

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 40. ARIZONA DEPARTMENT OF VETERANS' SERVICES SERVICE COMMISSION

ARIZONA STATE VETERAN HOME

PREAMBLE

1. Sections Affected

R4-40-101
Article 2
R4-40-201
R4-40-301
R4-40-302
R4-40-303
R4-40-304
R4-40-305
R4-40-306
Article 4
R4-40-401
R4-40-402
R4-40-403
R4-40-404
R4-40-501
R4-40-502
R4-40-601
Article 7
R4-40-701
R4-40-702
R4-40-703
R4-40-801
Article 9
R4-40-901
R4-40-902

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Repealed
Amend
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
Repealed
Amend
Repealed
Amend
Amend
Amend
Repealed
Repealed
Repealed
Amend
New Article
New Section
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. § 41-603

Implementing statute: A.R.S. § 41-603.01

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 9 A.A.R. 3383, August 1, 2003

Notice of Proposed Rulemaking: 10 A.A.R. 1005, March 19, 2004

4. The effective date for the rule:

September 11, 2004

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

Name: Gabriel M. Forsberg

Address: Arizona State Veteran Home
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6. An explanation of the rules, including the agency's reasons for initiating the rules:

The Arizona Veterans' Service Commission rules were originally drafted in 1995 and adopted January 2, 1996. In August 1999, the Arizona Veterans' Service Commission became the Arizona Department of Veterans' Services. The change from a commission to a department required a restructuring at the highest level of the agency. Under the commission, the agency was governed by a five-member commission appointed by and answerable to the Governor. This commission was required to hire a director who reported to the commission, and to set policy.

Amended in August 1999, A.R.S. § 41-601 through 41-604 provided for

- The veterans' service commission to become a department,
- The commission was increased to seven members to act in an advisory role,
- The director reported directly and was appointed by the Governor.

The rules must now be changed to reflect the change in the name of veterans' services throughout the rules and to amend those portions dealing with appeal processes because the director no longer reports to the commission.

Changes in the rules are desirable to update procedures to conform to long-term, skilled care industry practice. Additionally, changes are desirable to streamline procedures that have been found to be cumbersome, unnecessarily time consuming, or outdated.

The Department is also in the process of drafting new rules that set clear definitions and policies. The Department has been soliciting input from staff and interested members of the public on proposed rule changes. The new rules will provide consistency, reflect current practice standards, and conform to current rulemaking format style requirements.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on in its evaluation of or justification for the rules 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:

It is anticipated that the private sector (including small businesses) and political subdivisions will not be economically impacted. The proposed rule language changes are intended to clarify and to align the rules to current practice. The agency anticipates a minor cost savings realized through decreased recordkeeping, reporting, and approval responsibilities at the Arizona State Veteran Home (ASVH).

10. A description of the changes between the proposed rule, including supplemental notices, and final rules:

The CFR, which was previously incorporated by reference in R4-40-201, is no longer necessary, as the language from the regulation is not to be included in the revised rule. Labels were added to definitions under R4-40-101. Minor grammatical and stylistic changes were made in response to comments received from the Governor's Regulatory Review Council staff.

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

The Department did not receive any oral or written comments regarding these rules.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rules 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 40. ARIZONA DEPARTMENT OF VETERANS' SERVICES ~~SERVICE COMMISSION~~

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ARIZONA STATE VETERAN HOME

(Authority: A.R.S. § ~~32-2704~~ 41-601 et seq.)

ARTICLE 1. DEFINITIONS

Section
R4-40-101. Definitions

ARTICLE 2. ELIGIBILITY GENERAL PROVISIONS

Section
R4-40-201. General Provisions

ARTICLE 3. APPLICATION AND ADMISSION PROCESS

Section
R4-40-301. Application
R4-40-302. Application Process
R4-40-303. ~~Preadmission Requirements~~ Repealed
R4-40-304. Admission Process
R4-40-305. ~~Applicant Grievance, Hearing, and Appeal Process~~ Repealed
R4-40-306. ~~Rehearing or Review of Commission's Decisions~~ Repealed

ARTICLE 4. STANDARDS OF CARE Repealed

Section
R4-40-401. ~~Care and Treatment~~ Repealed
R4-40-402. ~~General Provisions~~ Repealed
R4-40-403. ~~Level of Care~~ Repealed
R4-40-404. ~~Level of Care or Eligibility Changes~~ Repealed

ARTICLE 5. RESIDENT SUPPORT

Section
R4-40-501. Billing
R4-40-502. ~~Payment Process~~ Repealed

ARTICLE 6. RESIDENT RESPONSIBILITIES AND CONDUCT

Section
R4-40-601. General Provisions

ARTICLE 7. INVOLUNTARY RESIDENT DISCHARGE, GRIEVANCE, HEARING, AND APPEAL PROCESS

Section
R4-40-701. Resident Discharge
R4-40-702. ~~Resident Grievance, Hearing, and Appeal Process~~ Repealed
R4-40-703. ~~Rehearing or Review of Commission's Decisions~~ Repealed

ARTICLE 8. RESIDENT TRUST FUND

Section
R4-40-801. General Provisions

ARTICLE 9. APPEAL PROCESS

Section
R4-40-901. General Provisions
R4-40-902. Rehearing or Review of Decision

ARTICLE 1. DEFINITIONS

R4-40-101. Definitions

- A. "Administrator" means the ~~individual~~ administrative officer of the Arizona State Veteran Home who is appointed by the Director and licensed by the Board of Examiners of Nursing Care Institution Administrators and Adult Care Home Managers ~~who is the chief administrative officer of ASVH.~~
- B. "Admission agreement" means ~~the~~ a document signed by an applicant or the applicant's legal representative and the

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admissions coordinator or designee that provides the permission for the applicant to receive treatment, defines the rights and responsibilities the applicant will have as a resident, and sets forth the standard of care and support the applicant will receive as a resident that outlines the responsibilities of the applicant, the applicant's legal representative, and the ASVH.

