent, custodial relative or designated representative is required unless the minor is capable and sufficiently mature to understand the consequences of authorizing and not authorizing; or,~~
 3. ~~In the case where an appeal or grievance has been filed, the appellant, grievant, and/or the appellant's or grievant's designated representative shall be permitted to review,~~

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- obtain, or copy any nonprivileged record necessary for the proper presentation of the case. The grievant or appellant also may authorize release of information deemed necessary to the contested issue, to the opposing party in the case.
- F. Release to persons or agencies for official purposes.**
1. ~~Official purposes are those purposes directly related to the administration of AHCCCS:~~
 - a. ~~Establishing eligibility;~~
 - b. ~~Determining the amount of medical assistance;~~
 - c. ~~Providing services for eligible persons and members;~~
 - d. ~~Conducting or assisting an investigation, prosecution, or civil or criminal proceedings related to AHCCCS;~~
 - e. ~~Performing evaluations and analyses of AHCCCS operations.~~
 2. ~~Employees of the Administration. For official purposes, safeguarded information, case records and medical records information may be disclosed without the consent of an applicant, member or eligible person for purposes related to administration of the program and only to the extent required in performance of duties by the following persons:~~
 - a. ~~Employees of the Administration;~~
 - b. ~~Employees of the U.S. Social Security Administration;~~
 - c. ~~Employees of the Arizona Department of Economic Security;~~
 - d. ~~Employees of the U.S. Department of Health and Human Services;~~
 - e. ~~Employees of contractors and subcontractors;~~
 - f. ~~Employees of the state of Arizona Attorney General's Office;~~
 - g. ~~Employees of counties including Boards of Supervisors, AHCCCS eligibility offices, and the County Attorney.~~
 3. ~~Law enforcement officials.~~
 - a. ~~Case record. The Administration may release, without an eligible person's or member's written or verbal consent, information to authorized officials for the purposes of an investigation, prosecution, or criminal or civil proceedings conducted by or on behalf of the Administration, the state of Arizona, or a federal agency in connection with the administration of AHCCCS.~~
 - b. ~~Medical record. The Administration may release safeguarded information contained in the member's medical record to law enforcement officials without the member's consent only in situations of suspected cases of fraud and abuse against the AHCCCS program.~~
 4. ~~Review committees. For official purposes, safeguarded information, case records, and medical services information may be disclosed without the consent of the applicant, member, or eligible person to members, agents or employees of review committees in accordance with the provisions of A.R.S. § 36-2917.~~
 5. ~~Compliance with the 1634 Agreement. In accordance with the 1634 Agreement between the state of Arizona and the U.S. Department of Health and Human Services, the recipient of any information or records disclosed or used pursuant to an official, routine request shall also be responsible for complying with the provisions of the 1634 Agreement.~~
- G. Subcontractors shall not be required to obtain written approval from the member before transmitting member medical records to physicians:**
1. ~~Providing services to members under subcontract with the contractor;~~
 2. ~~Retained by the subcontractor to provide services that are infrequently used or are of an unusual nature;~~
 3. ~~Providing services under the prime contract.~~
- H. Written consent shall be obtained before medical records of a former member may be transmitted to any physician.**
- A. The Administration, contractors, providers, and noncontracting providers shall safeguard the information concerning an applicant, eligible person, or member which includes the information listed below:**
1. ~~Name and address;~~
 2. ~~Social Security number;~~
 3. ~~Social and economic conditions or circumstances;~~
 4. ~~Agency evaluation of personal information;~~
 5. ~~Medical data and services, including diagnosis and past history of disease or disability;~~
 6. ~~State Data Exchange (SDX) tapes from the U.S. Social Security Administration; and~~
 7. ~~Information system tapes from the Arizona Department of Economic Security.~~
- B. The restrictions upon disclosure of information shall not apply to:**
1. ~~Summary data;~~
 2. ~~Statistics;~~
 3. ~~Utilization data; and~~
 4. ~~Other information, which does not identify an applicant, an eligible person, or a member.~~
- C. Use or disclosure of information.**
1. ~~The use or disclosure of information concerning an eligible person, an applicant, or a member shall be limited to:~~
 - a. ~~The person concerned,~~
 - b. ~~Individuals authorized by the person concerned, and~~
 - c. ~~Persons or agencies for official purposes.~~
 2. ~~Safeguarded information may be released to these parties only under the conditions specified in subsections (D), (E), and (F) of this Section.~~
- D. Safeguarded information may be viewed or released to:**
1. ~~An applicant;~~
 2. ~~An eligible person;~~
 3. ~~A member; or~~
 4. ~~An unemancipated minor with written permission of a parent, custodial relative, or designated representative only under the conditions specified below:~~
 - a. ~~Provided an Administration employee or its authorized representative, county eligibility official, or responsible caseworker is present during the examination of the eligibility record; and/or~~
 - b. ~~As outlined in subsection (E), after written notification to the provider, and at a reasonable time and place.~~
- E. An eligibility case record, medical record, and any other AHCCS-related confidential and secured information regarding an eligible person, member, applicant, or unemancipated minor may be released to individuals authorized by the eligible person, member, or applicant only under the conditions listed below:**
1. ~~Authorization for release of information shall be obtained from an person, member, applicant, or designated representative;~~
 2. ~~Authorization used for release shall be a written document, separate from any other document, and shall specify the information listed below:~~

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- a. Information or records, in whole or in part, which are authorized for release;
 - b. To whom the release shall be made;
 - c. The period of time for which the authorization is valid, if limited; and
 - d. A dated signature of the adult and mentally competent member, eligible person, applicant, or designated representative. In the case of minor eligible person, a member, or applicant, the signature of a parent, custodial relative, or designated representative is required unless the minor is capable and sufficiently mature to understand the consequences of the authorization and of not giving authorization. In the case of a mentally incompetent eligible person, member, or applicant, authorization shall be according to A.R.S. § 36-509;
3. In the case where a complaint, appeal, or grievance has been filed, the eligible person, member, applicant, or designated representative shall be permitted to review, obtain, or copy any nonprivileged record necessary for the proper presentation of the case.
- E. Release to individuals or agencies for official purposes:**
1. Official purposes directly related to the Administration are:
 - a. Establishing eligibility and post-eligibility treatment of income, as applicable;
 - b. Determining the amount of medical assistance;
 - c. Providing services for eligible persons and members;
 - d. Conducting or assisting an investigation, prosecution, civil, or criminal proceeding related to AHCCCS program;
 - e. Performing evaluations and analyses of AHCCCS operations;
 - f. Filing liens on property as applicable;
 - g. Filing claims on estates, as applicable; and
 - h. Filing, negotiating, and settling medical liens and claims.
 2. For official purposes, related to the Administration of the program and only to the extent required in performance of duties, safeguarded information, case records, and medical records information may be disclosed to the persons listed below without the consent of an applicant, member, or eligible person:
 - a. Employees of the Administration;
 - b. Employees of the U.S. Social Security Administration;
 - c. Employees of the Arizona Department of Economic Security;
 - d. Employees of the Arizona Department of Health Services;
 - e. Employees of the U.S. Department of Health and Human Services;
 - f. Employees of contractors, program contractors, providers, and subcontractors;
 - g. Employees of the Arizona Attorney General's Office; or
 - h. Employees of counties including Boards of Supervisors, AHCCCS eligibility offices, and the County Attorney, as applicable.
 3. Law enforcement officials:
 - a. Information may be released to law enforcement officials without an applicant's, eligible person's, or member's written or verbal consent, for the purposes of an investigation, prosecution, or criminal or civil proceedings relating to the administration of the AHCCCS program.
 - b. Medical record. The Administration and contractors may release safeguarded information contained in the member's medical record to law enforcement officials without the member's consent only in situations of suspected fraud or abuse against the AHCCCS program.
 - c. A contractor may release the medical record or information in the case record or other information developed in case management or utilization management operations without a member's written or verbal consent, for the purpose of an investigation, prosecution, or similar criminal proceeding not in connection with the Administration, provided that the law enforcement official requesting the information has statutory authority to obtain such information.
 4. The Administration may release safeguarded information, case records, and medical service information to a review committee in accordance with the provisions of A.R.S. § 36-2917, without the consent of an applicant, eligible person, or member.
 5. The 1634 Agreement between the state of Arizona and the U.S. Department of Health and Human Services requires that the recipient of any information or records disclosed or used for an official purpose shall also be responsible for complying with the 1634 Agreement, dated October 1, 1982, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.
 6. Upon request, providers shall furnish requested records to the Administration and its contractors. The records shall be provided at no charge.
- G. Written consent shall be obtained before medical records of a former applicant, eligible person, or member may be transmitted to any primary care provider.**
- H. Subcontractors shall not be required to obtain written approval from an eligible person or member before transmitting medical records to a physician who:**
1. Provides a service to an eligible person or member under subcontract with the program contractor,
 2. Is retained by the subcontractor to provide services that are infrequently used or are of an unusual nature, and
 3. Provides a service under the contract.
- R9-22-513. Discrimination prohibition Prohibition**
- A. The contractor shall not discriminate against a member or eligible person an eligible person or a member because of race, color, creed, religion, ancestry, marital status, sexual preference, national origin, age, sex, or physical or mental handicap in accordance with Title VI of the U.S. Civil Rights Act of 1964, 42 USC 2000d, rules and regulations promulgated pursuant according thereto to, or as otherwise provided by, law or regulation. For the purpose of providing covered service under contract pursuant according to A.R.S. Title 36, Chapter 29, discrimination on the grounds of race, color, creed, religion, age, sex, national origin, or physical or mental handicap includes, but is not limited to, the following:**
1. Denying or providing an eligible person or a member any covered service or availability of a facility;
 2. Providing to a an eligible person or a member any covered service which is different, or is provided in a different manner or at a different time, from that provided to other AHCCCS members under contract, other public or

