

Notices of Final Rulemaking

Telephone: (623) 463-2727, ext. 131
Fax: (623) 934-0583
E-mail: rxcop@cox.net

6. An explanation of the rules, including the agency's reasons for initiating the rules:

The Board's five-year rule review in September 2002 identified Sections R4-23-101 and R4-23-103 through R4-23-109 for amending to increase clarity, conciseness, and understandability. These Sections deal with the processes and procedures of formal hearings conducted by the Board. The Governor's Regulatory Review Council's staff recommended that Sections R4-23-103 through R4-23-109 be repealed and that new language be written to comply with A.R.S. Title 41, Chapter, 6, Article 10. The proposed rules contain 19 new Sections (R4-23-111 through R4-23-129) that establish the necessary processes and procedures for formal hearings conducted by the Board. The proposed rules include necessary style, format, grammar, and punctuation changes to comply with the rules of the Secretary of State and Governor's Regulatory Review Council.

The Board believes that approval of these rules benefits the public and the pharmacy community by clearly establishing the processes and procedures for formal hearings conducted by the Board.

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

None

8. 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

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

The proposed rules will impact the Board, pharmacists, interns, pharmacy technicians, and pharmacies. The proposed rules will have no economic impact on pharmacists, interns, pharmacy technicians, pharmacies, or the public. The proposed rules will have minimal economic impact on the Board. The impact on the Board will be usual rulemaking-related costs, which are minimal.

The public, Board, pharmacists, pharmacy technicians, and pharmacies benefit from rules that are clear, concise, and understandable. The proposed rules benefit the public, the Board, and the pharmacy community by clearly establishing the processes and procedures for formal hearings conducted by the Board.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

There are no substantive changes in the final rules from the proposed rules. There are minor changes to style, format, grammar, and punctuation requested by G.R.R.C. staff.

11. A summary of the comments made regarding the rules and the agency response to them:

No comments were received by the Board regarding the rule.

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

Not applicable

13. Incorporations by reference and their location in the rules:

None

14. Were these rules previously approved as emergency rules?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 1. ADMINISTRATION

Section

R4-23-101. General
R4-23-103. ~~Procedure: witnesses~~ Repealed
R4-23-104. ~~Hearings~~ Repealed
R4-23-105. ~~Service~~ Repealed
R4-23-106. ~~Record and transcript~~ Repealed

Notices of Final Rulemaking

<u>R4-23-107.</u>	<u>Findings and evidence Repealed</u>
<u>R4-23-108.</u>	<u>Decisions and orders Repealed</u>
<u>R4-23-109.</u>	<u>Appeal Repealed</u>
<u>R4-23-111.</u>	<u>Notice of Hearing</u>
<u>R4-23-112.</u>	<u>Ex Parte Communications</u>
<u>R4-23-113.</u>	<u>Motions</u>
<u>R4-23-114.</u>	<u>Computing Time</u>
<u>R4-23-115.</u>	<u>Filing Documents</u>
<u>R4-23-116.</u>	<u>Continuing or Expediting a Hearing; Reconvening a Hearing</u>
<u>R4-23-117.</u>	<u>Vacating a Hearing</u>
<u>R4-23-118.</u>	<u>Prehearing Conference</u>
<u>R4-23-119.</u>	<u>Subpoenas</u>
<u>R4-23-120.</u>	<u>Telephonic Testimony</u>
<u>R4-23-121.</u>	<u>Rights and Responsibilities of Parties</u>
<u>R4-23-122.</u>	<u>Conduct of Hearing</u>
<u>R4-23-123.</u>	<u>Failure of Party to Appear for Hearing</u>
<u>R4-23-124.</u>	<u>Witnesses; Exclusion from Hearing</u>
<u>R4-23-125.</u>	<u>Proof</u>
<u>R4-23-126.</u>	<u>Disruptions</u>
<u>R4-23-127.</u>	<u>Hearing Record</u>
<u>R4-23-128.</u>	<u>Rehearing or Review and Appeal of Decision</u>
<u>R4-23-129.</u>	<u>Notice of Judicial Appeal; Transmitting the Transcript</u>

ARTICLE 1. ADMINISTRATION

R4-23-101. General

- ~~A. Notice, part of record, amendment: These rules apply A.A.C. Title 4, Chapter 23 applies to all actions and proceedings of the Board and shall be deemed a part of the record in every such any Board action or proceeding without formal introduction of, or reference to the same rules. All parties are A party to a Board action is deemed to have knowledge of the same rules. A copy will be supplied to licensees free of charge by the Board and to others for the approximate cost of printing. The rules are subject to amendment at any time, and the Board may adopt additional rules whenever, in its judgment, the same are advisable. These rules supersede existing rules of the Board. The Board office shall provide a copy of the rules:~~
1. To each license applicant who submits a completed application packet; and
 2. To each permit applicant during the final compliance inspection after the Board approves the permit application.
- ~~B. Excuse of failure to comply: The Board, when it is within its jurisdiction, may, in the interest of justice, excuse the failure of any person to comply with any of these the rules.~~
- ~~C. Extension of time: The Board, when it is within its jurisdiction, may grant an extension of time within which to comply with any rule when it shall deem such deems the extension to be proper and reasonable in the interest of justice.~~

R4-23-103. Procedure: Witnesses Repealed

- ~~A. Pleading, etc., printed or typewritten: Pleadings, depositions, briefs and other papers of importance shall be printed or typewritten, and when printed only one side of the paper shall be used.~~
- ~~B. Witnesses: All parties desiring witnesses summoned to testify on a hearing before the Board must make written application for subpoenas to issue stating the substance of what each witness will testify.~~
- ~~C. Subpoenas: Any party desiring the Board to issue a subpoena to compel the appearance of a witness at any hearing shall make written application therefor. Service of such subpoena shall be made at the expense of the party applying for same.~~
- ~~D. Witness' depositions:~~
- ~~1. When any party desires to take the oral deposition of any witness residing outside the state, such party shall file with the Board a petition for permission to take the deposition of such witness, showing the name and address of such witness and setting forth specifically and in detail the nature and substance of the testimony expected to be given by such witness. Unless it appears from such petition that the testimony of such witness is relevant and material, said petition may be denied. If such statement be not made specifically and in detail, so that the Board may determine therefrom the relevancy and materiality of the testimony of such witness, such petition may be disregarded.~~
 - ~~2. Upon the granting of such petition, the party may proceed to take the deposition of the witness by complying with the Arizona Rules of Civil Procedure.~~
 - ~~3. The Board may, in its discretion, designate the time and place and the officer before whom such deposition may be taken.~~
 - ~~4. The expense of any deposition must be borne by the party applying to the Board for permission to take same.~~
 - ~~5. Any party desiring to take the testimony of a witness residing outside the state by means of interrogatories may do so by serving the adverse party as in civil matters and by filing with the Board in duplicate a statement showing the name and address of such witness and containing the interrogatories such party wishes such witness to answer. The~~

Notices of Final Rulemaking

adverse party may file in duplicate, cross-interrogatories within 10 days following the service upon him of a copy of said statement.

6. Any party having any objection to the form of any interrogatory or cross-interrogatory may file a statement of his objections with the Board within five days after the service upon him of the interrogatories or cross-interrogatories and may suggest to the Board any amendment to any interrogatory or cross-interrogatories. The Board may amend, add or strike out any interrogatory when in its judgment it is proper to do so.

R4-23-104. Hearings Repealed

- A.** Hearings; restraining order: Except as provided in A.R.S. § 32-1928(B), a certificate of licensure, as required of practitioners, or permit, as required of establishments, shall be denied, revoked, suspended, or placed on probation only after due notice under R4-23-104(B), and only after hearing under R4-23-104(D). Failure to appear when requested shall leave the Board free to act upon the evidence and other information at hand without further notice to the licensee. Further, the licensee must be given an opportunity to show compliance with all lawful requirements for the retention of the license.
- B.** Notice of hearing: Notice shall be given to all interested parties at least 20 days prior to the date set for the hearing.
- C.** The notice shall include:
 1. A statement of the time, place and nature of the hearing.
 2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
 3. A reference to the particular sections of the statutes and rules involved.
 4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application, more definite and detailed statements shall be furnished.
- D.** Hearing procedures: A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. A decision or order of the Board must be supported by substantial, reliable, and probative evidence. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Every person who is a party to such proceedings shall have the right to be represented by counsel to submit evidence in open hearing and shall have the right of cross-examination. All witnesses will testify under oath.
- E.** Opportunity to respond: Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. The deposition of any witness shall be taken in such manner as in the judgment of the Board is best calculated to ascertain the substantial rights of the parties and to expedite the investigation of the facts. Notwithstanding the fact that a party may petition for permission to take the oral deposition of a witness, the Board may require it to be taken upon written interrogatories and vice versa. The deposition or answers to the interrogatories must be returned and filed with the Board within 45 days after permission for the taking of same is required.
- F.** Power to join an interested party: Any Board member may join as a party applicant or as a party defendant, any person, firm, or corporation, who may or might appear to have an interest in the matter before the Board.
- G.** Stipulation at hearing: The parties may stipulate to any facts that are not in dispute. Such stipulation may be in writing or may be made orally by reading the same into the record at the hearing; and will be binding upon the parties unless the Board grants permission to withdraw therefrom. The Board may, where it considers such action proper, set aside any stipulation and proceed to ascertain the true facts. Further, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.
- H.** Continuance of hearing: If, at the conclusion of a hearing held before a Board member, either party desires a further hearing in order to introduce further evidence, such party shall state, specifically and in detail, the nature and substance of the evidence desired to be produced, the names and addresses of the witnesses and the reasons why such party was unable to produce such evidence and such witnesses at the hearing. If it appears to the Board member presiding at the hearing that, with the exercise of due diligence, such party could have produced such witnesses or such evidence at the hearing, or that such evidence is cumulative or immaterial or otherwise not necessary, the Board member may submit the case for decision and deny the request for such further hearing; or may on its own motion continue the hearing. When a hearing is conducted, the matter shall be deemed submitted, subject to the jurisdiction of the Board to make any further or independent investigation it may determine advisable in the premises.
- I.** Files public records; notice of contents: The files of the Board will be open for inspection by all parties to the proceeding only, and they are deemed to have notice of all reports and other documents filed therein. Every party is deemed to admit the truth and correctness of every material fact or statement contained in any report or document on file, unless a written objection to or denial of such fact or facts be made and filed with the Board.