- C.** ~~“Admissions committee” means the administrator, director of nursing, veterans’ service officer, social work supervisor, and business manager of ASVH who together determine eligibility for admission and designate a level of care for each resident according to R4-40-403.~~
- C. D.** ~~“ALTCS” means the Arizona Long-term Care System defined in established at A.R.S. § 36-2931 et seq.~~
- D. E.** ~~“Applicant” means an individual who submits a written ASVH admission application a veteran, spouse, or surviving spouse who submits a written application for admission to the ASVH.~~
- F.** ~~“Assistant Administrator” means the individual who acts as the administrator in the administrator’s absence and performs other tasks as assigned by the administrator.~~
- E. G.** ~~“ASVH” means the Arizona State Veterans Veteran Home, licensed pursuant to A.R.S. § 36-401 et seq. and the rules promulgated thereunder and recognized by the VA according to 38 CFR 17.165 (September 1, 1992, edition and no later editions or amendments) which is incorporated by reference and on file with the Secretary of State.~~
- H.** ~~“Bedfast” means confined to bed or able to be out of bed for no more than 15 minutes at a time.~~
- I.** ~~“Business manager” means the individual who is responsible for managing ASVH’s finances.~~
- J.** ~~“Care plan” means a written plan of care and treatment developed by the social worker, nursing staff, and physician that states:

 1. The resident’s health problems and functional status;
 2. The treatment goals for the resident;
 3. The actions necessary to reach the goals, and
 4. The ASVH staff who is responsible for implementing each aspect of the plan.~~
- K.** ~~“Commission” means the Arizona Veterans’ Service Commission.~~
- L.** ~~“Customized medical equipment and supplies” means those adapted to a resident’s particular needs.~~
- M.** ~~“Daily charge rate” is each resident’s cost of care at ASVH for each 24-hour period, beginning at midnight.~~
- N.** ~~“Daily living activities” means bathing, dressing, using the toilet, eating, transferring in and out of a bed or chair, using a wheelchair, and ambulation with or without the assistance of medical devices.~~
- O.** ~~“Dangerous to self or others” means likely to cause serious physical harm to a resident or nonresident.~~
- E.** ~~“Director” means the Director of the Arizona Department of Veterans’ Services.~~
- G. P.** ~~“Director of nursing” means a registered nurse licensed to practice in Arizona who is responsible for the direction management and supervision of ASVH nursing care for all ASVH residents services.~~
- Q.** ~~“Disruptive behavior” means a resident’s actions that interfere with the daily activities of others, including loud arguing, verbal or physical threats, assault, and theft.~~
- R.** ~~“Grievance” means a complaint initiated in accordance with R4-40-305 or R4-40-702.~~
- H. S.** ~~“Legal representative” means an individual or entity designated by an applicant, a resident, or a court of competent jurisdiction to act as a power of attorney, guardian, or conservator of an applicant or resident, and who directs the care or management of an incapacitated applicant or resident and who provides documentation to ASVH to verify the legal representative status to make legal, financial, and medical decisions on behalf of the applicant or resident.~~
- L. T.** ~~“Medicare” means the health insurance program for the aged and disabled under Title XVIII of the Social Security Act.~~
- J. U.** ~~“Nursing services” means services as described defined in A.R.S. § 36-401(A)(28) 36-401(A)(34) and A.A.C. R9-10-905 and described by A.A.C. R9-10-906.~~
- V.** ~~“Occupational therapy” means therapy as described in A.R.S. § 32-3401(5).~~
- W.** ~~“PASARR” means a preadmission screening and annual resident review that is conducted pursuant to A.R.S. § 36-2936.~~
- X.** ~~“Physical therapy” means therapy as described in A.R.S. § 32-2001(A)(7) et seq.~~
- K. Y.** ~~“Physician” means a person licensed pursuant to under A.R.S. § 32-1401 et seq. Title 32, Chapter 13, or A.R.S. § 32-1800 et seq. Chapter 17, or a VA physician appointed under authority of 38 U.S.C. § 7402.~~
- Z.** ~~“Psychosocial behavior” means a person’s social relations, conduct, and manners based on mental and psychological factors, including level of consciousness, judgment, orientation, perception disturbances, and concerns.~~
- L. AA.** ~~“Resident” is means an individual who has been admitted to ASVH.~~
- M. BB.** ~~“Resident support charge room and board” means the dollar amount that is billed every calendar month to a resident or legal representative for the resident’s care.~~
- CC.** ~~“Respiratory care” means the practice of respiratory care as described in A.R.S. § 32-3501(5).~~
- DD.** ~~“Skilled nursing care” means nursing and health-related services that foster rehabilitation of a person who needs assistance with daily living activities, provided at a nursing facility licensed pursuant to A.R.S. § 36-401 et seq. and the rules promulgated thereunder.~~
- FF.** ~~“Speech therapy” means medically prescribed diagnosis and treatment provided by a speech therapist who has been granted a certificate of clinical competence by the American Speech and Hearing Association.~~
- N. GG.** ~~“Spouse” means an individual who entered into currently has a valid marriage contract that is valid in Arizona with a veteran at least 1 year before the veteran was admitted to ASVH.~~

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- ~~Q. HH.~~ "Surviving spouse" means an individual who had entered into a valid marriage contract that is valid in Arizona with a veteran at least 1 year before at the time of the veteran's death.
- ~~H.~~ "Therapeutic leave days" means the time that a resident is absent from ASVH, as ordered by the resident's physician, to live on a trial or therapeutic basis in a home setting.
- ~~JJ.~~ "Third-party reimbursement" means that part or all of a resident's daily charge rate and other expenses are paid by a 3rd-party payor.
- ~~P. KK.~~ "Third-party payor" means any individual, ~~entity, or program that is or may be liable to make 3rd-party reimbursements, including health insurance carrier, health maintenance organization, managed care entity, or organized health care delivery system including:~~
1. An ALTCS contract provider for a resident who is certified as eligible for ALTCS services pursuant to A.A.C. R9-28-401 et seq.,
 2. Per diem payments from the VA pursuant to 38 CFR 17.166(e), The VA,
 3. Medicare, ~~or~~
 4. A Health or long-term care insurance company, or
 5. A long-term care insurance company.
- ~~LL.~~ "Transitional living training" means a planned program that assists residents to adapt to in-home conditions by developing independent living and self-care skills.
- ~~Q. MM.~~ "VA" means the United States Department of Veterans' Veterans Affairs.
- ~~R. NN.~~ "Veteran" means an individual who:
1. ~~served~~ Served in the active United States Army, Navy, Marine Corps, Air Force, or Coast Guard and who was not dishonorably discharged or released under conditions other than dishonorable, and;
 2. Served an individual who served in the merchant marine between December 7, 1941, and July 25, 1947; or
 3. Is considered to have performed active military, naval, or air service under 38 CFR 3.7 as a civil service crew resident between December 7, 1941, and August 15, 1945.
- ~~OO.~~ "Veterans service officer" means an individual who is accredited with the VA and who provides technical assistance for veterans' benefits and files claims for those benefits on behalf of a veteran or an eligible resident of the veteran's family.