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private members/patients, or the public at large except where when medically necessary;

3. Subjecting an eligible person or a member to segregation or separate treatment in any manner related to the receipt of any covered service, restricting a member in any way in his or her enjoyment of any advantage or privilege enjoyed by others receiving any covered service; and
4. The assignment of times or places for the provision of services on the basis of the race, color, creed, religion, age, sex, national origin, ancestry, marital status, sexual preference, income status, AHCCCS membership, or physical or mental handicap of the participants to be served.

B. All provisions set forth in the this Section shall apply except that those to an eligible persons person defined as eligible pursuant according to A.R.S. § 36-2901, paragraph (4), subdivisions (d), (e), (f), and (g), are not by statute or these rules required to obtain their health care services at a county-owned and operated facility, if such the health care facility is awarded a contract as an AHCCCS provider. Those persons eligible, pursuant according to A.R.S. § 36-2901, paragraph (4), subdivision (b), shall have freedom of choice in selecting membership with an AHCCCS contractor in all instances in which more than one 1 choice of contractors contractor is available. However, such an eligible persons person shall become members a member of a county program and receive services in a county facility, if a county is the only AHCCCS contractor in such for the eligible persons person in the service areas: area.

C. The contractor shall take affirmative action to ensure assure that members are provided covered services without regard to race, color, creed, sex, religion, age, national origin, ancestry, marital status, sexual preference, or physical or mental handicap, except where medically indicated.

R9-22-514. Equal opportunity Opportunity

The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that it is an equal opportunity employer and will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Administration, advising the labor union or workers' representative of the contractor's commitment as an equal opportunity employer and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor shall, in all solicitations or advertisements for employees placed by, or, on behalf of the contractor:

1. Specify that it is an equal opportunity employer;
2. Send a notice provided by the Administration to each labor union, representative, or worker with a collective bargaining agreement, or other contract or understanding, stating that the contractor is an equal opportunity employer; and
3. Post copies of the notice in conspicuous places available to employees and applicants for employment.

R9-22-515. Filing notices and appeals Repealed

All notices and appeals or other statements shall be considered filed for the purpose of these rules when received in writing by the Administration.

R9-22-518. Information to enrolled members Enrolled Members

A. Each contractor shall produce and distribute printed informational materials to each enrolled member or family unit within ten 10 days of receipt of notification of enrollment from the Administration. The information materials shall be written in English and a 2nd language when 200 members or 5 percent,

%, whichever is greater, of the enrolled population are non-English speaking. Informational The informational materials shall include the following: must meet the requirements as specified in the contractor's current contract.

1. A description of all available services and an explanation of any service limitations, exclusions from coverage or charges for services, when applicable;
2. An explanation of the procedure for obtaining covered services, including a notice stating that AHCCCS shall only be liable for services authorized by a member's primary care physician;
3. A list of the names, telephone numbers and service site addresses of primary care physicians available for selection by the member, and a description of the selection process, including a statement that informs members that they may request another primary care physician in the event that they are dissatisfied with their assignment;
4. Locations, telephone numbers and procedures for obtaining emergency health services;
5. Explanation of the procedure for obtaining emergency health services outside the contractor's service area;
6. The causes for which a member shall lose enrollment;
7. A description of the grievance procedures;
8. Co-payment schedules along with a statement that services shall not be denied if a member is unable to pay a copayment;
9. Information on the appropriate use of health services and of the maintenance of personal and family health;
10. Information regarding emergency and medically necessary transportation offered by the contractor as well as the availability of public transportation; and;
11. Other information deemed essential to use the program.

B. Each contractor shall provide its members with the name, address, and telephone number of their primary care providers within ten 10 days from the date of their enrollment. This notice shall include information on how the members may change primary care physicians providers, if dissatisfied with their assignment.

C. Notification of changes in services. Each contractor shall revise and distribute to members a service guide insert describing any changes which the contractor proposes to make in services provided, or in service locations. The insert shall be distributed to all affected members or family units at least 14 days prior to a planned change. Notification shall be provided as soon as possible when unforeseen circumstances require an immediate change in services, sites, or locations.

D. All The Administration must approve informational and educational materials prepared by the contractor shall be approved by the Director prior to distribution to enrolled members and families.

R9-22-519. Periodic reports and information Repealed

Upon request by the Administration, each contractor shall furnish to the Administration information from its records relating to contract performance.

R9-22-520. Financial statements Statements, Periodic Reports, and Information

A. Upon request by the Administration, each contractor shall furnish to the Administration information from its records relating to contract performance.

A-B. Each contractor shall provide the Administration with the following financial statement(s):

1. An annual certified financial report prepared by a certified public accountant to be submitted no later than 120 days after the close of the contractor's fiscal year. Such The certified public accountants shall be independent of

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the contractor, subcontracting entities, and their officers or directors, or any affiliates.

2. Quarterly financial statements for the quarters ended December 31, March 31, June 30, and September 30. These quarterly reports shall be submitted to the Administration no later than 45 ~~60~~ days after the end of the reporting period.
3. Monthly claims aging analyses. Monthly claims reports shall be submitted to the Administration no later than 30 days after the end of the reporting period.
3. Monthly financial statements may be required to be submitted to the Administration no later than 60 days after the end of the reporting period.
4. Disclosures of information on ownership and control required by 42 CFR 455, Subpart B, September 30, 1986, incorporated by reference herein and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.
5. Cost reporting, audits, and financial reporting as specified in contract or provider agreement.