R4-23-105. Service Repealed

- A.** Service, same as civil action: Service of any decision, order, notice, subpoena, or other processes may be made personally in the same manner as a summons is served in a civil action; and in such event service shall be deemed complete at the time actually made.
- B.** Service by mail: Service may also be made of any decision, order, notice, subpoena, or other process by enclosing the same or a copy thereof in a sealed envelope and depositing the same in the United States mail, with postage prepaid, addressed to the party to be served. Such service may be made to the address of such party as shown by the records of the

Notices of Final Rulemaking

~~Board. Service shall be deemed complete within six days after the date of mailing. In computing time, the date of mailing is not to be counted; all intermediate Sundays and holidays are to be counted; if the last day falls on Sunday or a holiday, it is not to be counted, but service will be completed the following date.~~

- ~~C. Service upon attorney: Service upon an attorney who has appeared in behalf of a party will constitute service upon such party.~~
- ~~D. Service, proof of: Proof of service may be made by the affidavit or oral testimony of the person making such service.~~

R4-23-106. Record and Transcript Repealed

- ~~A. Record: The record in a contested case shall include:
 1. All pleadings, motions, interlocutory rulings.
 2. Evidence received or considered.
 3. A statement of matters officially noticed.
 4. Objections and offers of proof and rulings thereon.
 5. Proposed findings and exceptions.
 6. Any decision, opinion or report by the officer presiding at the hearing.
 7. All staff memoranda, other than privileged communications, or data submitted to the hearing officer or members of the agency in connection with their consideration of the case.~~
- ~~B. Transcripts: Oral proceedings or any part thereof shall be recorded manually or by a recording device and shall be transcribed on request of any party. The cost of such transcript shall be paid in accordance with the provisions of R4-23-109(B).~~

R4-23-107. Findings and Evidence Repealed

- ~~A. Findings: Findings of facts shall be based exclusively on the evidence and on matters officially noticed.~~
- ~~B. Evidence: See R4-23-104(D).~~
- ~~C. Copies of documentary evidence may be received in the discretion of the presiding officer. Upon request, parties shall be given an opportunity to compare the copy with the original.~~
- ~~D. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency'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 the agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.~~

R4-23-108. Decisions and Orders Repealed

~~Any final decision or order adverse to a party in a contested case shall be in writing or stated in the record. Any final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the finding. Parties shall be notified either personally or by mail to their last known address of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.~~

R4-23-109. Appeal Repealed

- ~~A. Notice of an appeal from the decision of the Board shall be made by service on the executive director at the office of the Board within 30 days after the Board has notified the person aggrieved of its decision.~~
- ~~B. The party appealing may demand from the Board, in writing, a certified transcript of the record of the Board relating to its decision. Within 30 days after receipt of the demand, accompanied by payment of a fee of the current prevailing rate for transcript, and \$1.00 for certification thereof, the Board shall make and certify the transcript and file it with the county clerk of the court to which the appeal has been taken.~~
- ~~C. When an appeal is taken to the superior court from the order or decision of the Board, such order or decision shall remain in effect pending final determination of the matter unless stayed by the court, on a hearing after notice to the Board, and upon a finding by the court there is probable cause for appeal, warranting such stay.~~
- ~~D. Rehearing or review of decision
 1. Except as provided in subsection (D)(7), any party in a contested case before the Board who is aggrieved by a decision rendered in such case may file with the Board, not later than 10 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at his last known residence or place of business.
 2. A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Board. A response may be filed within 10 days after service of such motion or amended motion by any other party. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
 3. A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:
 - a. Irregularity in the administrative proceedings of the agency or its hearing officer or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;~~

Notices of Final Rulemaking

- b. ~~Misconduct of the Board or its hearing officer or the prevailing party;~~
- e. ~~Accident or surprise which could not have been prevented by ordinary prudence;~~
- d. ~~Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;~~
- e. ~~Excessive or insufficient penalties;~~
- f. ~~Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;~~
- g. ~~That the decision is not justified by the evidence or is contrary to law.~~
- 4. ~~The Board may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (D)(3). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.~~
- 5. ~~Not later than 10 days after a decision is rendered, the Board may on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case, the order granting such a rehearing shall specify the grounds therefor.~~
- 6. ~~When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may within 10 days after such service serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.~~
- 7. ~~If in a particular decision the Board makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.~~
- 8. ~~For purposes of this Section the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.~~
- 9. ~~To the extent that the provisions of this rule are in conflict with the provisions of any statute providing for rehearing or decisions of Board, such statutory provisions shall govern.~~

R4-23-111. Notice of Hearing

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

R4-23-112. Ex Parte Communications

- A party shall not communicate, either directly or indirectly, with a Board member about any substantive issue in a pending matter unless:
- 1. All parties are present;
 - 2. It is during a scheduled proceeding, where an absent party fails to appear after proper notice; or
 - 3. It is by written motion with copies to all parties.

R4-23-113. Motions

- A.** Purpose. A party requesting a ruling from the Board shall file a motion. Motions may be made for rulings such as:
 - 1. Continuing or expediting a hearing under R4-23-116;
 - 2. Vacating a hearing under R4-23-117;
 - 3. Scheduling a prehearing conference under R4-23-118;
 - 4. Quashing a subpoena under R4-23-119;
 - 5. Requesting telephonic testimony under R4-23-120; and
 - 6. Reconsidering a previous order under R4-23-121.
- B.** Form. Unless made during a prehearing conference or hearing, motions shall be made in writing and shall conform to the requirements of R4-23-115. All motions, whether written or oral, shall state the factual and legal grounds supporting the motion, and the requested action.
- C.** Time limits. Absent good cause, or unless otherwise provided by law or these rules, written motions shall be filed with the Board office at least 15 days before the hearing. A party demonstrates good cause by showing that the grounds for the

Notices of Final Rulemaking

motion could not have been known in time, using reasonable diligence and:

1. A ruling on the motion will further administrative convenience, expedition or economy; or
2. A ruling on the motion will avoid undue prejudice to any party.

- D.** Response to motion. A party shall file a written response stating any objection to the motion within five days of service, or as directed by the Board.
- E.** Oral argument. A party may request oral argument when filing a motion or response. If necessary to develop a complete record, the Board shall grant oral argument.
- F.** Rulings. Rulings on motions, other than those made during a prehearing conference or the hearing, shall be in writing and served on all parties.

R4-23-114. Computing Time

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

R4-23-115. Filing Documents

- A.** Docket. The Board shall open a docket for each hearing. All documents filed in a matter with the Board shall be date stamped on the day received by the Board office and entered in the docket.
- B.** Definition. "Documents" include papers such as complaints, answers, motions, responses, notices, and briefs.
- C.** Form. A party shall state on the document the name and address of each party served and how service was made under subsection (E). A document shall contain the Board caption and the Board's docket number.
- D.** Signature. A document filed with the Board shall be signed by the party or the party's attorney. A signature constitutes a certification that the signer has read the document, has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment.
- E.** Filing and service. A copy of a document filed with the Board shall be served on all parties. Filing with the Board office and service shall be completed by personal delivery; first-class, certified, or express mail; or facsimile.
- F.** Date of filing and service. A document is filed with the Board on the date it is received by the Board office, as established by the Board office's date stamp on the face of the document. A copy of a document is served on a party as follows:
1. On the date it is personally served,
 2. Five days after it is mailed by first-class or express mail,
 3. On the date of the return receipt if it is mailed by certified mail, or
 4. On the date indicated on the facsimile transmission.

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

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

R4-23-117. Vacating a Hearing

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

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

R4-23-118. Prehearing Conference

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

R4-23-119. Subpoenas

- A.** Form. A party shall request a subpoena in writing from the Board and shall include:
1. The caption and docket number of the matter;

Notices of Final Rulemaking

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

R4-23-120. Telephonic Testimony

The Board may grant a motion for telephonic testimony if:

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

R4-23-121. Rights and Responsibilities of Parties

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

R4-23-122. Conduct of Hearing

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

Notices of Final Rulemaking

I. Decisions and orders. Unless otherwise provided by law, any final decisions or order adverse to a party in a hearing shall be in writing or stated in the record. Any final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Unless otherwise provided by law, each party shall be notified either personally or by mail to the party's last known address of record of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed to each party and to each party's attorney of record.

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

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

R4-23-124. Witnesses: Exclusion from Hearing

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

R4-23-125. Proof

A. Standard of proof. Unless otherwise provided by law, the standard of proof is a preponderance of the evidence.

B. Burden of proof. Unless otherwise provided by law:

1. The party asserting a claim, right, or entitlement has the burden of proof;
2. A party asserting an affirmative defense has the burden of establishing the affirmative defense; and
3. The proponent of a motion shall establish the grounds to support the motion.

R4-23-126. Disruptions

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

R4-23-127. Hearing Record

A. Maintenance. The Board shall maintain the official administrative record of a matter.

B. Transfer of record. Any party requesting a copy of the administrative record or any portion of the administrative record shall make a request to the Board office and shall pay the reasonable costs of duplication.