ARTICLE 2. ELIGIBILITY-GENERAL PROVISIONS

R4-40-201. Eligibility-General Provisions

- A. An applicant is eligible for admission to ASVH:
1. ~~if~~ If the applicant is a veteran, spouse, or surviving spouse who meets the requirements set forth in Article 3, and:
 1. a. Has been an Arizona resident for at least 1 year before the date of application A veteran,
 2. b. Requires skilled nursing care as determined by a physician, and A spouse, or
 3. c. Is not dangerous to self or others as determined by a physician. A surviving spouse and
 4. d. Meets the requirements specified in this Section and A.A.C. Title 4, Chapter 40, Article 3.
- B. The administrator shall ensure that the number of ASVH residents who are spouses ~~and or~~ surviving spouses admitted to ASVH shall does not be more than 25% exceed 25 percent of the total number of residents at ASVH ~~as prescribed in 38 CFR 51.210, Subsection (d) (July 1, 2003, edition and no later editions or amendments) incorporated by reference and on file with the Secretary of State.~~
- C. Veterans for whom the VA has approved reimbursement to live in a State Veterans home, in accordance with 38 CFR 17.165 and 17.166 (September 1, 1992, edition and no later editions or amendments) incorporated by reference and on file with the Secretary of State, shall be admitted to ASVH before other applicants whose applications or admission is pending. An applicant shall provide a physician's written recommendation that the applicant receive nursing services on a 24-hour per day basis.
- D. The administrator shall ensure that an applicant is admitted only if the applicant requires the services available at the ASVH and the applicant's needs do not exceed the ASVH's ability to provide services at the time of application.

ARTICLE 3. APPLICATION AND ADMISSION PROCESS

R4-40-301. Application

- A. ~~Applicants~~ An applicant or legal representative shall apply for admission to ASVH on the form provided by ASVH by submitting a completed ASVH application to the admissions coordinator. When ~~If~~ both a veteran and the veteran's spouse are applying for admission, ~~they both~~ shall file separate applications. ~~Applications~~ An application may be obtained from the Commission, VA, or ASVH at 4141 N. Third Street, Phoenix, AZ 85012, telephone number (602) 248-1550, or from the agency web site at www.azvets.com.
- B. ~~The applicant shall provide the following information on the admission application.~~ In addition to the ASVH application required under subsection (A), an applicant or legal representative shall submit the following:
1. ~~The applicant's name, street address, mailing address, and telephone number~~ Information regarding the applicant's ability to participate in daily living activities and the applicant's psychosocial behavior. The information may be provided through either of the following:

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- a. A functional questionnaire form provided by ASVH that is completed by the applicant or family member, or
 - b. The equivalent medical information provided by a health care provider;
 2. The next of kin or legal representative's name, street address, mailing address, and telephone number A completed applicant's financial information statement on a form provided by ASVH;
 3. The applicant's place and date of birth A completed physician's statement by the applicant's physician on a form provided by ASVH or equivalent medical information;
 4. The applicant's and veteran's social security numbers A copy of the veteran's discharge document from the United States military, which includes Form DD214, Form DD215, the Statement of Service issued by the National Personnel Records Center, or equivalent separation-of-service document;
 5. The applicant's marital status and gender If requested by the director of nursing, a copy of medical records that assist in determining the level of care required by the applicant. Medical records may include physician's records, nurses' notes, test results, and medication records; and
 6. The applicant's or veteran's military service information; Evidence of freedom from infectious pulmonary tuberculosis as specified by A.A.C. R9-10-908(6).
 7. The applicant's health insurance and other 3rd party payor information;
 8. The applicant's assessment of the applicant's ability to participate in daily living activities and the applicant's psycho-social behavior;
 9. The applicant's current financial resources;
 10. The applicant's medical history, current medical status, a signed statement that the applicant requires the level of skilled nursing care in accordance with R4-40-403, and that the applicant is not dangerous to self or others. The applicant shall have the applicant's physician provide this information directly to ASVH; and
 11. The applicant's or legal representative's signature.
- C.** The applicant shall submit the following to the admissions committee with the admission application:
1. A copy of the veteran's discharge document from the United States military, that may include either Form DD214, Form DD215, the Statement of Service issued by the National Personnel Records Center, or equivalent separation-of-service document;
 2. A certified copy of the applicant's marriage certificate if the applicant is a spouse or a surviving spouse;
 3. A certified copy of the applicant's birth certificate; and
 4. A certified copy of the veteran's death certificate if the applicant is a surviving spouse.

R4-40-302. Application Process

- A.** Within 10 days after the applicant has filed a complete application with ASVH, the admissions committee shall review the application and determine whether to admit the applicant. The committee shall admit applicants of a 1st-come basis, based on the date that the complete application is filed, except for applicants given admission preference pursuant to R4-40-201(C). The admissions coordinator shall determine whether an applicant is eligible for admission to ASVH under R4-40-201 by:
1. Reviewing the application.
 2. Obtaining an onsite medical assessment, if requested by the director of nursing.
 3. Obtaining approval from the director of nursing, and
 4. Consulting with the business manager.
- B.** After determining that an applicant shall be admitted, the admissions committee shall designate a level of care for the applicant pursuant to R4-40-403.
- C.** If the admissions committee is unable to determine the level of care from the application information, the applicant shall comply with a PASARR so that the committee may determine the appropriate level of care.
- D.** The administrator shall notify the applicant, in writing, within 20 days after the applicant files a complete application of the committee's decision whether to admit the applicant. In that notice, the administrator also shall notify those applicants who have been approved for admission of their designated level of care. The admissions coordinator shall notify the applicant of the decision within 30 calendar days of receiving a completed application.
- E.** Within 10 days of the mailing date of the notice from the administrator, an applicant may submit documentation to the administrator that another level of care is more appropriate. The administrator shall make the final determination of what level of care is appropriate and provide written notice of that level to the applicant within 10 days after the applicant has filed documentation to the administrator that another level of care is more appropriate.
- F.** If there is no availability for the designated level of care an appropriate bed is not available at the time of admission approval, the admissions coordinator shall place the applicant's name shall be placed on a waiting list in order by date of approval for that level on a 1st-come basis, based on the date the applicant filed a complete application. If space is available, or when space becomes available, the applicant shall be admitted to ASVH.
- G.** Applicants may not be admitted without providing updated information if more than 6 months have passed since the applicant's complete application was filed.
1. If an applicant's admission is pending and the applicant's application was filed more than 6 months before the scheduled date of admission, the admissions committee shall re-review the application to determine whether the applicant

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can currently function at the previously designated level of care.

2. The applicant shall then be admitted to the currently appropriate level of care if space is available. If space is not available, the applicant's name shall be placed on the waiting list as stated in subsection (F).

R4-40-303. Preadmission Requirements Repealed

- ~~A.~~ Before admission, an admission agreement, including the applicant's daily charge rate, shall be executed by the applicant or legal representative and ASVH.
- ~~B.~~ Before admission, the applicant or legal representative shall notify ASVH of any changes in the information provided during the application.
- ~~C.~~ If the applicant's level of care requirements may have changed, based on information provided by the applicant or legal representative, the applicant shall complete a PASARR.

R4-40-304. Admission Process

- ~~A.~~ The administrator admissions coordinator or designee shall notify the an applicant or legal representative, ~~in writing,~~ of the date and time that the applicant is to ~~may~~ be admitted to ASVH.
- ~~B.~~ Upon arrival at ASVH, ~~The~~ the applicant or legal representative shall submit to an admission interview with the administrator, during which the administrator shall review and abide by the following with the applicant or legal representative:
 1. Resident responsibilities and conduct;
 2. Resident support charge room and board, billing, and payment; and
 3. The admission agreement.
- ~~C.~~ The resident or legal representative shall complete and sign an admission agreement.