B-C. All statements shall identify separately all AHCCCS-related transactions, including allocations of overhead and other shared expenses where applicable. The contractor shall provide supplemental schedules describing all inter-entity transactions and eliminations to provide comparability necessary for the Administration to analyze the overall financial status of the entire health care delivery system.

R9-22-521. Medical audits Program Compliance Audits

- A. Each health plan shall be medically audited by the Administration ~~shall conduct a program compliance audit of a health plan~~ at least once every 12 months ~~during the term of its contract with the contractor~~. Unless the Administration determines that advance notice will render a ~~medical review program compliance audit~~ less useful, a contractor will be notified approximately ~~three 3~~ weeks in advance of the date of an on-site ~~medical review program compliance audit~~. The Administration may conduct, without prior notice, inspections of contractor facilities or perform other elements of a ~~medical review program compliance audit~~ either in conjunction with the ~~medical audit program compliance audit~~ or as part of an unannounced inspection program.
- B. In ~~pursuit of the review objectives, the~~ ~~The~~ review team may perform any or all of the following procedures:
 1. Conduct private interviews and group conferences with members, physicians, and other health professionals, and members of its administrative staff including, but not limited to, its principal management persons;
 2. Examination of records, books, reports, and papers of the health plan and any management company, and all providers or subcontractors providing health care and other services to the health plan. The examination may include, but not be limited to: the minutes of medical staff meetings, peer review and quality of care review records, duty rosters of medical personnel, appointment records, written procedures for the internal operation of the health plan, contracts and correspondence with members and with providers of health care services and other services to the plan, and such additional documentation deemed necessary by the Administration to properly review the quality of medical care.

R9-22-522. Contractor's Internal Utilization Control System Quality Management/Utilization Management (QM/UM) Requirements

A. Each contractor shall design a formal Quality Management System and shall implement the system effectively, efficiently and continuously. A written Quality Management Plan which shall include a Utilization Management Plan shall be submitted to and subject to approval by the Administration. The Plan shall be updated annually. The quality management system shall be designed and implemented with actions to promote the provision of quality health care services. It shall have as its primary goal the systematic improvement of health care and shall be concerned with structures, processes and outcomes, as they interrelate.

The contractor shall comply with Quality Management/Utilization Management (QM/UM) requirements specified in this Section and in a contract. The contractor shall maintain responsibility for compliance with QM/UM requirements accomplished through delegation or subcontract with another party.

B. The health professionals of the contractor shall have primary responsibility for the design and ongoing implementation of the Quality Management System. While the responsibility ordinarily shall be discharged by committees of health professionals who are employed by or provide services to the contractor, nothing contained in this Section shall relieve the contractor from the ultimate management responsibility.

The contractor shall:

1. Submit a written QM/UM plan which includes a description of the systems, methodologies, protocols, and procedures to be used in:
 - a. Monitoring and evaluating the types of services,
 - b. Numbers and costs of services provided,
 - c. Assessing and improving the quality and appropriateness of care and services,
 - d. Evaluating the outcome of care provided to members, and
 - e. Determining those steps and actions necessary to improve and enhance service delivery;
2. Submit the QM/UM plan on an annual basis within time-lines specified in a contract. Updates and revisions shall be submitted prior to implementation;
3. Receive approval from the Administration prior to implementation of the QM/UM plan;
4. Ensure that the QM/UM committee operates under the control of the contractor's medical director and includes representation from medical and executive management personnel. The committee shall be responsible for:
 - a. Oversight of the development, revision, and implementation of the QM/UM plan; and
 - b. Ensuring and allocating qualified QM/UM personnel and sufficient resources to implement the contractor's QM/UM activities.
5. Ensure that the QM/UM activities include at least:
 - a. Prior authorization for non-emergency or scheduled hospital admissions;
 - b. Concurrent review of inpatient hospitalization;
 - c. Retrospective review of hospital claims;
 - d. Program and provider audits designed to detect over or under utilization, service delivery effectiveness, and outcome;
 - e. Medical records audits;
 - f. Surveys to determine satisfaction of members;
 - g. Assessment of the adequacy and qualifications of the contractor's provider network;
 - h. Review and analysis of QM/UM data; and

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- i. ~~Other activities necessary to improve or enhance the quality of care and the efficient, cost effective delivery and utilization of services.~~
- C. ~~The contractor shall design and implement procedures for continuously reviewing the performance of health care personnel and the utilization of facilities, services and costs. Medical records shall be maintained by the member's primary care provider and shall:~~
 - 1. ~~Be maintained in a detailed and comprehensive manner and include:~~
 - a. ~~A record of all medically necessary services provided to the member by the contractor,~~
 - b. ~~Its providers, and~~
 - c. ~~Emergency services provided by nonproviders;~~
 - 2. ~~Conform to professional medical standards and practices for documentation of medical diagnostic and treatment data;~~
 - 3. ~~Facilitate follow-up treatment; and~~
 - 4. ~~Permit professional medical review and medical audit processes.~~
- D. ~~Medical records and systems-~~
 - 1. ~~The member medical record shall be maintained by the primary care provider and shall include a record of all medical services received by the member from the contractor and its providers, subcontracting and noncontracting.~~
 - 2. ~~Medical records shall be maintained in a detailed and comprehensive manner which conforms to professional medical standards and practices, permits professional medical review and medical audit processes, and which facilitates a system for follow-up treatment.~~
 - 3. ~~Medical records or copies of medical records of all members enrolled with a subcontractor, or for which a subcontractor has provided services, shall be forwarded to the contractor or its designee within 30 working days following termination of a contract between the subcontractor and the contractor.~~

Medical records or copies of medical records of all members assigned to a subcontractor, or for which a subcontractor has provided services, shall be forwarded to the contractor or its designee within 30 days following termination of a contract between the subcontractor and the contractor.
- E. ~~The Administration shall maintain responsibility for the monitoring of contractors and their providers to ensure compliance with Administration QM/UM requirements and adherence to the contractor QM/UM plan.~~
 - 1. ~~The contractor and its providers shall cooperate with the Administration in the performance of its QM/UM monitoring activities; and~~
 - 2. ~~The contractor and its providers shall develop and implement mechanisms for correction of deficiencies identified through the Administration's QM/UM monitoring of the contractor.~~
- F. ~~Each contractor shall develop and implement a program of utilization control methods for hospitals that shall at a minimum include prior authorization of nonemergency hospital admissions, concurrent review of inpatient stays and retrospective review of hospital claims to ensure that covered hospital ser-~~

- ~~VICES ARE NOT USED UNNECESSARILY OR UNREASONABLY. THE CONTRACTOR'S UTILIZATION CONTROL METHODS ARE SUBJECT TO EVALUATION BY THE ADMINISTRATION TO DETERMINE COST EFFECTIVENESS AND TO MEASURE IF THE UTILIZATION CONTROL METHODS ARE REDUCING, CONTROLLING, OR ELIMINATING UNNECESSARY OR UNREASONABLE UTILIZATION. THE CONTRACTOR SHALL STAFF ITS PROGRAM OF UTILIZATION CONTROL ACTIVITIES CONSISTENT WITH REQUIREMENTS IN ITS CONTRACT WITH THE ADMINISTRATION. THE CONTRACTOR MAY SUBCONTRACT WITH AN ORGANIZATION OR ENTITY DESIGNED TO CONDUCT EITHER PRIOR AUTHORIZATION, CONCURRENT REVIEW OR RETROSPECTIVE REVIEW ACTIVITIES. SUCH A SUBCONTRACT IS SUBJECT TO PRIOR APPROVAL AS REQUIRED BY R9-22-403.~~
- G. ~~Pursuant to R9-22-519, each contractor shall submit to the Administration hospital inpatient and outpatient utilization information to facilitate evaluation of the cost effectiveness and health implications of the contractor's utilization control activities.~~
- H. ~~In providing prior authorization of nonemergency inpatient admissions, the contractor may use criteria, guidelines or procedures approved by the Administration.~~
- I. ~~Subcontracting and noncontracting providers of outpatient or inpatient hospital services shall not withhold access to medical records regarding members and shall in all other ways fully cooperate with the contractor or its designated representative in performance of the contractor's utilization control activities. Failure to cooperate may result in denial or nonpayment of claims.~~