C. Release of exhibits. Exhibits shall be released:

1. Upon the order of a court of competent jurisdiction; or
2. Upon motion of the party who submitted the exhibits if the time for judicial appeal has expired and no appeal is pending.

R4-23-128. Rehearing or Review and Appeal of Decision

A. The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10, and this Section. For purposes of these rules, the terms "contested case" and "party" are defined in A.R.S. § 41-1001.

B. A party to a contested case shall exhaust the party's administrative remedies by filing a motion for rehearing or review within 30 days after the service of the Board decision that is subject to rehearing or review in order to be eligible for judicial review under A.R.S. Title 12, Chapter 7, Article 6. The Board shall notify a party in its decision, that is subject to rehearing or review, that the party may file a motion for rehearing or review, and that failure to file a motion for rehearing or review within 30 days after service of the decision has the effect of prohibiting the party from seeking judicial review of the Board's decision.

C. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.

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

1. Irregularity in the proceedings of the Board, or any order or abuse of discretion, that deprived the moving party of a fair hearing;
2. Misconduct of the Board, its staff, its hearing officer, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Excessive or insufficient penalty;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
7. That the Board's decision is a result of passion or prejudice; or
8. That the findings of fact or decision is not justified by the evidence or is contrary to law.

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

Notices of Final Rulemaking

- F. If a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board may extend this period for a maximum of 20 days, for good cause as described in subsection (I).
- G. Not later than 10 days after the date of a decision, after giving parties notice and an opportunity to be heard, the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on the motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.
- H. If a rehearing is granted, the Board shall hold the rehearing within 60 days after the order granting the rehearing is issued.
- I. The Board may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party’s motion or other action could not have been known in time, using reasonable diligence, and a ruling on the motion will:

 - 1. Further administrative convenience, expedition, or economy; or
 - 2. Avoid undue prejudice to any party.

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

- A. Notification to the Board office. Within 10 days of filing a complaint for judicial review of a final administrative decision of the Board, the party shall file a copy of the complaint with the Board office. The Board office shall then transmit the administrative record to the Superior Court.
- B. Transcript. A party requesting a transcript shall arrange for transcription at the party’s expense. The Board office shall make a copy of the audio taped record available to the transcriber. The party arranging for transcription shall deliver the transcript, certified by the transcriber under oath to be a true and accurate transcription of the audio taped record, to the Board office, together with one unbound copy.

NOTICE OF FINAL RULEMAKING

TITLE 7. EDUCATION

CHAPTER 5. STATE BOARD FOR CHARTER SCHOOLS

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| Article 1 | New Article |
| R7-5-101 | New Section |
| Article 2 | New Article |
| R7-5-201 | New Section |
| R7-5-202 | New Section |
| R7-5-203 | New Section |
| R7-5-204 | New Section |
| Article 4 | New Article |
| R7-5-401 | New Section |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
 Authorizing statute: A.R.S. § 15-182
 Implementing statutes: A.R.S. §§ 15-181, 15-183, and 41-1072 et seq.
 - 3. The effective date of the rules:**
 March 2, 2004. Under A.R.S. § 41-1032(A)(4) the Board respectfully requests an immediate effective date upon approval of the rulemaking package by the Governor’s Regulatory Review Council. The Board is currently using the application process described in this rulemaking package in R7-5-201 through R7-5-203. Sections R7-5-204 and R7-5-401 outline procedures that have been used by the Board since 1998 and 1995, respectively. Formally implementing the procedures currently being used by the Board will provide a benefit to the public, and no penalty is associated with violation of the rules. The benefit to the public results from the clear and concise procedures for the charter application, execution, and amendment processes.
 - 4. A list of all previous notices appearing in the Register addressing the proposed rules:**
 Notice of Rulemaking Docket Opening: 9 A.A.R. 4819, November 7, 2003
 Notice of Proposed Rulemaking: 9 A.A.R. 4811, November 7, 2003
 - 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Notices of Final Rulemaking

Name: Kristen Jordison, Executive Director
Arizona State Board for Charter Schools
Address: 1700 West Washington, #164
Phoenix, AZ 85007
Telephone: (602) 364-3080
Fax: (602) 364-3089
E-mail: Jordison_Kristen@pop.state.az.us

6. An explanation of the rule, including the agency's reasons for initiating the rule:

The agency is complying with A.R.S. § 15-182, which requires the agency to make rules for its own governance.

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

None

8. 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

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

The proposed rules' impact on the Board's established procedures and office-related costs is minimal. Because the agency currently grants, executes, and processes amendments to charters, the rule package will have a minimal economic impact on the agency. The economic impact on the Arizona Department of Education is expected to be minimal and arises from statutory requirements rather than rule. The application process (R7-5-201) imposes minimal costs on each applicant in the form of time to complete an application and the provision of required documentation including a fingerprint clearance card, if the applicant did not possess one, and filing fees to establish the entity with the Arizona Corporation Commission if it has not previously been established. While the implementation of a charter school's proposed amendment may have varying voluntary costs to the charter holder, the amendment process poses only minimal administrative costs to the charter holder in the form of completion and submission of the appropriate documents.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

No significant changes were made.

11. A summary of the principal comments and the agency response to them:

No comments were received.

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

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rules follow:

TITLE 7. EDUCATION

CHAPTER 5. STATE BOARD FOR CHARTER SCHOOLS

ARTICLE 1. GENERAL PROVISIONS

Section

R7-5-101. Definitions

ARTICLE 2. NEW CHARTERS

Section

R7-5-201. Application for a New Charter

R7-5-202. Time-frames for Granting or Denying a New Charter

R7-5-203. Review of Application Package and Technical Assistance

R7-5-204. Execution of a Charter

Notices of Final Rulemaking

ARTICLE 3. RESERVED

ARTICLE 4. AMENDMENT TO A CHARTER

Section

R7-5-401. Amendment to a Charter

ARTICLE 1. GENERAL PROVISIONS

R7-5-101. Definitions

For the purpose of this Chapter, the following definitions apply:

“Administrative completeness review time-frame” means the number of days from the Board’s receipt of an application package to obtain a charter until the Board determines whether the application package contains all components required by statute and rule. The administrative completeness review time-frame does not include the period during which the Board performs a substantive review of the application.

“Applicant” means a person that applies to the Board for a new charter or to transfer a charter under A.R.S. § 15-181 et seq.

“Application” means the Board-approved forms and instructions for a stated fiscal year, which are available on-line and in writing.

“Application package” means an application, narrative, and documents described in the application.

“Authorized representative” means an individual with the power to bind a charter holder contractually according to the charter holder’s Articles of Incorporation, operating agreement, or by-laws.

“Board” means the Arizona State Board for Charter Schools.

“Charter” means a contract between a person and the Board to operate a charter school under A.R.S. § 15-181 et seq.

“Charter school” means a school operated under a charter granted under A.R.S. § 15-181 et seq.

“Day” means a business day.

“Department” means the Arizona Department of Education.

“Fiscal year” means the 12-month period beginning July 1 and ending June 30.

“Overall time-frame” means the number of days after receipt of an application package until the Board determines whether to grant or deny a charter. The overall time-frame consists of both the administrative completeness review time-frame and the substantive review time-frame.

“Person” means an individual, partnership, corporation, association, or public or private organization of any kind.

“Preliminary application package” means a complete application package that is forwarded to the Technical Review Panel for scoring.

“Principals” means the officers, members, partners, or board of an applicant.

“Revised application package” means a complete application package submitted by an applicant after receiving written notification that the applicant’s preliminary application package failed to meet the expectations.

“Substantive review time-frame” means the number of days after an application package is determined to be administratively complete until the Board decides whether to grant or deny a charter.

“Sufficiently qualified” means a Board determination that an applicant’s experience, qualifications, current and prior charter compliance, and creditworthiness indicate an ability to operate a charter school.

“Technical Review Panel” means individuals approved and acting on behalf of the Board who use their expertise in charter school development, curriculum, and finance to evaluate a preliminary or revised application package.

ARTICLE 2. NEW CHARTERS

R7-5-201. Application for a New Charter

A. By March 31 of each year, the Board shall approve and make available in writing at its office and on-line at its website an application for a new charter for a specified fiscal year.

B. A person desiring to establish a charter school shall submit an unbound original application package and five bound copies of the application package to the Board.

C. An applicant for a new charter shall ensure that the submitted application package contains the following in the order listed:

1. Cover Sheet form;

2. Title Page form;

3. Target Population form;

4. Curricular Emphasis. A narrative describing the proposed charter school’s program of instruction including its philos-

Notices of Final Rulemaking

- ophy, special emphasis, and methods of instruction and assessment in relation to achieving the school's mission:
5. Goals form;
 6. Curriculum Sample. A reading, writing, and math sample for each grade level to be served. Each sample will include a student assessment, description of instruction, description of student activities, and an indication of alignment with the Arizona Academic Standards;
 7. Monitoring of Program of Instruction. A narrative and examples regarding dissemination of information to teachers, tracking of students' progress toward mastery of state standards, and integration of Arizona Academic Standards into instructional practices;
 8. Special education delivery models to be used;
 9. Business Plan. A detailed business plan including:
 - a. Business description.
 - b. Marketing plan.
 - c. Management plan.
 - d. Resumes of the principals and authorized representative.
 - e. Background information form.
 - f. Valid fingerprint clearance cards for the principals and authorized representative.
 - g. Affidavit form.
 - h. Copy of Arizona filing required to conduct business in Arizona by the Arizona Corporation Commission or Arizona Secretary of State.
 - i. Financial plan.
 - j. Start-up budget with assumptions form.
 - k. Three-year operating budget form, and
 - l. First year month-by-month cashflow form;
 10. Compliance Assurances form;
 11. Certificate of Workshop Attendance or Workshop Waiver form;
 12. Bibliography; and
 13. Application Checklist form.