R4-40-305. Applicant Grievance, Hearing, and Appeal Process Repealed

- ~~A.~~ An applicant or legal representative who believes that any of the provisions of Articles 2 or 3 have not been applied or have been unfairly applied may file a written grievance with the administrator by mailing or hand-delivering the grievance to the administrator. The grievance shall set forth the facts that form the basis of the grievance and the requested action by ASVH.
- ~~B.~~ Within 10 days after the grievance is filed, the administrator shall contact the applicant or legal representative, by telephone or in writing, and attempt to satisfy the concerns raised in the grievance. If the grievance is satisfied, the administrator shall send a letter to the applicant or legal representative, within 20 days after the grievance is filed, documenting the satisfaction and obtain the applicant's or legal representative's signature on the letter acknowledging the satisfaction. This letter shall be kept with the grievance.
- ~~C.~~ If the grievance cannot be informally satisfied, the administrator shall notify the applicant or legal representative, in writing within 30 days after the grievance is filed, of the administrator's decision regarding the grievance.
- ~~D.~~ The applicant or legal representative may file an appeal of the administrator's decision with the Commission, in writing, within 10 days of the mailing date of the administrator's decision.
- ~~E.~~ If the Commission receives a timely filed appeal of the administrator's decision, the Commission shall file a Notice of Hearing pursuant to A.R.S. § 41-1061. At the hearing, the applicant shall be the moving party and have the burden of proof. The hearing shall be conducted pursuant to A.R.S. § 41-1061 et seq.
- ~~F.~~ The Commission shall provide written notice of its decision to the applicant or legal representative within 30 days after the hearing.

R4-40-306. Rehearing or Review of Commission's Decisions Repealed

- ~~A.~~ A party to an action before the Commission who is aggrieved by the Commission's decision may file with the Commission, not later than 20 days after the service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefore. A decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at the party's last known address.
- ~~B.~~ A motion for rehearing or review may be amended at any time before it is ruled upon by the Commission. A response may be filed within 10 days after a motion or amended motion has been filed by any other party. The Commission may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- ~~C.~~ A rehearing or review of the decision may be granted, in whole or part, for any of the following causes materially affecting the moving party's rights:
 1. Irregularity in the administrative proceedings by the Commission or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
 2. Misconduct of the Commission or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing; or
 6. That the decision is not justified by the evidence or is contrary to law.
- ~~D.~~ The Commission may affirm or modify the decision or grant a rehearing or review to all or any of the parties and on all or

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part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing or review shall specify the ground or grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters so specified.

- E. Not later than 10 days after a decision is rendered, the Commission may, on its own initiative, order a rehearing or review of its decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Commission may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds therefore.
- F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 10 days after the motion has been filed, serve opposing affidavits. This period may be extended for an additional period not exceeding 20 days by the Commission for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
- G. Once a Commission decision is final, an aggrieved party may file an application for judicial review of the decision within the time limits permitted for applications for judicial review of final agency decisions pursuant to A.R.S. § 12-901 et seq.

ARTICLE 4. STANDARDS OF CARE Repealed

R4-40-401. Care and Treatment Repealed

- A. Within 10 days of a resident's admission, the resident's care plan shall be developed based on the resident's physician's treatment orders and the resident's physical, social, and psychosocial needs. The care plan shall be in writing and include:
 - 1. Health problems and the diagnosis or diagnoses;
 - 2. Medical status measurements including vital signs, weight, height, and any laboratory findings;
 - 3. Sensory impairments and communication status;
 - 4. Physical function, including range of motion, balance, coordination, and daily living activities;
 - 5. Nutritional status, including nutritional deficiencies, food preferences, intake and output problems, and food allergies;
 - 6. Social and psychosocial status, including cultural or religious constraints, outside contacts, use of free time, interaction with other residents, and behavioral problems;
 - 7. Rehabilitation potential; and
 - 8. Discharge potential, including status of independent physical function, availability of family support, and financial resources.
- B. Each resident's progress toward care goals shall be evaluated, in writing, at least every 90 days, including:
 - 1. Whether each goal was achieved, partially achieved, or unachieved;
 - 2. The reasons for any goal being partially achieved or unachieved; and
 - 3. New health problems and new or revised goals identified, if any.
- C. ASVH staff shall immediately notify the resident's physician, in writing, of any change in the resident's condition that may require a level of care change.
- D. The certified or licensed health care professionals at ASVH shall provide care and treatment to each resident pursuant to the laws, rules, and standards in their professions.
- E. The following minimum care shall be provided to each resident, as specifically set forth in each resident's care plan:
 - 1. Speech therapy, physical therapy, occupational therapy, respiratory care, and transitional living training;
 - 2. Services and treatments that foster the rehabilitation of the resident to the highest level of functioning;
 - 3. Physical exercise to maintain or improve muscle tone, joint function, and mobility;
 - 4. Freedom from bruises, injuries, bedsores, and infections on the skin;
 - 5. Sufficient fluids to maintain hydration;
 - 6. Nutrition planned by a dietitian to achieve or maintain an ideal weight range based on age, height, gender, activity, food allergies, and medications;
 - 7. Sensory stimulation to compensate for sensory loss;
 - 8. Mental stimulation to maintain or improve intellectual function;
 - 9. Individual attention and social interaction to maintain identify and self worth;
 - 10. Encouragement and assistance in preserving family and friends support systems.
- F. The ASVH nursing staff shall provide the following minimum care to each resident:
 - 1. Care of mouth, teeth, skin, nails, hair, feet, and perineal area daily;
 - 2. Tub baths, showers, or bed baths as needed, but at least twice weekly unless otherwise documented in the resident's care plan;
 - 3. Checks at least every 2 hours of incontinent residents to keep them clean, dry, and free from odor;
 - 4. Shampoos, shaves, and haircuts to maintain a clean and neat appearance;
 - 5. Clothing cleaned and maintained in good condition;
 - 6. Soiled personal clothing stored in closed containers;
 - 7. Bed linen, including mattress pad, sheets large enough to tuck under the mattress, pillow case, bedspread, and blanket

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to ensure warmth, changed as often as necessary to assure cleanliness but at least twice a week, and, in the case of bedfast residents, changed at least daily;

8. Towel and washcloth, which is available at resident's bedside or in the bathroom in a manner that identifies which towel and washcloth belongs to which resident, changed as often as necessary to assure cleanliness but at least twice a week; and
9. Comb, supplies for dental or mouth care, drinking glass, pitcher, and soap maintained in a manner that prevents use by more than 1 resident.