R9-22-523. Financial resources Resources

- A. ~~The Director shall require a contractor or offeror to demonstrate to the Administration that it has adequate financial reserves, administrative abilities and soundness of program design to carry out its contractual obligations. has:~~
 - 1. Adequate financial reserves.
 - 2. Administrative abilities, and
 - 3. Soundness of program design to carry out its contractual obligations.
- B. ~~Contract provisions required by the Director shall include, but are not limited to, the maintenance of deposits, performance bonds, financial reserves or other financial security. As specified in A.R.S. § 2903, the Director requires that contract provisions include, but are not limited to:~~
 - 1. The maintenance of deposits,
 - 2. Performance bonds,
 - 3. Financial reserves, or
 - 4. Other financial security.

R9-22-524. Continuity of care Care

- ~~Each contractor shall establish and maintain a system to assure ensure continuity of care which shall at a minimum include:~~
- 1. Referral of members needing specialty health care services,
 - 2. Monitoring of members with chronic medical conditions,
 - 3. Providing hospital discharge planning and coordination including post-discharge care, and
 - 4. Monitoring the operation of the system through professional review activities.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ARIZONA LONG-TERM CARE SYSTEM

PREAMBLE

1. **Sections Affected**

	Rulemaking Action
R9-28-501	Amend
R9-28-502	Amend
R9-28-503	Amend
R9-28-504	Amend
R9-28-505	Amend
R9-28-508	Amend
R9-28-510	Amend
R9-28-511	Amend
R9-28-512	Amend
R9-28-513	Amend
R9-28-514	Amend
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. § 36-2932

Implementing Statute: A.R.S. §§ 36-409, 36-425, 36-2932, 36-2938, 36-2939, 36-2940, 36-2944, 36-2947, and 36-2952
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Cheri Tomlinson

Address: AHCCCS
801 East Jefferson, MD4200
Phoenix, Arizona 85034

Telephone: (602) 417-4198

Fax Number: (602) 256-6756
4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The proposed rule language for Article 5 resulted from a 5-year-review report which identified nonsubstantive revisions which would make the language more clear, concise, and understandable.
5. **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.
6. **The preliminary summary of the economic, small business, and consumer impact:**

There will be a nominal to minimal economic impact on a limited number of ALTCS program contractors or ALTCS HCBS providers. The changes made to this Article primarily are to reflect current agency practice. The contractors and providers are already adhering to these changes.

Other individuals and/or entities which may benefit from the changes include:

 - ALTCS members;
 - ALTCS program contractors; and
 - AHCCCS.

Other entities considered, but which will not be directly affected, include:

 - The larger business community;
 - Other governmental entities and or political subdivisions; and
 - The general public, including taxpayers and private individuals.
7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Cheri Tomlinson

Address: AHCCCS

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801 East Jefferson, MD4200
Phoenix, Arizona 85034

Telephone: (602) 417-4198

Fax Number: (602) 256-6756

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: September 22, 1997

Time: 9 a.m.

Location: Industrial Commission Auditorium
800 West Washington, First Floor
Phoenix, Arizona

Nature: Public Meeting

A person may submit written comments on the proposed rules. The written comments should be submitted not later than 5 p.m., September 25, 1997, to the person listed in question #7.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

10. Incorporation by reference and their location in the rules:

42 CFR 442, September 28, 1995, incorporated at R9-28-503(A)

42 CFR 442, Subpart C, November 20, 1992 and 42 CFR 483, September 29, 1995, incorporated R9-28-503(B)

42 CFR 482, September 9, 1996, and 42 CFR 456, Subpart C, September 29, 1978, incorporated at R9-28-505(B)

42 CFR 456, December 1, 1986, Subparts C, D, and F, incorporated at R9-28-511(A)

11. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)

ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

Section	
Article 5	Program Contractor and Provider Standards
R9-28-501	General provisions Provisions
R9-28-502	Long-term care provider standards Care Provider Requirements
R9-28-503	Licensure and Certification for Long-term Care Institutional Facilities
R9-28-504	Standards of Participation, Licensure, and Certification for Noninstitutional Long-term Care HCBS Providers
R9-28-505	Standards, licensure, and certification for providers of hospital and medical services Licensure and Certification for Providers of Hospital and Medical Services
R9-28-508	Program contractor standards -- submittal of comprehensive plan for delivery of services Contractor Standards - Submittal of Comprehensive Plan for Delivery of Services
R9-28-510	Case Management
R9-28-511	Quality Management Requirements Management/Utilization Management (QM/UM) Requirements
R9-28-512	Financial reporting requirements Statements, Periodic Reports, and Information
R9-28-513	Program compliance audits Compliance Audits
R9-28-514	Safeguarding and release of confidential information Release of Safeguarded Information by the Administration and Contractors

R9-28-501. General provisions Provisions

~~A. ALTCS eligible and enrolled members shall receive covered services as set forth in Article 2 of this Chapter. The provision of these services shall be coordinated by program contractors. In counties where there is no program contractor, the Administration shall provide ALTCS covered services to eligible persons. The Department of Economic Security, in its role as a program contractor, shall provide services to ALTCS members with developmental disabilities, as defined in A.R.S. § 36-551.~~

The eligible person and member shall receive covered services as specified in Article 2 of this Chapter. The provision of these services for a member enrolled with a program contractor shall be provided and coordinated by a program contractor. The Administration shall provide and coordinate ALTCS-covered services to an eligible person or a member in counties where there is no program contractor. The Department of Economic Security, in its role as a program contractor, shall provide and coordinate services to an eligible person or a member with developmental disabilities, as defined in A.R.S. § 36-551.

~~B. In order to To participate in the ALTCS program, either through a program contractor or directly through the Administration, providers a provider of ALTCS-covered services shall be registered with the Administration.~~

~~C. Program contractors shall meet standards relating to the provision and coordination of long term care services as set forth in this Article.~~

R9-28-502. Long-term care provider standards Care Pro-

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vider Requirements

- A. ~~ALTCS providers~~ A provider shall obtain any necessary authorization from the program contractor or the Administration for services provided to ~~ALTCS an eligible persons person or enrolled members,~~ member.
- B. ~~ALTCS providers~~ A provider shall maintain and make available to a program contractors contractor and to the Administration ~~Administration~~ financial and medical records for a period of not less than five 5 years from the date of final payment or, for records relating to costs and expenses to which the Administration has taken exception, 5 years after the date of final disposition or resolution of the exception service delivery. ~~Such~~ The records shall meet the uniform accounting standards as ~~prescribed~~ specified by the Administration, and accepted practices for maintenance of medical records, including detailed specification of all patient services delivered, the rationale for delivery, and the service date.
- C. ~~ALTCS providers~~ A provider shall not submit a claim, demand, or otherwise collect payment from ~~a member or eligible person~~ an eligible person or a member for ALTCS-covered services paid to the provider by the Administration or program contractor. ~~Providers~~ A provider shall not bill, or attempt to collect payment directly or through a collection agency from, a person claiming to be ALTCS-eligible without 1st receiving verification from the Administration that the person was ineligible for ALTCS on the date of service, or that services provided were not ALTCS-covered services.
- D. ~~ALTCS providers~~ shall provide cost reporting, audits, and financial reporting as specified in contract or provider agreement.
- E. ~~ALTCS providers~~ shall cooperate with a program contractors and ALTCS utilization review and quality assurance programs and comply with the utilization control and review procedures specified in 42 CFR 456, incorporated by reference herein and on file with the Office of the Secretary of State.