R7-5-202. Time-frames for Granting or Denying a New Charter

- A.** For granting or denying a charter, the time-frames required by A.R.S. § 41-1072 et seq. are:
1. Administrative completeness review time-frame: 25 days;
 2. Substantive review time-frame: 175 days; and
 3. Overall time-frame: 200 days.
- B.** An administratively complete application package for a charter school consists of all the information and documents listed in R7-5-201.
- C.** The administrative completeness review time-frame, as described in A.R.S. § 41-1072(1) and listed in subsection (A)(1), begins on the date the Board receives an application package.
1. If the application package is not administratively complete when received, the Board shall provide to the applicant a notice of deficiency that states the documents and information that are missing.
 2. Upon written notice to the applicant that the application package is incomplete, the Board shall close the applicant's file.
 3. If the application package is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
 4. If the Board does not provide a notice of deficiency or administrative completeness to the applicant within the administrative completeness review time-frame, the application package is deemed administratively complete.
- D.** A substantive review time-frame, as described in A.R.S. § 41-1072(3) and listed in subsection (A)(2), begins when an application package is determined to be administratively complete.
- E.** Within the time provided in subsection (A)(3), the Board shall provide the applicant with written notice of its decision to grant or deny a charter.
1. The Board shall deny a charter if it determines that the application package does not meet the requirements of statute or rule or the applicant is not sufficiently qualified to operate a charter school. The written notice shall include the basis for the denial. The applicant may:
 - a. Submit a new application under R7-5-201 for consideration by the Board; or
 - b. Appeal the Board's decision as prescribed in A.R.S. Title 41, Chapter 6, Article 10.
 2. The Board shall grant a charter if it determines that the application package meets the requirements of statute and rule and the applicant is sufficiently qualified to operate a charter school.

R7-5-203. Review of Application Package and Technical Assistance

The review of a complete application package is as follows:

1. The Technical Review panel shall score the preliminary application package using the scoring criteria provided in the application.
2. The Board staff shall conduct background investigations of the applicant.
3. The Board shall notify the applicant if the preliminary application package fails to meet the expectations as evaluated by the Technical Review Panel. The Board shall include with the notice the comments of the Technical Review Panel, which will serve as technical assistance, and suggestions for improving the application package.
4. An applicant who receives notification of failure to meet the expectations as evaluated by the Technical Review Panel may, within 20 days of the postmark date on the notice, submit a revised application package or a letter requesting that the preliminary application package be forwarded to the Board.
5. If a revised application package or letter is not submitted to the Board within 20 days of the postmark date on the notice of failure to meet the expectations, the Board shall close the applicant's file. An applicant whose file is closed and who wants to obtain a charter shall apply again under R7-5-201.
6. If a revised application package is submitted, the Technical Review Panel shall score the revised application package using the scoring criteria provided in the application.
7. If a revised application package fails to meet the expectations as evaluated by the Technical Review Panel, the Board shall notify the applicant of the intent to close the file. The Board shall include with the notice the comments of the Technical Review Panel.
8. An applicant who receives notification of the Board's intent to close the file may, within 20 days of the postmark date on the notice, submit a letter requesting that the revised application package be forwarded to the Board.
9. An applicant whose file is closed and who wants to obtain a charter shall apply again under R7-5-201.
10. The Board shall consider an application package if the Technical Review Panel determines that the application package meets or exceeds the expectations or if the applicant requests under subsection (4) or (8) that the Board consider an application package that fails to meet the expectations. In conducting its consideration of an application package, the Board shall:
 - a. Review a copy of the application package scored by the Technical Review Panel;
 - b. Review a copy of the scoring rubric completed by the Technical Review Panel;
 - c. Review all information obtained through verification and investigation of an applicant's background including employment, education, fingerprint clearance card, and assessment of creditworthiness;
 - d. Hear a brief presentation by the applicant; and
 - e. Listen to the applicant's responses to Board questions.
11. The Board shall provide an applicant, with at least seven days written notice of the date, time, and place of the meeting at which the Board will consider the applicant's application package.

R7-5-204. Execution of a Charter

- A.** After the Board grants a charter, and before the contract is signed, the charter holder shall submit to the Board the following:
 1. Completed I.R.S. Form W-9, Request for Taxpayer Identification Number and Certification, obtained from the Board;
 2. School site location information;
 3. General Statement of Assurances form obtained from the Board;
 4. Copy of the statement filed with the Secretary of State under A.R.S. § 38-431.02; and
 5. Copy of lease agreement, if any, for each school site.
- B.** A new charter shall be signed by the Board President or designee and the charter holder or authorized representative within 12 months after the Board grants the charter.
- C.** A charter that is not timely signed expires. If the holder of an expired charter wants to obtain a new charter, the holder shall apply again under R7-5-201.
- D.** A charter holder shall begin providing educational instruction within six months after signing the charter or within 18 months after the Board grants the charter, whichever occurs later.
- E.** A charter holder shall submit to the Board written proof that the charter school is in compliance with federal, state, and local rules, regulations, and statutes relating to health, safety, and insurance at least 10 days before the first day of operation of the charter school by submitting:
 1. School site contact information;
 2. Certificate of occupancy for each school site;
 3. Fire marshal report for each school site;
 4. Insurance policy binder issued by an insurance company licensed to do business in Arizona;
 5. County health certificate for each site at which students will be taught;
 6. Evidence of a public meeting, required by A.R.S. § 15-183(C)(5), at least 30 days before the charter holder opens a site for the charter school; and
 7. Certificate of attendance of the authorized representative or principal at the special education training for new char-

Notices of Final Rulemaking

ters offered by the Arizona Department of Education, Exceptional Student Services Division.

- F. A charter is effective for 15 years from the first day of operation of the charter school unless revoked under A.R.S. § 15-183(I).

ARTICLE 3. RESERVED

ARTICLE 4. AMENDMENT TO A CHARTER

R7-5-401. Amendment to a Charter

- A. A charter holder that wishes to amend its charter shall submit to the Board:
 - 1. A completed charter amendment form approved by the Board.
 - 2. The support documentation indicated on the charter amendment form, and
 - 3. Evidence that the proposed charter amendment has been approved by the charter school's governing body.
- B. For approving or disapproving an amendment, the time-frames required by A.R.S. § 41-1072 et seq. are:
 - 1. Administrative completeness review time-frame: 20 days.
 - 2. Substantive review time-frame: 40 days.
 - 3. Overall time-frame: 60 days.
- C. A charter holder shall conform to the terms of the charter until an amendment is approved by the Board.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION**

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R9-22-110 | Repeal |
| R9-22-1001 | Repeal |
| R9-22-1001 | New Section |
| R9-22-1002 | Repeal |
| R9-22-1002 | New Section |
| R9-22-1003 | New Section |
| R9-22-1004 | New Section |
| R9-22-1005 | New Section |
| R9-22-1006 | New Section |
| R9-22-1007 | New Section |
| R9-22-1008 | New Section |
| R9-22-1009 | New Section |
- 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. §§ 36-2903.01(F) and (K), 36-2915(E)
 - Implementing statutes: A.R.S. §§ 36-2903(B)(10) and (F), 36-2903.01, 36-2915, 36-2916
 - 3. **The effective date of the rules:**
 - May 1, 2004
 - 4. **A list of all previous notices appearing in the Register addressing the exempt rule:**
 - Notice of Rulemaking Docket Opening: 9 A.A.R. 4566, October 24, 2003
 - Notice of Proposed Rulemaking: 9 A.A.R. 5100, November 28, 2003
 - 5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
 - Name: Barbara Ledder
 - Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034

Notices of Final Rulemaking

Telephone: (602) 417-4580

Fax: (602) 253-9115

6. **An explanation of the rule, including the agency’s reasons for initiating the rule:**

The rules in 9 A.A.C. 22, Article 10, First- and Third-party Liability and Recoveries, define the roles of various parties, including AHCCCS, providers, noncontracting providers, and members, in the first- and third-party liability and recovery process. AHCCCS proposes to modify first- and third-party related rule language to:

- Implement changes identified in the November 2002 five-year review report;
- Remove contractor-related language; and
- Make conforming changes to the Secretary of State’s rule writing guidelines.

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

No studies were reviewed.

8. **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

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

AHCCCS anticipates that there will be a nominal impact on the parties involved in the cost avoidance and recovery process. AHCCCS, providers, noncontracting providers, members, and Public Consulting Group, an entity that contracts with AHCCCS to do first- and third-party recoveries, will benefit from the changes because the rules will be easier to use and better organized. In addition, AHCCCS contractors will benefit since contractor-related language will be removed from rule and placed in the contract between AHCCCS and contractors.

10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

R9-22-1001	Clarified definition of “Cost avoid.”
R9-22-1003	Clarified the process of cost avoiding a claim.
R9-22-1007(B)	Clarified the term “Notify.”
R9-22-1008	Clarified notification requirements in situations where the date of discharge is not known at time of initial notification.
General	AHCCCS made the rules more clear, concise, and understandable by making grammatical and structural changes throughout the rules.

11. **A summary of the principal comments and the agency response to them:**

No comments have been received.

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

None

13. **Incorporations by reference and their location in the rules:**

No incorporations by reference are cited within rules.