R4-40-402. General Provisions Repealed

- A.** Residents shall purchase any needed customized medical equipment and supplies.
- B.** Single-occupancy rooms shall only be for residents with medical conditions requiring isolation, as ordered by the resident's physician.
- C.** A resident's bed shall be held for no more than 4 days without the resident paying a daily charge rate when the resident is admitted to a hospital, another health or medical facility, or on therapeutic leave as ordered by the resident's physician. If the resident does not pay the charges incurred, the resident may lose that space and be placed on the waiting list pursuant to R4-40-302(F).

R4-40-403. Level of Care Repealed

- A.** The amount of skilled nursing care time required to provide resident care shall be considered in determining the appropriate level of care. Consideration shall include:
 1. The ability of the resident to get in and out of bed and ambulate;
 2. The ability of the resident to perform activities of daily living;
 3. The ability of the resident to communicate and interact in the resident's environment;
 4. The ability of the resident to control bowel and bladder functions; and
 5. The complexity of prescribed medication and treatments.
- B.** Personal care level. The personal care level is appropriate only for persons who require minimum assistance with activities of daily living. A personal care resident exhibits the following characteristics:
 1. Is able to ambulate independently with or without the use of assistive devices such as a cane, walker, or wheelchair;
 2. Requires no more than stand by assistance to transfer from bed, chair, or toilet;
 3. Does not need restraints to control a behavioral or medical problem;
 4. Requires minimum assistance with bathing, dressing, and grooming;
 5. Is able to eat independently, although assistance may be needed in preparing food before eating;
 6. Is continent of bowel and bladder or requires minimum assistance in the care of an indwelling catheter or colostomy;
 7. Is able to socially interact, although there may be episodes of confusion, memory defects, impaired judgment, or agitation; minimum staff intervention is required; or
 8. Receives routine medications or treatment requiring general staff monitoring.
- C.** Class 1 care level. The Class 1 care level is appropriate only for residents who require moderate assistance with activities of daily living. A Class 1 care resident exhibits 1 or more of the following characteristics:
 1. Needs the assistance of 1 or more than 1 staff person to transfer from bed, chair, or toilet;
 2. Needs assistance in walking but is able to self-propel a wheelchair;
 3. Requires moderate assistance in bathing, grooming, dressing, and feeding;
 4. May need restraints for personal safety;
 5. Is periodically incontinent of bowel and bladder or requires care of an indwelling catheter or colostomy;
 6. Demonstrates socially acceptable behavior but may have periodic emotional or mental disturbances, including combativeness, that can be controlled by moderate staff intervention; or
 7. Receives routine medications and treatments requiring general staff monitoring.
- D.** Class 3 Care Level. Class 3 care level is appropriate for the residents who require maximum assistance with activities of living. A Class 3 care resident exhibits 1 or more of the following characteristics:
 1. Needs the assistance of more than 1 staff person to transfer from bed, chair, or toilet or is bedfast.
 2. Needs maximum assistance in walking and moving from 1 location to another;
 3. Requires maximum assistance in bathing, dressing, grooming, and feeding;
 4. Is totally incontinent of bowel and bladder;
 5. Is disoriented, confused, combative, withdrawn, or depressed; frequent staff intervention is required; or behavior may be socially unacceptable; or
 6. Requires complex medications or treatments requiring close monitoring.
- E.** When the resident's level of care borders between 2 levels of care or when the required level of care fluctuates, the Director of Nursing shall confer with the resident's physician to determine appropriate placement. The decision shall be documented in the resident's medical record.

R4-40-404. Level of Care or Eligibility Changes Repealed

- A.** If a resident no longer requires skilled nursing care, or becomes dangerous to self or others, as determined by a physician,

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the administrator shall discharge the resident from ASVH pursuant to R4-40-701.

- ~~B.~~ A resident requiring a level of care change shall be transferred to the appropriate level of care as soon as space is available.
- ~~C.~~ ASVH shall place residents requiring a level of care change in available space until space at the appropriate level of care is available.
- ~~D.~~ If a resident needs a level of care, as determined by the resident's physician, that ASVH does not offer, the resident's physician shall refer the resident to a VA medical center or another medical facility equipped to meet the resident's needs. The resident is responsible for paying any charges incurred at the other medical facility and the daily charge rate at ASVH after 4 days absence as stated in R4-40-402(C).

ARTICLE 5. RESIDENT SUPPORT

R4-40-501. Billing

- ~~A.~~ Each A resident or the resident's legal representative shall pay ASVH the daily charge rate for all services, treatments, and customized medical equipment and supplies provided to the resident that are not paid to ASVH for all services, equipment, or supplies not paid by a 3rd-party third party payor.
- ~~B.~~ A monthly resident support charge The business manager shall send a bill shall be sent to the resident or the legal representative at least 10 days before the payment due date by the 10th of each month. The bill, which is due upon receipt, requires. The bill shall state the total payment due for the upcoming month plus any past due amount and any services, treatments, and custom medical equipment and supplies not included in the daily charge rate, less any anticipated 3rd-party third-party reimbursements, credits, or refunds following:
 - 1. Resident room and board for the upcoming month;
 - 2. Any past-due amount; and
 - 3. Any services, treatment, supplies, and custom medical equipment not included in the resident room and board.
- ~~C.~~ ASVH's business manager shall credit a resident's account within 30 days of verifying that a credit or refund is due. If a resident is discharged, the business manager shall submit the amount of any refund or credit to the former resident or legal representative within 30 days of the resident's discharge. If a resident is deceased, the business manager shall submit the amount of any refund or credit to the executor or administrator of the resident's estate or legal representative within 30 days of verifying that an amount is due. If a refund or credit to the resident's account is due, the business manager shall issue the refund or credit within 30 days of the termination of care provided by ASVH.

R4-40-502. Payment Process Repealed

- ~~A.~~ The resident shall pay the resident support charge 1 month in advance, by the 1st business day of each month.
- ~~B.~~ If payment is not received by ASVH within 30 days of the due date, ASVH may discharge a resident pursuant to R4-40-701.