R9-28-503. Licensure and Certification for Long-term Care Institutional Facilities

- A. ~~ALTCS nursing facilities~~ shall be Medicare and Medicaid certified and meet the requirements set forth in 42 CFR 405, Subpart K, and Part 442, incorporated by reference herein and on file with the Office of the Secretary of State, and the Arizona Department of Health Services rules for licensure. Nursing facilities that provide services to an eligible person or member shall be Medicare- and Medicaid-certified and meet the requirements in 42 CFR 442, September 28, 1995, and 42 CFR 483, September 29, 1995, incorporated by reference and on file with the Administration and the Office of the Secretary of State, and meet the Arizona Department of Health Services' rules for licensure. This incorporation by reference contains no future editions or amendments.
- B. ~~An ICF-MR shall be Medicaid-certified and meet the requirements set forth in 42 CFR 442, Subparts C, E and G and Part 483, incorporated by reference herein and on file with the Office of the Secretary of State, and A.R.S. § 36-2939(A)(3). An ICF-MR shall be Medicaid-certified and meet the requirements in A.R.S. § 36-2939(B)(1) and 42 CFR 442, Subpart C, November 20, 1992, and 42 CFR 483, September 29, 1995, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.~~
- C. All ALTCS long-term care institutional facilities nursing facilities and ICF-MRs that provide services to an eligible person or a member shall be registered as providers with the Administration. To be a registered provider of long-term care institutional services, registered, the institution provider shall meet the licensure and certification requirements of subsection (A)

or (B) of this Section and have an executed current provider agreement.

R9-28-504. Standards of Participation, Licensure, and Certification for Noninstitutional Long-term Care HCBS Providers

- A. All noninstitutional long-term care providers shall be registered with the Administration; and meet the requirements of the Arizona Department of Health Services' rules for licensure, if applicable. ~~Alternate residential facilities shall meet the requirements of 45 CFR 1397, incorporated by reference herein and on file with the Office of the Secretary of State, in the provision of home and community-based services to ALTCS members and, in the case of group homes for the developmentally disabled, be licensed by the Arizona Department of Economic Security, and in the case of adult foster care be licensed by the county or the Arizona Department of Health Services.~~
- B. ~~Home health services. To be a registered provider of home health services, including home health aide services, a home health agency shall be Medicare-certified and licensed pursuant to A.A.C. Title 9, Chapter 10, Article 11. Additional qualifications.~~
1. Community residential settings for an individual with developmental disabilities shall be licensed by the Arizona Department of Economic Security;
 2. Adult foster care homes shall be certified or licensed by the county where the facility is located or the Arizona Department of Health Services;
 3. Homes health services agencies shall be Medicare-certified and licensed according to 9 A.A.C. 10;
 4. An individual providing homemaker services shall meet the requirements specified in contract;
 5. An individual providing personal care services shall meet the requirements specified in contract;
 6. An adult day health provider shall be licensed according to 9 A.A.C. 10;
 7. A therapy provider shall meet the requirements stated below:
 - a. A physical therapy provider shall meet the requirements in 4 A.A.C. 24;
 - b. A speech therapy provider shall be certified by the American Speech, Language, and Hearing Association;
 - c. An occupational therapy provider shall meet the requirements in 4 A.A.C. 43; or
 - d. A respiratory therapy provider shall meet the requirements in 4 A.A.C. 45.
 8. A respite provider shall meet the requirements specified in contract;
 9. A hospice provider shall be Medicare-certified and shall be licensed according to 9 A.A.C. 10;
 10. A provider of home-delivered meal service shall comply with hygiene requirements in 9 A.A.C. 8;
 11. A provider of non-emergency transportation shall be licensed by the Arizona Department of Transportation, Motor Vehicle Division;
 12. A provider of emergency transportation shall meet the licensure requirements in 9 A.A.C. 13;
 13. A developmentally disabled day care provider shall meet the licensure requirements in 6 A.A.C. 6;
 14. A habilitation provider shall meet the requirements in A.A.C. R6-6-1523 or meet the therapy requirements in R9-28-504;
 15. Another service provider approved by the Director shall meet the requirements specified in a program contractor's contract with the Administration;

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16. A behavioral health provider shall have all applicable state licenses or certifications, and meet the service specifications in A.A.C. R9-22-1205;
17. An adult care home shall meet the requirements in 9 A.A.C. 10; or
18. A supportive residential living center shall meet the requirements in 9 A.A.C. 10.
- C.** ~~Homemaker. To be a registered provider of homemaker services, the individual shall meet the ALTCS homemaker service specifications dated January 1987, incorporated by reference herein, and on file with the Office of the Secretary of State; copies are also available at the central office of the AHCCCS Administration. The rule does not include any later amendments or editions of the incorporated service specifications.~~
- D.** ~~Personal care. To be a registered provider of personal care services, the individual shall meet the ALTCS personal care service specifications set forth in contract.~~
- E.** ~~Adult day health. To be a registered provider of adult day health services, the provider shall have all applicable state licenses.~~
- F.** ~~Physical, speech, respiratory and occupational therapy.~~
1. ~~To be a registered provider of physical therapy services, the individual shall be licensed to practice physical therapy pursuant to A.R.S. § 32-2001 et seq.~~
 2. ~~To be a registered provider of speech therapy, the individual shall meet the requirements set forth in A.A.C. Title 9, Chapter 10, Article 11.~~
 3. ~~To be a registered provider of occupational therapy, the individual shall meet the requirements set forth in A.A.C. Title 9, Chapter 10, Article 11.~~
 4. ~~To be a registered provider of respiratory therapy, the individual shall meet the requirements set forth in A.A.C. Title 9, Chapter 10, Article 11.~~
- G.** ~~Respite services. To be a registered provider of noninstitutional respite services, the provider shall meet the requirements of subsection (B) or (D) or the respite standards for sitter services set forth in contract.~~
- H.** ~~Hospice services. To be a registered provider, the hospice facility shall be Medicare certified and shall have all applicable state licenses.~~
- I.** ~~Home delivered meals services. To be registered with the Administration, providers of these services shall comply with hygiene requirements set forth in A.A.C. Title 9, Chapter 8, Article 1, and the ALTCS home delivered meals service specifications dated January 1987, incorporated by reference herein and on file with the Office of the Secretary of State; copies are also available at the central office of the AHCCCS Administration. The rule does not include any later amendments or editions of the incorporated service specifications.~~
- J.** ~~Transportation services. To be registered with the Administration, providers of nonemergency transportation services shall be licensed by the Arizona Department of Transportation, Motor Vehicle Division. Providers of emergency transportation shall meet the licensure requirements set forth in A.A.C. Title 9, Chapter 13, Article 10.~~
- K.** ~~Developmentally disabled day care. To be a registered provider of developmentally disabled day care services, the provider shall be licensed by the Arizona Department of Economic Security.~~
- L.** ~~Habilitation. To be a registered provider of habilitation services the provider must meet the ALTCS service specifications for habilitation providers, dated September 1992, incorporated by reference herein and on file with the Office of the Secretary of State.~~
- M.** ~~Attendant care services. To be a registered provider of attendant care services, the individual shall meet the ALTCS Attendant Care service specifications.~~
- R9-28-505. Standards, licensure, and certification for providers of hospital and medical services Licensure and Certification for Providers of Hospital and Medical Services**
- A.** ~~ALTCS providers A provider of hospital and medical care services shall be registered with the Administration.~~
- B.** ~~Providers of hospital services shall be licensed by the Arizona Department of Health Services, and shall meet requirements set forth in 42 CFR 482, and Part 456, Subpart C, incorporated by reference herein and on file with the Office of the Secretary of State~~
With the exception of an IHS hospital and a Veterans Administration hospital which must be Joint Commission on Accreditation of Healthcare Organizations (JCHACO)-accredited, a provider of hospital services shall be licensed by the Arizona Department of Health Services, be JCHACO-accredited, and shall meet the requirements in 42 CFR 482, September 9, 1996, and 42 CFR 456, Subpart C, September 29, 1978, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation contains no future editions or amendments.
- R9-28-508. Program contractor standards -- submittal of comprehensive plan for delivery of services Contractor Standards - Submittal of Comprehensive Plan for Delivery of Services**
- A.** ~~Program contractors shall annually submit a comprehensive plan for delivery of services under the ALTCS program. The comprehensive service delivery plan shall set forth the methods and procedures to be used by the program contractor in complying with the standards defined in this Article and for the provision of services to ALTCS enrolled members.~~
- B.** ~~In addition to the elements required by contract, the comprehensive service delivery plan shall contain those elements listed below:~~
1. ~~The program contractor's procedures for selection of providers of ALTCS services and specification of the method and amount of payment. The plan shall demonstrate that the program contractor has selected or will select cost effective providers and that the amount of reimbursement is tied to the quality of care provided.~~
 2. ~~The program contractor's plan for case management, including a discussion of procedures the contractor intends to follow in order to place members, monitor placement, and provide member's involvement in the placement decision.~~
- A program contractor shall annually submit a comprehensive plan for delivery of services under the ALTCS program as specified in the RFP bid years or RFP amendment for renewal years. The comprehensive service delivery plan shall describe the methods and procedures to be used by a program contractor in complying with the standards as defined in this Article, and for the provision of services to an eligible person or a member.
- R9-28-510. Case Management**
- A.** ~~Each eligible member of ALTCS shall be assigned a case manager to coordinate, monitor and reassess the need for and provision of long term care services.~~
- B.** ~~The case manager shall be responsible for the duties listed below:~~
1. ~~The case manager shall assure placement of the member in appropriate long-term care services within 30 days of notification of enrollment.~~