14. **Was this rule previously adopted as an emergency rule?**

No

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

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION

ARTICLE 1. DEFINITIONS

Section

R9-22-110. ~~First and Third Party Liability Related Definitions~~ Repealed

ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

Section

- R9-22-1001. First and Third Party Liability and Coordination of Benefits Definitions
- R9-22-1002. First and Third Party Liability Monitoring and Compliance General Provisions
- R9-22-1003. Cost Avoidance
- R9-22-1004. Member Participation
- R9-22-1005. Collections
- R9-22-1006. AHCCCS Monitoring Responsibilities
- R9-22-1007. Notification for Perfection, Recording, and Assignment of AHCCCS Liens
- R9-22-1008. Notification Information for Liens
- R9-22-1009. Notification of Health Insurance Information

ARTICLE 1. DEFINITIONS

R9-22-110. ~~First and Third Party Liability Related Definitions Repealed~~

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

“First party liability” means the resources available from any insurance or other coverage obtained directly or indirectly by a member that provides benefits directly to the member and is liable to pay all or part of the expenses for medical services incurred by the Administration, a contractor, or a member.

“Third party” means a person, entity, or program that is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or member.

“Third party liability” means the resources available from a person, entity, or program that is or may be, by agreement, circumstance, or otherwise, liable to pay all or part of the medical expenses incurred by an applicant or member.

ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

R9-22-1001. ~~First and Third Party Liability and Coordination of Benefits Definitions~~

A. ~~Definitions. In this Section, the following definitions apply:~~

- 1. ~~“First party liability” means the resources available from any insurance or other coverage obtained directly or indirectly by a member or eligible person that provides benefits directly to the member or eligible person and is liable to pay all or part of the expenses for medical services incurred by the Administration, a member, or eligible person.~~
- 2. ~~“Cost avoidance” means avoiding payment of claims when first or third party payment sources are available.~~

B. ~~General provisions. The System shall be the payor of last resort, unless specifically prohibited by applicable state or federal law. The Administration may subcontract distinct administrative functions as permitted by A.R.S. §§ 36-2903(D) and 36-2915(B).~~

C. ~~Cost avoidance. The System shall cost avoid all claims or services that are subject to first or third party liability source, and may deny a service to a member or eligible person if it knows that a first or third party will provide the service. The requirement to cost avoid applies to all AHCCCS covered services, unless otherwise specified in this Section.~~

1. ~~Responsible parties. The following parties shall take reasonable measures to identify legally liable first or third party sources:~~

- a. ~~Administration;~~
- b. ~~Contractor;~~
- e. ~~Provider;~~
- d. ~~Nonprovider;~~
- e. ~~Nonecontracting provider;~~
- f. ~~Member, and~~
- g. ~~Eligible person.~~

2. ~~Coordination of benefits. If a contractor does not know whether a particular service is covered by a first and third party insurer, and the service is medically necessary, the contractor shall contact the first and third party, and determine whether the service is covered rather than requiring the member or eligible person to contact the first or third party. If the contractor knows that the first and third party insurer will neither pay for nor provide the covered service, and the service is medically necessary, the contractor shall neither deny the service nor require a written denial letter.~~

3. ~~Copayment, coinsurance, deductible. If a first or third party insurer (other than Medicare) requires a member or eligible person to pay any copayment, coinsurance, or deductible, the contractor must decide whether it is more cost effective to provide the service:~~

- a. ~~Within its network for continuity of care; or~~
- b. ~~Outside its network for continuity of care under the following conditions:~~
 - i. ~~Advance payments. If an insurer requires payment in advance of a copayment, coinsurance, or deductible, the contractor shall make the payment in advance for the member or eligible person.~~

Notices of Final Rulemaking

- ii. ~~Limitation of copayment, coinsurance, and deductible amounts. A contractor that meets the requirements in subsection (C)(5) is not responsible for paying a copayment, coinsurance, or deductible that is in excess of what the contractor would have paid for the entire service, per a written contract with the provider performing the service, or the AHCCCS fee for service rate minus any amount paid by the first and third party.~~
- 4. ~~Exceptions. A contractor shall provide the following services, and then coordinate payment with a first and third party payor:
 - a. ~~Emergency service;~~
 - b. ~~Medically necessary transportation service. If a contractor approves a covered service out of the contractor's network, the contractor shall provide all medically necessary transportation, so first and third party benefits can be received.~~~~
- 5. ~~Medically necessary service. A contractor shall ensure that its cost avoidance efforts do not prevent an eligible person or member from receiving a medically necessary service, and that the eligible person or member is not required to pay any copayment, coinsurance, or deductible for use of the other insurer's provider;~~
- 6. ~~Pre-natal and preventive services. The Administration may require a contractor to provide pre-natal and preventive pediatric services, and then coordinate payment with a liable first or third party.~~
- D.** ~~Member or eligible person participation. A member or an eligible person shall cooperate in identifying potentially liable first or third parties and assist the Administration, contractor, provider, nonprovider, or noncontracting provider in pursuing any first or third party who may be liable to pay for covered services.~~
- E.** ~~Collections:
 - 1. ~~The following parties shall cooperate, identify, and notify the Administration of all potential sources of first or third party liability:
 - a. ~~Provider;~~
 - b. ~~Nonprovider, and~~
 - e. ~~Noncontracting provider.~~~~
 - 2. ~~The following parties shall pursue collection or reimbursement from all potential sources of first or third party liability:
 - a. ~~The Administration;~~
 - b. ~~Provider;~~
 - e. ~~Nonprovider, and~~
 - d. ~~Noncontracting provider.~~~~
 - 3. ~~Contractors shall cooperate, identify, and notify the Administration of all potential sources of first or third party liability and pursue collection or reimbursement according to R9-22-1002(B).~~
 - 4. ~~Recoveries: Contractor. A contractor may retain up to 100% of its first and third party collections if:
 - a. ~~Total payments received do not exceed the total amount of the contractor's financial liability for the member. Payments in excess of the contractor's liability shall be reimbursed as described in 42 CFR 433.154;~~
 - b. ~~AHCCCS fee for service, reinsurance benefits or both have not duplicated the recovery. Any duplicated benefits received shall be reimbursed to the Administration. Payments by the Administration for covered services may supplement payment or benefits from first or third parties to the extent authorized by this Chapter or applicable contracts;~~
 - e. ~~The recovery is not prohibited by federal or state law; and~~
 - d. ~~The payments collected are reflected in reduced capitation rates. The Administration may require a contractor to reimburse the Administration up to 100% of collected first and third party payments that are not reflected in reduced capitation rates.~~~~
 - 5. ~~Recoveries: Administration. The Administration may retain its first and third party collections up to 100% of fee for service, reinsurance payments, administrative costs, capitation payments, Medicare Part A and B premium payments, and any other payments made by the System. The funds collected shall be deposited in the AHCCCS fund.~~~~

In addition to the definitions in A.R.S. § 36-2901 and 9 A.A.C 22, Article 1, the following definitions apply to this Article:

"Cost avoid" means to deny a claim and return the claim to the provider for a determination of the amount of first- or third-party liability.

"First-party liability" means the obligation of any insurance or other coverage obtained directly or indirectly by a member that provides benefits directly to the member to pay all or part of the expenses for medical services incurred by AHCCCS or a member.

"Third-party" means a person, entity, or program that is, or may be, liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or member.

"Third-party liability" means the obligation of a person, entity, or program by agreement, circumstance, or otherwise, to pay all or part of the medical expenses incurred by an applicant or member.

R9-22-1002. ~~First and Third Party Liability Monitoring and Compliance~~ General Provisions

- A.** ~~First or third party liability sources. The Administration shall monitor first or third party liability payments to a contrac-~~

Notices of Final Rulemaking

~~tor, provider, nonprovider, or noncontracting provider, which may include but are not limited to payments by or for:~~

- ~~1. Private health insurance;~~
- ~~2. Employment related disability and health insurance;~~
- ~~3. Long-term care insurance;~~
- ~~4. Other federal programs not excluded by statute;~~
- ~~5. Court ordered or non-court ordered medical support from an absent parent;~~
- ~~6. State worker's compensation;~~
- ~~7. Automobile insurance, including underinsured and uninsured motorists insurance;~~
- ~~8. Court judgment or settlement from a liability insurer including settlement proceeds placed in a trust;~~
- ~~9. First-party probate estate recovery;~~
- ~~10. Adoption related payment; and~~
- ~~11. Tortfeasor.~~

B. Contractor responsibility. A contractor shall:

- ~~1. Recover first- and third-party payments from the sources identified in subsections (A)(1) through (A)(5); and~~
- ~~2. Recover first- and third-party payments from the sources identified in subsections (A)(6) through (A)(11), when directed by the Administration.~~

C. Monitoring. ~~The Administration shall determine whether a contractor, provider, nonprovider, or noncontracting provider is in compliance with the requirements in this Article by inspecting claim submissions and payment documentation for cost avoidance and recovery activities.~~

D. Notification for perfection, recording, and assignment of AHCCCS liens:

- ~~1. County requirements. The county of residence shall notify the Administration according to subsection (E) within 30 days after providing services according to A.R.S. § 11-291 of charges for hospital or medical services provided to a member or eligible person for an injury or condition resulting from circumstances reflecting the probable liability of a 1st or 3rd party, so the Administration may preserve its lien rights according to A.R.S. § 36-2915.~~
- ~~2. Hospital requirements. Hospitals providing emergency or urgent medical services to a member or eligible person for an injury or condition resulting from circumstances reflecting the probable liability of a 1st or 3rd party shall notify the Administration according to subsection (E) within 30 days after discharge. A hospital may satisfy the requirement of this subsection also by mailing to the Administration a copy of the lien it proposes to record or has recorded according to A.R.S. § 33-932 within 30 days after discharge.~~
- ~~3. Contractor, provider, nonprovider, and noncontracting provider requirements. A contractor, provider, nonprovider, or noncontracting provider, other than a hospital, rendering medical services to a member or eligible person for an injury or condition resulting from circumstances reflecting the probable liability of a first or third party shall notify the Administration according to subsection (E) within 30 days after providing the services.~~