ARTICLE 6. RESIDENT RESPONSIBILITIES AND CONDUCT

R4-40-601. General Provisions

- ~~A.~~ The A resident or legal representative shall:
 - 1. Report any change in the resident's financial resources, or all 3rd-party payors' responsibilities including any change in third-party payors or the third-party payors' responsibility for paying to pay for the resident's care and treatment;
 - 2. Provide accurate and complete information about the resident's medical history, including previous illnesses, hospitalizations, and medications, and current physical, psychological, and mental condition;
 - 3. Report changes any change in the resident's physical, psychological, or mental condition observed while outside ASVH to the resident's physician nursing staff or the Director of Nursing director of nursing; and
 - 4. Participate in care planning, cooperate with the carrying out of the care plan, and participate in the evaluation of the care plan;
 - 5. Be considerate of the rights of other residents and treat other residents, staff, and visitors with dignity and respect;
 - 6. Avoid disruptive behavior;
 - 7.3. Respect the property of other residents, staff, and ASVH. A resident or legal representative may be held financially responsible Pay for any property damaged or destroyed by the resident.;
 - 8. Keep scheduled appointments with ASVH staff and if unable to do so, notify the staff;
 - 9. Maintain personal hygiene, clothing, and living area in a clean and neat condition, to the extent possible based on physical and mental capabilities;
 - 10. Carry Medicare Part B insurance, if eligible;
 - 11. Maintain all records regarding the resident's finances and provide all information required by ASVH to compute the resident's support charge; and
- ~~12.B.~~ If a resident has a conservator, the conservator shall submit a copy of the annual conservatorship report to ASVH within 30 days of filing the report with the Superior Court.
- ~~B.C.~~ The A resident shall not:
 - 1. Use or possess Consume an alcoholic beverages or illegal substances on ASVH premises beverage except in a desig-

- nated area and with a physician's order,
2. Possess firearms or weapons Use or possess a firearm on ASVH premises;
 3. Smoke in an ASVH building; or
 4. Use or possess an illegal drug or substance on ASVH premises; or
 - 4.5. Engage in disruptive behavior Take any action that poses a risk to the health, safety, or welfare of self or others at the ASVH.

ARTICLE 7. INVOLUNTARY RESIDENT DISCHARGE, GRIEVANCE, HEARING, AND APPEAL PROCESS

R4-40-701. Involuntary Resident Discharge

- A. The administrator may discharge a resident for:
1. Loss of eligibility to reside at ASVH pursuant to specified in R4-40-201,
 2. Failure to pay the resident support charge pursuant to bill specified in R4-40-502 R4-40-501,
 3. Failure to comply with resident responsibilities pursuant to specified in R4-40-601.
- B. ~~Before ordering the discharge of a resident, the administrator shall have a staff member meet with the resident or legal representative about the alleged grounds for discharge. The staff member shall submit a written report to the administrator detailing the outcome of the meeting.~~
- ~~C. If the report concludes that the alleged grounds for discharge no longer warrant discharge, the matter shall be closed.~~
- ~~D. If the report concludes, and the administrator agrees, that the grounds reason for discharge are is substantiated and warrant warrants the resident's discharge, the administrator shall notify the resident or legal representative, in writing, at least 30 days before the effective date of discharge of the reasons reason for and effective date of the discharge. If the administrator determines that a resident is a danger to self or others or an immediate transfer or discharge is required by the resident's urgent care medical needs, the 30-day written notice is waived and the administrator shall discharge the resident immediately. A written notice by the Director, Arizona Veterans' Service Commission, to a resident or legal representative may be made as soon as practicable but at least 10 days prior to a resident's transfer or discharge when:~~
1. ~~The safety of individuals in the facility would be endangered,~~
 2. ~~The health of individuals in the facility would be endangered,~~
 3. ~~The resident's health improves sufficiently to allow a more immediate transfer or discharge, or~~
 4. ~~An immediate transfer or discharge is required by the resident's urgent care medical needs.~~
- ~~C. A resident who is discharged involuntarily or legal representative may appeal under A.R.S. Title 41, Chapter 6, Article 10 and Article 9 of these rules.~~
- ~~E.D. A resident who has been is discharged shall may be readmitted to ASVH only when the admissions committee determines that the grounds for the discharge are not likely to recur. The discharged resident's application for readmission shall be in accordance comply with the applicable portions of R4-40-201, R4-40-301 R4-40-302, R4-40-303, and R4-40-304.~~

R4-40-702. Resident Grievance, Hearing, and Appeal Process Repealed

- ~~A. A resident or legal representative who believes that any of the provisions of Articles 4, 5, 6, 7, or 8 have not been applied or have been unfairly applied may file a written grievance with the administrator by mailing or hand-delivering the grievance to the administrator. A grievance shall contain a statement of the grievance and the requested action.~~
1. ~~A grievance filed regarding a resident's discharge shall be filed within 10 days of the mailing date of the notice that states the effective date of the discharge; and~~
 2. ~~A grievance filed pursuant to subsection (A)(1) stays the effective date of the resident's discharge until the grievance is satisfied, the administrator makes a decision regarding the grievance, or the matter is a final administrative decision pursuant to A.R.S. § 12-901(2), whichever is later.~~
- ~~B. Within 5 days of the grievance being filed, the administrator shall assign a social worker to discuss the grievance with the resident or legal representative. Within 10 days of the grievance being filed with the administrator, the social worker shall investigate the matter, meet with the resident or legal representative, and attempt to resolve the grievance.~~
- ~~C. If the grievance is satisfied, the administrator shall send a letter to the resident or legal representative, within 20 days of the grievance being filed, documenting the satisfaction. The administrator shall obtain the resident's or legal representative's signature on the letter acknowledging the satisfaction and keep this letter with the grievance.~~
1. ~~If the satisfaction is that the resident no longer disputes being discharged, the resident shall be discharged on a date agreed to in the letter of satisfaction between the administrator and the resident or legal representative, not to exceed 10 days from the date of the satisfaction letter.~~
 2. ~~If the satisfaction is that the discharge is no longer warranted, the letter of satisfaction shall state the reasons therefore and the pending discharge matter shall be closed.~~
- ~~D. If the grievance cannot be informally satisfied, the administrator shall notify the resident or legal representative, in writing within 30 days of the grievance being filed, of the administrator's decision regarding the grievance.~~
- ~~E. The resident or legal representative may file an appeal of the administrator's decision as set forth in R4-40-305(D). If an appeal is filed, the Commission shall proceed and a hearing shall be held as set forth in R4-40-305(E) and (F).~~

R4-40-703. Rehearing or Review of Commission's Decisions Repealed

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~~A rehearing or review of a Commission decision shall be in accordance with R4-40-306.~~

ARTICLE 8. RESIDENT TRUST FUND

R4-40-801. General Provisions

- A. ~~If a resident or legal representative has requests that ASVH manage the resident's finances, a written authorization shall be executed by ASVH's business manager and the resident or legal representative shall complete and sign a resident trust fund agreement provided by ASVH.~~
- ~~1. The resident or legal representative's written consent may be withdrawn at any time.~~
 - ~~2. ASVH's managing of a resident's finances shall not be a condition of admission to or continued residence at ASVH.~~
- B. ~~ASVH shall maintain an interest-bearing account, which is separate from any of the ASVH operating accounts, with a federally insured bank for each resident for whom ASVH manages finances residents' trust funds. The ASVH shall deposit the personal funds of each resident into the interest-bearing account and credit all interest earned by each resident's trust fund to the individual resident's trust fund account.~~
- ~~1. The administrator or business manager shall keep written receipts of each resident's deposits, withdrawals, and expenditures.~~
 - ~~2. The administrator or business manager shall provide the resident or legal representative with a monthly statement accurately reflecting deposits, withdrawals, disbursements, interest, and current balances.~~
 - ~~3. Residents' finances and funds shall be kept separate from each others' and from ASVH's.~~
 - ~~4. All funds that have been entrusted to ASVH, less any amount owed for resident support or costs of care, shall be returned to the resident or legal representative within 30 days of the resident's discharge or the demand from the resident or legal representative, whichever is sooner. The administrators or business manager shall obtain a signed receipt from the resident or legal representative acknowledging that the resident's funds have been properly returned.~~
 - ~~5. Within 30 days of a resident's death, all funds, less any amount owed for resident support or costs of care, and a resident's valuables that have been entrusted to ASVH shall be returned to the legal representative or to the executor or administrator of the resident's estate.~~