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2. ~~The case manager shall complete the case management plan when the member is enrolled in ALTCs, and shall reevaluate and update as necessary that plan upon transfer of the member to another facility, to a hospital, when there is a change in the member's in-home service package or when there is a change in the member's level of care. The case management plan shall specify the services to be received by the member, the units and frequency of those services, the provider of service and the effective time period. The case management plan shall serve as authorization for services for individuals who continue to be financially and medically eligible for services.~~
 3. ~~The case manager shall coordinate with the primary care physician in determining the necessary services for the member, including hospital and medical services.~~
 4. ~~The case manager shall allow for the member's participation in preparation of the case management plan.~~
 5. ~~The case manager shall assist the member to maintain or progress toward the highest level of functioning.~~
 6. ~~The case manager shall monitor receipt of services by the member.~~
 7. ~~When ALTCs services are no longer necessary, the case manager shall initiate transfer to AHCCCS or other available programs, where appropriate.~~
 8. ~~The case manager shall not include home and community-based services in the case management plan if the services exceed 80% of the institutional cost without submittal of justification.~~
 9. ~~The case manager shall not include hospitalization and other services in excess of \$265 per day in the case management plan for a ventilator dependent individual unless the Administration determines after utilization review that the care is medically indicated and provided at the lowest appropriate level.~~
 10. ~~A program contractor shall only provide payment or reimbursement for ALTCs services provided according to the case management plan.~~
 11. ~~The case manager shall perform additional monitoring of members with rehabilitation potential, or members whose condition is fragile, or is unstable, and members whose case management plan is marginally cost effective, or whose use of medical and hospital services is unusual.~~
 12. ~~To ensure a smooth transition and continuity of care, the case manager shall assist the member in transfer of facilities or providers, and transfer of records.~~
 13. ~~The case manager shall update the case management plan at least every 90 days for eligible persons receiving home and community-based services, every 180 days for eligible persons in nursing facilities, and every 30 days for ventilator dependent eligible persons.~~
- ~~C. Program contractors shall submit the initial case management plan and subsequent updates to the Administration within 5 working days of preparation or revision of such plan.~~
- ~~A. Each eligible person and member shall be assigned a case manager to:~~
1. Identify.
 2. Plan.
 3. Coordinate.
 4. Monitor, and
 5. Reassess the need for and provision of long-term care services.
- ~~B. The case manager shall be responsible for the duties listed below to:~~
1. Assure placement of the eligible person or member in appropriate ALTCs services within 30 days of notification of enrollment;
 2. Complete the case management plan when the eligible person or member is enrolled in ALTCs. The case manager shall re-evaluate and update the plan when an eligible person or member:
 - a. Transfers to another facility,
 - b. Transfers to a hospital,
 - c. Has a change in the in-home service package, and
 - d. Has a change in the level of care;
 3. Specify the services to be received by an eligible person or a member, which includes the:
 - a. Duration,
 - b. Scope of services,
 - c. Units,
 - d. Frequency of those services,
 - e. Provider of services, and
 - f. Effective time period.
 4. Authorize the services for an eligible person and a member who continue to be financially and medically eligible for services;
 5. Coordinate with a primary care provider in determining the necessary services for an eligible person or a member, including hospital and medical services;
 6. Assure an eligible person or a member participates in the preparation of a case management plan;
 7. Assist an eligible person or a member to maintain or progress toward the highest level of functioning;
 8. Monitor receipt of services by an eligible person or a member;
 9. Initiate a transfer to AHCCCS or other programs, where appropriate, when ALTCs services are no longer necessary;
 10. Submit written justification to the case manager's supervisor to include the HCBS in the case management plan, if the services exceed 80% of the institutional cost;
 11. Assure, when transferring an eligible person or a member from a facility or provider to a new facility or provider, that the transfer of records are submitted too;
 12. Perform additional monitoring of an eligible person and a member with rehabilitation potential, or an eligible person and a member whose condition is fragile or is unstable, and an eligible person and a member whose case management plan is marginally cost effective, or whose use of medical and hospital services is unusual;
 13. Update a case management plan for an eligible person or a member according to the terms of the contract; and
 14. Arrange behavioral health services, if necessary, and have initial and quarterly consultation and collaboration with a behavioral health professional to review the treatment plan, if the case manager does not meet the definition of a behavioral health professional according to A.A.C. R9-22-1201.
- ~~C. A program contractor shall submit the initial case management plan and subsequent updates to the Administration with 14 calendar days of preparation or revision of the plan.~~

R9-28-511. Quality Management Requirements Management/Utilization Management (QM/UM) Requirements

- ~~A. Program contractors shall be responsible for submitting to the Administration a quality management plan, which incorporates the utilization requirements specified in this Section. Program contractors shall review the plan annually, update it as needed, and submit the updates to the Administration. Program contractors or providers of ICF-MR facilities shall follow utilization review and control requirements set forth in 42~~

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CFR 456.401(b)(1), October 1, 1978, incorporated by reference herein and on file with the Office of the Secretary of State.