E. Notification information for liens. To satisfy notification requirements, all of the following information shall be mailed to the Administration:

- ~~1. Name of the contractor, provider, nonprovider, or noncontracting provider;~~
- ~~2. Address of the contractor, provider, nonprovider, or noncontracting provider;~~
- ~~3. Name of member or eligible person;~~
- ~~4. Member's or eligible person's Social Security number or AHCCCS identification number;~~
- ~~5. Address of member or eligible person;~~
- ~~6. Date of member's or eligible person's admission;~~
- ~~7. Amount estimated to be due for care of member or eligible person;~~
- ~~8. Date of member's or eligible person's discharge;~~
- ~~9. Name of county in which injuries were sustained; and~~
- ~~10. Name and address of all persons, firms, and corporations and their insurance carriers claimed by the member, eligible person, or legal representative to be liable for damages.~~

F. Notification of health insurance information. A contractor, provider, nonprovider, or noncontracting provider shall provide notification of health insurance information to the Administration. To satisfy notification requirements, all of the following health insurance information shall be submitted to the Administration within 10 days of receipt of the health insurance information:

- ~~1. Name of member or eligible person;~~
- ~~2. Member's or eligible person's Social Security number or AHCCCS identification number;~~
- ~~3. Insurance carrier name;~~
- ~~4. Insurance carrier address;~~
- ~~5. Policy number;~~
- ~~6. Policy begin and end dates; and~~
- ~~7. Insured's name and Social Security number.~~

AHCCCS is the payor of last resort unless specifically prohibited by applicable state or federal law.

R9-22-1003. Cost Avoidance

Notices of Final Rulemaking

- A. AHCCCS shall cost avoid a claim if AHCCCS establishes the probable existence of first- or third-party liability or has information that establishes that first- or third-party liability exists.
- B. When the amount of first- or third-party liability is determined, AHCCCS shall pay no more than the difference between the Capped Fee-For-Service Schedule amount and the amount of the first- or third-party liability.
- C. The requirement to cost avoid applies to all AHCCCS-covered services under Article 2 of this Chapter, unless otherwise specified in this Section. The following parties shall take reasonable measures to identify potentially legally liable first- or third-party sources:
 - 1. AHCCCS.
 - 2. A provider.
 - 3. A noncontracting provider, and
 - 4. A member.

R9-22-1004. Member Participation

A member shall cooperate in identifying potentially legally liable first- or third-parties and timely assist AHCCCS and a contractor, provider, or noncontracting provider in pursuing any first- or third-party who may be liable to pay for covered services.

R9-22-1005. Collections

- A. Parties that notify AHCCCS. A provider or noncontracting provider shall cooperate with AHCCCS by identifying all potential sources of first- or third-party liability and notify AHCCCS of these sources.
- B. Parties that pursue collection or reimbursement. AHCCCS, a provider, or noncontracting provider shall pursue collection or reimbursement from all potential sources of first- or third-party liability.

R9-22-1006. AHCCCS Monitoring Responsibilities

AHCCCS shall monitor first- or third-party liability payments to a provider or noncontracting provider, which include but are not limited to payments by or for:

- 1. Private health insurance;
- 2. Employment-related disability and health insurance;
- 3. Long-term care insurance;
- 4. Other federal programs not excluded by statute from recovery;
- 5. Court ordered or non-court ordered medical support from an absent parent;
- 6. State worker's compensation;
- 7. Automobile insurance, including underinsured and uninsured motorists insurance;
- 8. Court judgment or settlement from a liability insurer including settlement proceeds placed in a trust;
- 9. First-party probate estate recovery;
- 10. Adoption-related payment; or
- 11. A tortfeasor.

R9-22-1007. Notification for Perfection, Recording, and Assignment of AHCCCS Liens

- A. County requirements. The member's county of residence shall notify AHCCCS under R9-22-1008 within 30 days after providing hospital or medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- or third-party to enable AHCCCS to preserve lien rights under A.R.S. §§ 36-2915 and 36-2916.
- B. Hospital requirements. A hospital providing medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- or third-party shall within 30 days after a member's discharge:
 - 1. Notify AHCCCS via facsimile or mail under R9-22-1008, or
 - 2. Mail AHCCCS a copy of the lien the hospital proposes to record or has recorded under A.R.S. § 33-932.
- C. Provider and noncontracting provider requirements. A provider or noncontracting provider, other than a hospital, rendering medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- or third-party shall notify AHCCCS under R9-22-1008 within 30 days after providing the service.

R9-22-1008. Notification Information for Liens

- A. Except as provided in subsection (B), a county, hospital, provider, and noncontracting provider identified in R9-22-1007 shall provide the following information to AHCCCS in writing:
 - 1. Name of the provider or noncontracting provider;
 - 2. Address of the provider or noncontracting provider;
 - 3. Name of member;
 - 4. Member's Social Security Number or AHCCCS identification number;
 - 5. Address of member;
 - 6. Date of member's admission;
 - 7. Amount estimated to be due for care of member;
 - 8. Date of discharge, if member has been discharged;
 - 9. Name of county in which injuries were sustained; and

Notices of Final Rulemaking

10. Name and address of all persons, firms, and corporations and their insurance carriers claimed by the member or legal representative to be liable for damages.

B. If the date of discharge is not known at the time the information in subsection (A) is provided, a party identified in subsection (A) shall notify AHCCCS of the date of discharge within 30 days after the member has been discharged.

R9-22-1009. Notification of Health Insurance Information

A provider or noncontracting provider shall notify AHCCCS, in writing, of the following health insurance information within 10 days of receipt of the health insurance information:

1. Name of member.
2. Member's Social Security Number or AHCCCS identification number.
3. Insurance carrier name.
4. Insurance carrier address.
5. Policy number or insurance holder's Social Security Number.
6. Policy begin and end dates, and
7. Insurance holder's name.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
CHILDREN'S HEALTH INSURANCE PROGRAM**

PREAMBLE

1. Sections Affected

	<u>Rulemaking Action</u>
R9-31-110	Repeal
R9-31-1001	Repeal
R9-31-1001	New Section
R9-31-1002	Repeal
R9-31-1002	New Section
R9-31-1003	New Section
R9-31-1004	New Section
R9-31-1005	New Section
R9-31-1006	New Section
R9-31-1007	New Section
R9-31-1008	New Section
R9-31-1009	New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 36-2987(F)

Implementing statute: A.R.S. § 36-2987(F)

3. The effective date of the rules:

May 1, 2004

4. A list of all previous notices appearing in the Register addressing the exempt rule:

Notice of Rulemaking Docket Opening: 9 A.A.R. 4568, October 24, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 5111, November 28, 2003

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Barbara Ledder
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4580
Fax: (602) 253-9115

Notices of Final Rulemaking

6. An explanation of the rule, including the agency’s reasons for initiating the rule:

The rules in 9 A.A.C. 31, Article 10, First- and Third-party Liability and Recoveries, define the roles of various parties, including AHCCCS, providers, noncontracting providers, and members, in the first- and third-party liability and recovery process for the KidsCare program. AHCCCS proposes to modify first- and third-party related rule language to:

- Make rules easier to use by cross-referencing, when possible, first- and third-party-related rule language in 9 A.A.C. 22, Article 10. Requirements that are specific to the KidsCare program remain in the body of 9 A.A.C. 31, Article 10;
- Remove contractor-related language; and
- Make changes to conform to the Secretary of State rule writing guidelines.

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

No studies were reviewed.

8. 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

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

AHCCCS anticipates that there will be a nominal impact on the parties involved in the cost avoidance and recovery process. AHCCCS, providers, noncontracting providers, members, and Public Consulting Group (PCG), an entity that contracts with AHCCCS to do first- and third-party recoveries, will benefit from the changes because the rules will be easier to use and better organized. In addition, KidsCare contractors will benefit since contractor-related language will be removed from rule and placed in the contract between AHCCCS and contractors.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

R9-31-1007(B)	Clarified that the term “Notify” means to notify either by facsimile or mail.
General	AHCCCS made the rules more clear, concise, and understandable by making grammatical and structural changes throughout the rules.

11. A summary of the principal comments and the agency response to them:

No comments have been received.

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

None

13. Incorporations by reference and their location in the rules:

No incorporations by reference are included within the rules.

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
CHILDREN’S HEALTH INSURANCE PROGRAM**

ARTICLE 1. DEFINITIONS

Section

R9-31-110. ~~First and Third Party Liability and Recoveries Related Definitions~~ Repealed

ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

Section

R9-31-1001. ~~First and Third Party Liability and Coordination of Benefits~~ Definitions

R9-31-1002. ~~First and Third Party Liability Monitoring and Compliance~~ General Provisions

R9-31-1003. Cost Avoidance

R9-31-1004. Member Participation

R9-31-1005. Collections

Notices of Final Rulemaking

- R9-31-1006. AHCCCS Monitoring Responsibilities
- R9-31-1007. Notification for Perfection, Recording, and Assignment of Title XXI Liens
- R9-31-1008. Notification Information for Liens
- R9-31-1009. Notification of Health Insurance Information

ARTICLE 1. DEFINITIONS

R9-31-110. ~~First and Third Party Liability and Recoveries Related Definitions Repealed~~

Definitions. The words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning: “Cost avoidance” means avoiding payment of claims when first- or third-party payment sources are available.

ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

R9-31-1001. ~~First and Third Party Liability and Coordination of Benefits Definitions~~

A. General provisions.

1. As specified in A.R.S. §§ 36-2986 and 36-2987, the Director has full operational authority to adopt rules or to use the appropriate rules adopted for coordination of benefits provided under this Article for any member.
2. The Administration may subcontract distinct administrative functions as permitted by A.R.S. § 36-2986.
3. KidsCare shall be the payor of last resort as specified in A.R.S. § 36-2903.

B. Cost avoidance. The System shall cost avoid all claims or services that are subject to first- or third-party liability source, and may deny a service to a member if it knows that a first- or third-party will provide the service. The requirement to cost avoid applies to all Title XXI covered services, unless otherwise specified in this Section.

1. Responsible parties. The following parties shall take reasonable measures to identify legally liable first- or third-party sources:
 - a. Administration,
 - b. Contractor,
 - c. Provider,
 - d. Nonprovider,
 - e. Nonecontracting provider, and
 - f. Member.
2. Coordination of benefits. As specified in A.R.S. § 36-2986, if a contractor does not know whether a particular service is covered by a first- and third-party insurer, and the service is medically necessary, the contractor shall contact the first and third party, and determine whether the service is covered rather than requiring a member to contact the first- or third party. If the contractor knows that the first- and third-party insurer will neither pay for nor provide the covered service, and the service is medically necessary, the contractor shall neither deny the service nor require a written denial letter.
3. Copayment, coinsurance, deductible. If a first- or third-party insurer (other than Medicare) requires a member to pay any copayment, coinsurance, or deductible, the contractor must decide whether it is more cost effective to provide the service:
 - a. Within its network for continuity of care, or
 - b. Outside its network for continuity of care under the following conditions:
 - i. Advance payments. If an insurer requires payment in advance of a copayment, coinsurance, or deductible, the contractor shall make the payment in advance for the member.
 - ii. Limitation of copayment, coinsurance, and deductible amounts. A contractor that meets the requirements in subsection (B)(5) is not responsible for paying a copayment, coinsurance, or deductible that is in excess of what the contractor would have paid for the entire service, per a written contract with the provider performing the service minus any amount paid by the first- and third-party.
4. Exceptions. A contractor shall provide the following services, and then coordinate payment with a first- and third-party payor:
 - a. Emergency service, and
 - b. Emergency transportation as specified in A.R.S. § 36-2989.
5. Medically necessary service. A contractor shall ensure that its cost avoidance efforts do not prevent a member from receiving a medically necessary service, and that a member is not required to pay any copayment, coinsurance, or deductible for use of the other insurer's provider;
6. Pre-natal and preventive services. The Administration may require a contractor to provide pre-natal and preventive pediatric services, and then coordinate payment with a liable first- or third-party.

C. Member participation. A member shall cooperate in identifying potentially liable first- or third parties and assist the Administration, contractor, provider, nonprovider, or nonecontracting provider in pursuing any first- or third party who may be liable to pay for covered services.

D. Collections.

1. The following parties shall cooperate, identify, and notify the Administration of all potential sources of first- or third-

Notices of Final Rulemaking

- party liability:
- a. Provider;
 - b. Nonprovider, and
 - c. Noncontracting provider.
2. The following parties shall pursue collection or reimbursement from all potential sources of first- or third-party liability:
- a. The Administration;
 - b. Provider;
 - c. Nonprovider, and
 - d. Noncontracting provider.
3. Contractors shall cooperate, identify, and notify the Administration of all potential sources of first- or third-party liability and pursue collection or reimbursement according to R9-31-1002(B).
4. Recoveries: Contractor. A contractor may retain up to 100% of its first- and third-party collections if:
- a. Total payments received do not exceed the total amount of the contractor's financial liability for the member. Payments in excess of the contractor's liability shall be reimbursed as described in 42 CFR 433.154, May 12, 1980, 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;
 - b. Title XXI reinsurance benefits or both have not duplicated the recovery. Any duplicated benefits received shall be reimbursed to the Administration. Payments by the Administration for covered services may supplement payment or benefits from first- or third-parties to the extent authorized by this Chapter or applicable contracts;
 - c. The recovery is not prohibited by federal or state law; and
 - d. The payments collected are reflected in reduced capitation rates. The Administration may require a contractor to reimburse the Administration up to 100% of collected first- and third-party payments that are not reflected in reduced capitation rates.
5. Recoveries: Administration. The Administration may retain its first- and third-party collections, reinsurance payments, administrative costs, capitation payments, and any other payments made by the System. The funds collected shall be deposited in the Children's Health Insurance Program Fund as specified in A.R.S. § 36-2995.

The definitions in A.R.S. § 36-2981, A.A.C. R9-22-1001, and A.A.C. R9-31-101 apply to this Article.

R9-31-1002. First and Third Party Liability Monitoring and Compliance General Provisions

- A.** First- or third-party liability sources. The Administration shall monitor first- or third-party liability payments to a contractor, provider, nonprovider, or noncontracting provider, which may include but are not limited to payments by or for:
- 1. Private health insurance;
 - 2. Employment related disability and health insurance;
 - 3. Other federal programs not excluded by statute;
 - 4. Court ordered or non-court ordered medical support from an absent parent;
 - 5. State worker's compensation;
 - 6. Automobile insurance, including underinsured and uninsured motorists insurance;
 - 7. Court judgment or settlement from a liability insurer including settlement proceeds placed in a trust;
 - 8. First party probate estate recovery;
 - 9. Adoption related payment; and
 - 10. Tortfeasor.
- B.** Contractor responsibility. A contractor shall:
- 1. Recover first- and third-party payments from the sources identified in subsections (A)(1) through (4); and
 - 2. Recover first- and third-party payments from the sources identified in subsections (A)(5) through (8), when directed by the Administration.
- C.** Monitoring. The Administration shall determine whether a contractor, provider, nonprovider, or noncontracting provider is in compliance with the requirements in this Article by inspecting claim submissions and payment documentation for cost avoidance and recovery activities.
- D.** Notification for perfection, recording, and assignment of Title XXI liens.
- 1. County requirements. The Administration may preserve its lien rights according to A.R.S. §§ 36-2986(M), 36-2915 and 36-2916.
 - 2. Hospital requirements. Hospitals providing emergency or urgent medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- or third-party shall notify the Administration according to subsection (E) within 30 days after discharge. A hospital may satisfy the requirement of this subsection also by mailing to the Administration a copy of the lien it proposes to record or has recorded according to A.R.S. § 36-2986 within 30 days after discharge.
 - 3. Contractor, provider, nonprovider, and noncontracting provider requirements. A contractor, provider, nonprovider, or noncontracting provider, other than a hospital, rendering medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- or third-party shall notify the Administration

Notices of Final Rulemaking

according to subsection (E) within 30 days after providing the services.

- E.** Notification information for liens. To satisfy notification requirements, all of the following information shall be mailed to the Administration:
1. Name of the contractor, provider, nonprovider, or noncontracting provider;
 2. Address of the contractor, provider, nonprovider, or noncontracting provider;
 3. Name of the member;
 4. The member's Social Security number or Title XXI identification number;
 5. Address of the member;
 6. Date of the member's admission;
 7. Amount estimated to be due for care of the member;
 8. Date of the member's discharge;
 9. Name of county in which injuries were sustained; and
 10. Name and address of all persons, firms, and corporations and their insurance carriers claimed by the member or legal representative to be liable for damages.
- F.** Notification of health insurance information. A contractor, provider, nonprovider, or noncontracting provider shall provide notification of health insurance information to the Administration. To satisfy notification requirements, all of the following health insurance information shall be submitted to the Administration within 10 days of receipt of the health insurance information:
1. Name of the member;
 2. The member's Social Security number or Title XXI identification number;
 3. Insurance carrier name;
 4. Insurance carrier address;
 5. Policy number, if available;
 6. Policy begin and end dates, if available; and
 7. Insured's name and Social Security number.

AHCCCS is the payor of last resort unless specifically prohibited by applicable state or federal law.

R9-31-1003. Cost Avoidance

The provisions in A.A.C. R9-22-1003 apply to this Section except:

1. Replace the reference to "Article 2," with 9 A.A.C. 31, Article 2; and
2. This Section applies to Title XXI covered services.

R9-31-1004. Member Participation

The provisions in A.A.C. R9-22-1004 apply to this Section.

R9-31-1005. Collections

The provisions in A.A.C. R9-22-1005 apply to this Section except:

1. Replace the reference to "Article 2," with 9 A.A.C. 31, Article 2;
2. This Section applies to Title XXI fee-for-service and reinsurance payments.

R9-31-1006. AHCCCS Monitoring Responsibilities

With the exception of long-term care insurance, the provisions in A.A.C. R9-22-1006 apply to this Section.

R9-31-1007. Notification for Perfection, Recording, and Assignment of Title XXI liens

The provisions in A.A.C. R9-22-1007 apply to this Section.

R9-31-1008. Notification Information for Liens

The provisions in A.A.C. R9-22-1008 apply to this Section.