ARTICLE 9. APPEAL PROCESS

R4-40-901. Hearings

- A. Within 30 days after receiving a notice of a denial of eligibility for admission or an involuntary discharge, an applicant or resident may file a notice of appeal under A.R.S. §41-1092.03 with the ASVH administrator. The notice shall identify the applicant or resident, the applicant's or resident's address, and the action being appealed, and contain a concise statement of the reason for the appeal.
- B. The hearing shall be conducted by the Office of Administrative Hearings as specified in A.R.S. Title 41, Chapter 6, Article 10.

R4-40-902. Rehearing or Review of Decision

- A. Under A.R.S. § 41-1092.09, the ASVH Director may grant a rehearing or review of decision.
- B. Rehearing or review of decision is granted for any one of the following reasons that materially affect the requesting party's rights:
1. Irregularity in the proceedings of a hearing that deprived the requesting party of a fair hearing;
 2. Misconduct of the judge;
 3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 4. The decision is the result of passion or prejudice; or
 5. The decision is not supported by the evidence or is contrary to law.
- C. Within 30 days after a decision is rendered, the Director may, on the Director's own initiative, order a rehearing or review of a decision for any reason for which a rehearing on motion of a party might have been granted. The order granting the rehearing shall specify the grounds for the review of the decision.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 7. DEPARTMENT OF HEALTH SERVICES
CHILDREN'S REHABILITATIVE SERVICES**

PREAMBLE

1. Sections Affected

Rulemaking Action

Notices of Final Rulemaking

Article 7
R9-7-701

New Article
New Section

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

Authorizing statutes: A.R.S. §§ 36-104(3), 36-132(A)(1), and 36-136(F)

Implementing statute: A.R.S. § 36-261

3. The effective date of the rules:

July 13, 2004

The Department is requesting an immediate effective date pursuant to § A.R.S. 41-1032(A)(4). Rules for the Children's Rehabilitative Services program in 9 A.A.C. Articles 1 through 6, were approved by the Governor's Regulatory Review Council and effective February 3, 2004, without a process for CRS member appeals. Article 7 in this rulemaking package includes the CRS member appeals process that sets forth the procedures and requirements for filing an appeal. Making clear, concise information about filing an appeal available provides a benefit to the public and a penalty is not associated with a violation of the rule.

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

Notice of Rulemaking Docket Opening: 9 A.A.R. 3522, August 8, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 4274, October 10, 2003

Notice of Supplemental Proposed Rulemaking: 10 A.A.R. 1188, April 2, 2004

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

Name: Kathleen Phillips, Rules Administrator

Address: Department of Health Services
1740 W. Adams, Suite 202
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax number: (602) 364-1150

E-mail: kphilli@hs.state.az.us

or

Name: Cathryn Echeverria, Office Chief

Address: Department of Health Services
Bureau of Community & Family Health Services
Office of Children with Special Health Care Needs
150 N. 18th Ave., Suite 330
Phoenix, AZ 85007

Telephone: (602) 542-2584

Fax: (602) 542-2589

E-mail: cecheve@hs.state.az.us

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

Arizona Administrative Code, Title 9, Chapter 7, Department of Health Services, Children's Rehabilitative Services was adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1991, Ch. 140 § 4, and was effective June 30, 1992. The rules did not reflect current Department policy or current practice and the Department allowed the rules to expire on August 31, 2002. The Department made new rules consistent with current Department policy and current practice and submitted a Notice of Proposed Rulemaking that included Title 9, Chapter 7, Articles 1 through 7. The Notice of Proposed Rulemaking was published in the *Arizona Administrative Register* on October 10, 2003. An oral proceeding was held on November 17, 2003, and a Notice of Final Rulemaking was submitted to the Governor's Regulatory Review Council for review. Because an issue involving the statutory authority for the grievance and appeal process in Article 7 could not be resolved before the G.R.R.C. meeting deadline, the Department requested that Article 7 be held. The remainder of the rules, 9 A.A.C. 7 Articles 1 through 6, were approved by the Governor's Regulatory Review Council at its February 3, 2004 meeting. The Department has resolved the issue and the rules in Article 7 eliminate the grievance process at the regional contractor's level.

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

The Department did not review any study relevant to the rules.

Notices of Final Rulemaking

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:

Cost/benefit analysis

Annual costs/revenue changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000 in additional costs or revenues.

Cost Bearers

Department

The rules will change the current process for CRS member grievances and appeals. CRS members will no longer submit grievances to the regional contractors, but will submit appeals directly to the Department for review. The Department estimates that CRS members will submit 36-40 appeals with the Department on an annual basis, which will cause a minimal to moderate increase in processing costs for the Department.

Beneficiaries

CRS members

A CRS member will experience a minimal to moderate decrease in processing time for an appeal. The CRS member will no longer be required to submit a grievance to a regional contractor but will be able to submit an appeal directly to the Department.

Regional contractor

A regional contractor will experience a minimal to moderate decrease in staff time to process grievances and benefit from the deletion of the grievance process at the regional contractor's level.

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

Minor technical and grammatical changes were made.

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

The Department did not receive any comments.

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:

Not applicable

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

No

15. The full text of the changes follows:

TITLE 9. HEALTH SERVICES

CHAPTER 7. DEPARTMENT OF HEALTH SERVICES

CHILDREN'S REHABILITATIVE SERVICES

ARTICLE 7. ~~EXPIRED~~ MEMBER APPEALS

Section

R9-7-701. ~~Expired Member Appeals~~

ARTICLE 7. ~~EXPIRED~~ MEMBER APPEALS

R9-7-701. ~~Expired Member Appeals~~

A. For purposes of this Article, "appeal":

1. Means a written expression of dissatisfaction with a regional contractor's intended decision not to provide a covered service to a member that is submitted to the Department by the member or, if the member is a minor, the member's parent; or

2. For a member who has Title XIX or Title XXI health care insurance, has the same meaning as in A.A.C. R9-34-202.

B. If a member has Title XIX or Title XXI health care insurance, the member and the Department shall comply with the requirements for an appeal in A.A.C. Title 9, Chapter 34, Article 2.

C. If a member does not have Title XIX or Title XXI health care insurance, the member shall comply with the requirements for an appeal in this Article.