- B.** Program contractors shall perform, or delegate to institutional providers the performance of, utilization review and control requirements. Such utilization review and control requirements shall include:
1. Formation of a utilization review committee;
 2. Completion of medical care evaluation studies for hospitals and mental hospitals;
 3. Submission of utilization review quarterly showing reports to the Administration;
 4. Maintenance and updating the plan of care for each member;
 5. Certification and recertification of the need for hospice services;
 6. Certification of an eligible person's need for care and recertification of the eligible person's need for care. For ICF-MR, this shall take place annually after initial certification.
- C.** Program contractors shall monitor compliance with physician certification and recertification of terminal illness for individuals receiving hospice services.
- D.** Program contractors shall monitor compliance with the home health agency plan of care. The plan shall be reviewed by a physician every 60 days.
- E.** Program contractors shall maintain Utilization Review Committees which meet the requirements set forth in 42 CFR 456.405-456.407, October 1, 1978, incorporated by reference herein and on file with the Office of the Secretary of State.
- F.** The program contractor shall also maintain a quality management process for both institutional and noninstitutional members. This process shall examine patterns of care, document and correct patterns which are of insufficient quality or cost-effectiveness, and monitor provider compliance with utilization review and control requirements. This process shall also include the review of case manager functions and providers of care, as well as overall performance of the delivery system.
- G.** Program contractors shall implement utilization control functions specified in R9-22-522(F) through (I).
- H.** The Administration shall be responsible for utilization review, utilization control, and quality management functions, including:
1. Inspection of care by the Administration;
 2. Monitoring program contractors and providers to ensure compliance with quality management plans and standards set forth in this Article;
 3. Conducting utilization review for members who receive services on a fee-for-service basis;
 4. Conducting post-payment review.
- I.** Program contractors shall cooperate with the Administration in the performance of functions set forth in subsection (H).
- J.** Program contractors shall develop and maintain a mechanism for correction of utilization or quality of care deficiencies.
- A.** The program contractor shall:
1. Comply with all requirements specified in A.A.C. R9-22-522; and
 2. Submit quarterly utilization control reports within time-lines specified through contract and in accordance with 42 CFR 456, Subparts C, D, and E, December 1, 1986, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation date by reference contains no future editions or amendments.
- B.** In addition to OM/UM monitoring activities specified in A.A.C. R9-22-522, the Administration shall maintain the

responsibility for conducting inspections of care for ICF-MR facilities, psychiatric hospitals, inpatient psychiatric facilities for individuals under age 21 (behavioral health residential treatment centers) and institutions for mental disease (IMDs) where members are residing to receive treatment.

R9-28-512. Financial reporting requirements--Statements, Periodic Reports, and Information

- A.** Upon request of the Administration, each program contractor shall furnish information from its records relating to contract performance.
- B.** Financial statements--
1. Each program contractor shall provide the Administration with the following financial statements:
 - a. An annual certified financial report prepared by a certified public accountant to be submitted not later than 120 days after the close of the program contractor's fiscal year. Such certified public accountants shall be independent of the program contractor, subcontracting entities, and their officers or directors, and any affiliates.
 - b. Quarterly financial statements for the quarters ending December 31, March 31, June 30, and September 30. These quarterly reports shall be submitted to the Administration not later than 45 days after the end of the reporting period.
 2. All statements shall identify separately all ALTCS related transactions, including allocations of overhead and other shared expenses where applicable. The program contractor shall provide supplemental schedules describing all inter-entity transactions and eliminations to provide comparability necessary for the Administration to analyze the overall financial status of the entire delivery system.

The Administration and its contractors shall meet the requirements as specified in A.A.C. R9-22-520.

R9-28-513. Program compliance audits Compliance Audits

- A.** Each program contractor shall be audited by the Administration at least once every 12 months. Unless the Administration determines that advance notice will render a review less useful, a program contractor shall be notified approximately 3 weeks in advance of the date of an on-site review. The Administration shall conduct, without prior notice, inspections of program contractor facilities or perform other elements of a review, either in conjunction with another audit or as part of an unannounced inspection program.
- B.** In pursuit of the review objectives, the review team may perform any or all of the procedures listed below:
1. Conduct private interviews and group conferences with members, physicians and other health professionals, and members of the program contractor's administrative staff including, but not limited to, its principal management persons.
 2. Examine records, books, reports and papers of the program contractor and any management company, and all providers or noncontracting providers of health care and other services to the program contractor. The examination shall include:
 - a. The minutes of staff meetings,
 - b. Peer review and quality of care review records,
 - c. Duty rosters of medical personnel,
 - d. Appointment records,
 - e. Written procedures for the internal operation of the program contractor,
 - f. Contracts and correspondence with members and with providers of health care services and other services to the program contractor, and

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- g. Such additional documentation deemed necessary by the Administration to properly review the quality of care.

The Administration and its contractors shall meet the requirements as specified in A.A.C. R9-22-521 for an ALTCS-eligible person or member.

R9-28-514. Safeguarding and release of confidential information Release of Safeguarded Information by the Administration and Contractors

The Administration, program contractors, providers and noncontracting providers shall meet the requirements as specified in A.A.C. R9-22-512 for an ALTCS applicant, eligible person, or member.

A. Information to be safeguarded concerning ALTCS applicants, eligible persons or members includes the information listed below:

1. Names, addresses, and Social Security numbers;
2. Social and economic conditions or circumstances;
3. Agency evaluation of personal information;
4. Medical data and services, including diagnosis and past history of disease or disability;
5. State Data Exchange (SDX) tapes from the U.S. Social Security Administration; and
6. Information system tapes from the Arizona Department of Economic Security.

B. Unrestricted information. The restrictions upon disclosure of information shall not apply to summary data, statistics, utilization data, and other information which do not identify an individual applicant, eligible person, or member.

C. The use or disclosure of information concerning an eligible person, applicant or member, shall be limited to the person concerned, or individuals authorized by the person concerned, and persons or agencies for official purposes. Safeguarded information may be released to these parties only under the conditions specified in subsections (D), (E) and (F) of this Section.

D. Safeguarded information may be released to the applicant, eligible person, or member only under the conditions specified below:

1. Eligibility case record. An applicant, eligible person or member may view the contents of his or her eligibility case record at any time, provided an Administration official, or its authorized representative is present during the examination of the eligibility record. An unemancipated minor may view the eligibility case record in which he is included with the written permission of a parent or person standing in a parental relationship.
2. Medical record. The eligible person, member or authorized representative may view his or her medical record after written notification to the provider and at a reasonable time and place.

E. Release to individuals authorized by the person concerned. Eligibility case records, record, medical records, and any other ALTCS related confidential and secured information regarding categorically eligible an eligible person, a members or applicants may be released to individuals authorized by the client or applicant only under the conditions listed below:

1. Authorization for release of information shall be obtained from the member, applicant or designated representative
2. Authorization used for release shall be a written document, separate from any other document, and shall specify the information listed below:
 - a. Information or records, in whole or in part, which are authorized for release;
 - b. To whom the release shall be made;

c. The period of time for which the authorization is valid, if limited;

d. The dated signature of the adult and mentally competent member, applicant or designated representative. In the case of a minor member or applicant, the signature of a parent, custodial relative or designated representative is required unless the minor is capable and sufficiently mature to understand the consequences of the authorization and of not giving authorization

3. In the case where a complaint, appeal, or grievance has been filed, the member, applicant or his designated representative shall be permitted to review, obtain, or copy any record necessary for the proper presentation of the case.

F. Release to persons or agencies for official purposes:

1. For this purpose those official purposes which are directly related to the administration of ALTCS are:

- a. Establishing eligibility and post eligibility treatment of income;
- b. Determining the amount of medical assistance;
- c. Providing services for eligible persons and members;
- d. Conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to ALTCS;
- e. Performing evaluations and analyses of ALTCS operations;
- f. Filing liens on property;
- g. Filing claims on estates.

2. Employees of the Administration. For official purposes, safeguarded information, case records and medical records information may be disclosed to the persons listed below without the consent of an applicant, member or eligible person for purposes related to administration of the program and only to the extent required in performance of duties:

- a. Employees of the Administration, and its contractors;
- b. Employees of the U.S. Social Security Administration;
- c. Employees of the Arizona Department of Economic Security;
- d. Employees of the Arizona Department of Health Services;
- e. Employees of the U.S. Department of Health and Human Services;
- f. Employees of program contractors and providers;
- g. Employees of the Arizona Attorney General's Office.