R9-31-1009. Notification of Health Insurance Information

The provisions in A.A.C. R9-22-1009 apply to this Section.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

- 1. Sections Affected** **Rulemaking Action**
R12-4-102 Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statutes: A.R.S. §§ 17-231(A)(1) and 17-231(B)(7)
Implementing statutes: A.R.S. §§ 17-333(B) and 41-1008
- 3. The effective date of the rule:**
May 1, 2004
- 4. A list of all the previous notices appearing in the Register addressing the rule:**
Notice of Rulemaking Docket Opening: 9 A.A.R. 475, February 14, 2003
Notice of Public Meeting on Open Rulemaking Docket: 9 A.A.R. 1432, May 9, 2003
Notice of Proposed Rulemaking: 9 A.A.R. 4173, October 3, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Mark Naugle, Rules and Risk Manager
Address:	2221 W. Greenway Rd. Phoenix, AZ 85023
Telephone:	(602) 789-3289
Fax:	(602) 789-3677
E-mail:	mnaugle@gf.state.az.us
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

For more than a century, the Kaibab Plateau has been recognized for producing exceptionally large mule deer that have been prized by hunters. Since 1930, the Arizona Game and Fish Department (Department) and U.S.D.A. Forest Service (USFS) have maintained a cooperative agreement to collect fees from deer hunters to be used to improve deer habitat on the Kaibab Plateau. Since 1960, this "administrative fee" has been collected under the authority of the Sikes Act (16 U.S.C. 670(g) through (n)). These fees are collected by the Department and transferred to the USFS, which implements the habitat improvement projects.

Procedurally, the Department collects the fees by requiring deer hunters to submit an additional \$5 when applying for the limited number of General Hunt permits through the draw process. Currently, archery hunters may also hunt deer on the Kaibab Plateau, but the number of archery tags is unlimited and hunters may purchase a tag from any license vendor rather than go through a draw. Therefore, archers have not been subject to the \$5 fee.

In 2001, the Arizona Game and Fish Commission directed the Department to seek public comment on raising the fee to \$15 and collecting the fee from archers. The Department received strong public support for these proposals. In April 2002, the Commission directed the Department to implement these changes.

Since archers do not apply through the draw, the Department would have to issue a separate "Kaibab Archery Deer Stamp" to collect the fee from archers. Under the current permit process, a hunter might receive a General Hunt permit through the draw and also purchase an archery deer tag from an outside vendor and therefore pay the "Kaibab fee" twice.

The Department proposes to implement the Commission's direction and resolve the above concern by eliminating the "administrative fee" charged to applicants in the draw and establishing a "stamp," which all deer hunters on the Kaibab Plateau will purchase for \$15 and attach to their hunting license. Therefore, the Department intends to amend R12-4-102 as follows to authorize activities established under the cooperative agreement with the USFS:

 - Amend the rule to rename the "Kaibab North Special Deer Hunting Permit" to the "Unit 12A (North Kaibab) Habitat Management Stamp."
 - Amend the rule to increase the fee from \$5 to \$15.

Notices of Final Rulemaking

- Amend the rule to remove the permit and fee from the “Administrative Fees” Section and establish a stamp under the “Stamps and Special Use Permit Fees” Section.

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

None

8. 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

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

The Department anticipates that the rulemaking will affect the agency, the United States Forest Service (USFS), hunters that pursue wildlife opportunities on the Kaibab Plateau, and local businesses in the area. The rulemaking will increase fees to hunt in Game Management Unit 12A on the Plateau, which increases costs to hunters. However, the increased fee is a long-term investment that will gradually generate more funds for improvement of wildlife habitat and the eventual improvement of wildlife opportunities. As wildlife opportunities improve, the Department anticipates that purchases of the authorizing stamp to hunt in the area will increase, as will patronage of local businesses designed to meet the needs of hunters. The Department also anticipates that the rulemaking will benefit the agency and the USFS by generating revenue for improved wildlife management. The rulemaking will not affect other political subdivisions of this state, public or private employment, nor the general fund. Because it is not supported by the general fund, the Department has determined there are no less intrusive or costly methods of achieving the purpose of the proposed rulemaking.

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

Non-substantive grammatical and verbiage changes were made as suggested by G.R.R.C. staff after courtesy review.

11. A summary of the principal comments and the agency response to them:

The Department has not received any comments related to the rulemaking.

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

None

13. Incorporations by reference and their location in the rule:

None

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rule follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

Section

R12-4-102. Fees for Licenses, Tags, Stamps, and Permits

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R12-4-102. Fees for Licenses, Tags, Stamps, and Permits

Persons purchasing the licenses, tags, stamps, or permits listed in this Section shall pay the prescribed fees at the time of application, or the fees prescribed by the Director under R12-4-115.

Notices of Final Rulemaking

Hunting and Fishing License Fees	
Class A, General Fishing License	
• Resident	\$18.00
• Nonresident	\$51.50
Pursuant to A.R.S. § 17-333(A)(1), the fee for this license issued in November or December of the year for which the license is valid is half price; that includes half of the surcharge prescribed as authorized by A.R.S. § 17-345.	
Class B, Four-month Fishing License	
• Nonresident	\$37.50
Class C, Five-day Fishing License	
• Nonresident	\$26.00
Class D, One-day Fishing License	
• Resident or Nonresident	\$12.50
Class E, Colorado River Only Fishing License	
• Nonresident	\$42.50
Class F, Combination Hunting and Fishing License	
• Resident Adult	\$44.00
• Nonresident Adult	\$177.50
• Resident or Nonresident Youth. Fee applies before and through the calendar year of the applicant's 20th birthday.	\$25.50
Class G, General Hunting License	
• Resident	\$25.50
• Nonresident	\$113.50
Class H, Three-day Hunting License	
• Nonresident	\$51.50
• Resident Youth Group Two-day Fishing License	\$25.00
Class U, Urban Fishing License	
• Resident or Nonresident	\$16.00
Hunt Permit-tag Fees	
Antelope	
• Resident	\$59.50
• Nonresident	\$299.50
Bear	
• Resident	\$13.00
• Nonresident	\$183.00
Bighorn Sheep	
• Resident	\$179.50
• Nonresident	\$915.00
Buffalo	

Notices of Final Rulemaking

• Adult Bulls or Any Buffalo	
• Resident	\$750.00
• Nonresident	\$3,750.00
• Adult Cows	
• Resident	\$450.00
• Nonresident	\$2,250.00
• Yearling	
• Resident	\$240.00
• Nonresident	\$1,200.00
• Yearling or Cow	
• Resident	\$450.00
• Nonresident	\$2,250.00
Deer and Archery Deer	
• Resident	\$17.50
• Nonresident	\$108.50
Elk	
• Resident	\$71.50
• Nonresident	\$366.00
Javelina and Archery Javelina	
• Resident	\$11.00
• Nonresident	\$63.00
Mountain Lion	
• Resident	\$13.00
• Nonresident	\$183.00
Turkey and Archery Turkey	
• Resident	\$10.00
• Nonresident	\$50.50
Sandhill Crane	
• Resident or Nonresident	\$5.00
Nonpermit-tag and Restricted Nonpermit-tag Fees	
Antelope	
• Resident	\$59.50
• Nonresident	\$299.50
Bear	
• Resident	\$13.00
• Nonresident	\$183.00
Bighorn Sheep	
• Resident	\$179.50
• Nonresident	\$915.00
Buffalo	
• Adult Bulls or Any Buffalo	
• Resident	\$750.00
• Nonresident	\$3,750.00
• Adult Cows	
• Resident	\$450.00
• Nonresident	\$2,250.00

Notices of Final Rulemaking

• Yearling	
• Resident	\$240.00
• Nonresident	\$1,200.00
• Yearling or Cow	
• Resident	\$450.00
• Nonresident	\$2,250.00
Deer and Archery Deer	
• Resident	\$17.50
• Nonresident	\$108.50
Elk	
• Resident	\$71.50
• Nonresident	\$366.00
Javelina and Archery Javelina	
• Resident	\$11.00
• Nonresident	\$63.00
Mountain Lion	
• Resident	\$13.00
• Nonresident	\$183.00
Turkey and Archery Turkey	
• Resident	\$10.00
• Nonresident	\$50.50
Stamps and Special Use Permit Fees	
Arizona Colorado River Special Use Permit Stamp. For use by California fishing licensees, resident or nonresident.	\$3.00
Arizona Colorado River Special Use Permit Stamp. For use by Nevada fishing licensees, resident or nonresident.	\$3.00
Arizona Lake Powell Stamp. For use by resident Utah licensees.	\$3.00
Bobcat Permit Tag. For resident or nonresident.	\$2.00
State Waterfowl Stamp. Validates resident or nonresident Class F, G, or H license for ducks, geese, and swans.	\$7.50
State Migratory Bird Stamp, as prescribed in A.R.S. § 17-333.03. Resident or nonresident.	\$3.00
Trout Stamp. When affixed to the back of the license, validates Class A license for trout.	
• Resident	\$10.50
• Nonresident	\$49.50
Two-Pole Stamp. When affixed to the back of a Class A, B, C, D, E, F. Pioneer or Urban fishing license, allows simultaneous fishing as defined in R12-4-101.	\$4.00
<u>Unit 12A (North Kaibab) Habitat Management Stamp, resident or nonresident.</u>	<u>\$15.00</u>

Notices of Final Rulemaking

Other License Fees	
Falconer License	\$75.00
Field Trial License	\$5.00
Fur Dealer's License	\$100.00
Guide License	
• Resident or Nonresident	\$100.00
License Dealer's License	\$75.00
Minnow Dealer's License	\$30.00
Private Game Farm License	\$40.00
Shooting Preserve License	\$100.00
Taxidermist License	\$50.00
Trapping License	
• Resident	\$10.00
• Nonresident	\$50.00
• Resident Juvenile	\$10.00
White Amur Stocking License	\$100.00
Wildlife Hobby License	\$5.00
Zoo License	\$100.00
Administrative Fees	
Duplicate Fee. Duplicates are not issued for Trout Stamps, Arizona Colorado River Special Use Permits, Arizona Colorado River Special Use Permit Stamps, Arizona Lake Powell Stamps, State Migratory Bird Stamps, or State Waterfowl Stamps.	\$3.00
Permit Application Fee.	\$5.00
Kaibab North Special Deer Hunting Permit, resident or nonresident	\$5.00