3. Law enforcement officials:

- a. Case record. The Administration and or contractor may release, the case record with out an eligible person's or member's written or verbal consent, information to authorized officials for the purposes of an investigation, prosecution, or criminal or civil proceedings conducted by or on behalf of the Administration, the State of Arizona, or a Federal agency in connection with the administration of ALTCS.
- b. Medical record. The Administration may release safeguarded information contained in the member's medical record to law enforcement officials without the member's consent in cases of suspected fraud or abuse against the ALTCS program.

4. Review committees. For official purposes, safeguarded information, case records, and medical services information may be disclosed without the consent of the appli-

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- cant, member, or eligible person to members, agents or employees of review committees in accordance with the provisions of A.R.S. § 36-2917.
5. ~~Compliance with the 1634 Agreement. In accordance with the 1634 Agreement between the State of Arizona and the U.S. Department of Health and Human Services, the recipient of any information or records disclosed or used pursuant to an official purpose shall also be responsible for complying with the provisions of the 1634 Agreement, dated October 1982, incorporated by reference herein, and on file with the Office of the Secretary of State.~~
- ~~G. Written consent shall be obtained before medical records of a former member may be transmitted to any physician.~~
- ~~H. Providers shall not be required to obtain written approval from the member before transmitting member medical records to physicians who:~~
- ~~1. Provide services to members under subcontract with the program contractor;~~
 - ~~2. Are retained by the provider to provide services that are infrequently used or are of an unusual nature;~~
 - ~~3. Provide services under the prime contract.~~

NOTICE OF PROPOSED RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE

TRANSACTION PRIVILEGE AND USE TAX SECTION

PREAMBLE

1. **Sections Affected**

<u>Sections Affected</u>	<u>Rulemaking Action</u>
Article 17	Amend
R15-5-1704	Amend
R15-5-1705	Amend
R15-5-1706	Amend
R15-5-1708	Amend
R15-5-1709	Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 42-105 and 42-1303

Implementing statute: A.R.S. § 42-1310.14
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Ernest Powell, Tax Analyst

Address: Tax Research and Analysis Section
Arizona Department of Revenue
1600 West Monroe
Phoenix, Arizona 85007

Telephone: (602) 542-4672

Fax Number: (602) 542-4680
4. **An explanation of the rules, including the agency's reasons for initiating the rules:**

The rules provide guidance in the application of transaction privilege tax to persons engaged in business under the restaurant classification. As a result of the Department's 5-year review of Article 17, the Department is proposing to amend the rules to conform to current rulemaking guidelines.

Also, the Department is proposing to amend R15-5-1704 to clarify that all sales by restaurants to government agencies are subject to tax, unless a specific exemption applies. The current rule only addresses sales to the military. In addition, the Department is proposing to amend R15-5-1709 to clarify when a restaurant is taxable on the value of coupons that it accepts.
5. **A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

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

Identification of the Rulemaking:

As a result of the Department's 5-year review of Article 17, the Department is proposing to amend the rules to conform to current rulemaking guidelines.

Also, the Department is proposing to amend R15-5-1704 to clarify that all sales by restaurants to government agencies are subject to tax, unless a specific exemption applies. In addition, the Department is proposing to amend R15-5-1709 to clarify when a restaurant is taxable on the value of coupons that it accepts.

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Summary of Information in the Economic, Small Business, and Consumer Impact Statement:

It is expected that the benefits of the rules will be greater than the costs. The amendment of these rules will benefit the public by making the rules conform to current rulemaking guidelines which will make the rules clearer and easier to understand. In addition, the amendment of R15-5-1704 and R15-5-1709 will benefit the public by providing additional guidance regarding sales to government agencies and the acceptance of coupons. The Department will incur the costs associated with the rulemaking process. Taxpayers are not expected to incur any expense in the amendment of these rules.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Ernest Powell, Tax Analyst
Address: Tax Research and Analysis Section
Arizona Department of Revenue
1600 West Monroe
Phoenix, Arizona 85007
Telephone: (602) 542-4672
Fax Number: (602) 542-4680

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Oral proceedings at which members of the public may appear and make comments regarding the rules or the economic, small business, and consumer impact statement will occur as follows:

Date: September 29, 1997
Time: 9:30 a.m.
Location: Department of Revenue Building
1600 West Monroe, Large Conference Room, B1 Floor
Phoenix, Arizona 85007
Nature: Public hearing

A person may submit written comments regarding the proposed rule by submitting the comments no later than 5 p.m., September 29, 1997, to the person above.

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.

10. **Incorporations by reference and their location in the rules:**
None.

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

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE

TRANSACTION PRIVILEGE AND USE TAX SECTION

**ARTICLE 17. RESTAURANT SALES TAX --
RESTAURANTS AND BARS CLASSIFICATION**

Section

- R15-5-1704. Providing Food or Drink to Government Agencies Meals served to military personnel
R15-5-1705. Amusement Devices machines
R15-5-1706. Cover Charges charges
R15-5-1708. Gratuities (Tips tips)
R15-5-1709. Coupon Redemption redemption

**ARTICLE 17. RESTAURANT SALES TAX --
RESTAURANTS AND BARS CLASSIFICATION**

R15-5-1704. Providing Food or Drink to Government Agencies Meals served to military personnel

A restaurant's gross proceeds of sales or gross income from sales of food or drink to income from meals served to military personnel or inductees, paid by the United States Government, the state or its political subdivisions, or any other government agency, or its

employees is included in the tax base under the restaurant classification unless exempt as a sale to a qualifying hospital under A.R.S. § 42-1310.14(B)(7) or as a sale for consumption within the premises of a prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff under A.R.S. § 42-1310.14(B)(9) for consumption on the restaurant premises, is taxable.

R15-5-1705. Amusement Devices machines

A restaurant's gross proceeds of sales or gross income derived from the operation of amusement devices machines such as record players, pool tables, and pinball games, is included in the tax base subject to the tax under the amusement classification (see Article 4).

R15-5-1706. Cover Charges charges

A restaurant's gross proceeds of sales or gross income from when a cover charge or other minimum charge is made by a restaurant or

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~~bar, the income therefrom is included in the tax base under the restaurant classification subject to the tax.~~

R15-5-1708. Gratuities (Tips tips)

A. ~~A restaurant's gross receipts from gratuities that are charged separately stated on the by the seller on a check or bill for gratuities are not included in the restaurant's tax base subject to the tax if under the following conditions:~~

1. ~~The exact amount charged on a check for gratuities is must be segregated on the seller's records for the account of the employees actually providing the services, and~~
2. ~~The amounts so segregated are must be distributed directly to the employees providing the services for which the charges were made.~~

B. ~~In cases where the a restaurant amounts charged cannot be specifically segregate the charges for gratuities segregated or when any portion of the amounts charged for gratuities is not~~

~~distributed to the employees involved, the total gross receipts from the gratuities are amount is included in the tax base under the restaurant classification taxable as part of the gross receipts.~~

R15-5-1709. Coupon Redemption redemption

~~A restaurant that accepts coupons is subject to transaction privilege tax on the full sales price of the food or beverage before the coupon value is deducted if:~~

1. ~~The coupon is issued by anyone other than the taxpayer; or~~
2. ~~The restaurant receives advertising services, or products in exchange for providing the discounts. Coupons offering special or discount prices, such as 2 items for the price of 1, issued by dinner clubs or other similar advertisers are taxable at full value when accepted by member establishments.~~