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- D. If a member or, if the member is a minor, the member's parent, does not submit an appeal within 60 days from the date of a regional contractor's intended decision, the intended decision becomes final.
- E. To submit an appeal of a regional contractor's intended decision not to provide covered services, a member shall submit to the Department, no later than 60 calendar days from the date of the intended decision that is the subject of the appeal, a written notice containing:
 - 1. The name of the member.
 - 2. The address of the member.
 - 3. The factual basis for the appeal, and
 - 4. The relief requested.
- F. The Department shall provide a member or, if the member is a minor, the member's parent with written notification regarding an appeal within 30 days from the date of receiving the appeal as follows.
 - 1. If the Department determines that additional documentation or information is necessary to make a decision, the Department shall provide a written notice to the member requesting that the member provide the additional documentation or information within 14 calendar days after the date of the request.
 - a. If the member submits the requested additional documentation or information in subsection (F)(1) within 14 calendar days from the date of the Department's request, the Department shall, within 14 calendar days from the date of receiving the requested additional documentation or information, provide notice to the member according to subsection (F)(2) or (F)(3).
 - b. If the member does not submit the requested additional documentation or information within 14 calendar days from the date of the Department's request, the Department shall consider the appeal withdrawn.
 - 2. If the Department determines that the regional contractor's intended decision does not comply with A.R.S. Title 36, Chapter 2, Article 3 or this Chapter, the Department shall reverse the intended decision and provide written notice of the Department's decision to the member and the regional contractor.
 - 3. If the Department determines that the regional contractor's intended decision complies with A.R.S. Title 36, Chapter 2, Article 3 and this Chapter, the Department shall provide a written notice of the Department's decision to the:
 - a. Member that complies with A.R.S. § 41-1092, and
 - b. Regional contractor of the Department's decision.
- G. A member may request a hearing on the Department's decision according to A.R.S. § 41-1092.03.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 16. DEPARTMENT OF HEALTH SERVICES
OCCUPATIONAL LICENSING**

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|------------------------------------|---------------------------------|
| R9-16-401 | Amend |
| R9-16-402 | Amend |
| R9-16-403 | Renumber |
| R9-16-403 | New Section |
| R9-16-404 | Renumber |
| R9-16-404 | Amend |
| R9-16-405 | Renumber |
| R9-16-405 | New Section |
| R9-16-406 | Renumber |
| R9-16-407 | Renumber |
| R9-16-407 | Amend |
| R9-16-408 | Renumber |
| R9-16-408 | Amend |
| R9-16-409 | Renumber |
| R9-16-409 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
 - Authorizing statute: A.R.S. § 36-136(F)
 - Implementing statute: A.R.S. § 36-136.01
 - 3. The effective date of the rules:**
 - September 11, 2004

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4. A list of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 9 A.A.R. 4671, October 31, 2003
Notice of Proposed Rulemaking: 10 A.A.R. 1024, March 19, 2004

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

Name: Kathleen Phillips, Rules Administrator

Address: Department of Health Services
1740 W. Adams, Suite 202
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: kphilli@hs.state.az.us

or

Name: Don Herrington, Office Chief

Address: Office of Environmental Health
Department of Health Services
150 N. 18th Ave., Suite 430
Phoenix, AZ 85007

Telephone: (602) 364-3142

Fax: (602) 364-3146

E-mail: dherrin@hs.state.az.us

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

Arizona Administrative Code, Title 9, Chapter 16 provides requirements and procedures for the registration of sanitarians. Laws 2003, Ch. 21, effective September 18, 2003, amended the statutory authority for registration of sanitarians by adding a continuing education requirement and provisions for allowing the Sanitarians' Council to waive the examination requirement for an individual who is registered, certified, or licensed as a sanitarian in another jurisdiction. The Department is amending the rules to be consistent with the statutory authority.

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

The Department did not review any study related to this rulemaking package.

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:

Annual costs/revenues are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000.

Cost bearers

- The Department will bear the moderate to substantial costs of reviewing, tracking, and approving continuing education and continuing education deferrals.
- County health departments may choose to bear minimal to moderate costs for providing continuing education to the registered sanitarians employed by a county health department.
- Registered sanitarians may bear a minimal cost of obtaining continuing education although continuing education is available from several sources for no cost.

Beneficiaries

- County health departments will experience a minimal to moderate benefit because they will be able to draw from an increased labor pool, resulting in a reduction of recruitment expenditures.
- Applicants for registration as a sanitarian who are registered, certified, or licensed in another jurisdiction can waive the examination requirement and will experience a minimal to moderate benefit because county health departments can hire an applicant in those situations much sooner.
- Registered sanitarians who are ill or on active military duty will experience a minimal to moderate benefit because they can defer continuing education. If a registered sanitarian is not allowed to defer required continuing education,

Notices of Final Rulemaking

the registered sanitarian’s registration would expire or the renewal application would be denied and the sanitarian would be required to complete the initial application process before functioning as a registered sanitarian.

- Individuals patronizing food establishments, children’s camps, campgrounds, motels, hotels, tourist courts, trailer coach parks, public toilet facilities, public schools, and public and semi-public swimming pools will experience a minimal to moderate benefit because registered sanitarians who acquire continuing education will be more aware of and able to respond to current issues in public health and safety during the inspection process.

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

Outdated references to current statutes and rules were corrected and minor style and grammatical changes were made. Additionally, unchanged subsections not listed in the Notice of Proposed Rulemaking are now listed with the words “No change.”

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

Comment	Agency Response
One written comment and one individual at the oral proceeding stated that sufficient notice had not been given to sanitarians regarding the rule changes.	As required by the Administrative Procedure Act, a Notice of Rulemaking Docket Opening was filed with the Office of the Secretary of State and published in the <i>Arizona Administrative Register</i> on October 31, 2003. A Notice of Proposed Rulemaking was filed with the Office of the Secretary of State and published in the <i>Arizona Administrative Register</i> on March 19, 2004. Additionally, the rule changes were discussed at the Arizona County Directors of Environmental Health Services Association meetings on March 24, 2004 and October 22, 2003. The County Directors supervise approximately 90% of the registered sanitarians in the state. The rule changes were also discussed at the Sanitarians’ Council meetings on March 5, 2004 and in December 2003.
One written comment claimed the “proposed rules make no mention of the continuing education component of registration renewal as outlined in the statutes. Nor does it suggest a mechanism by which these are to be demonstrated to the Council, or by which the Council will make a determination about what kinds of continuing education will qualify.”	The continuing education component of registration renewal in A.R.S. § 36-136.01 is clearly required in R9-16-405. Instructions for demonstrating completion of continuing education to the Sanitarians’ Council are clearly stated in R9-16-404(3). The kinds of continuing education that qualify are described in R9-16-401(6).
One written comment stated that R9-16-401 “defines applicants to include those persons seeking renewal of current registration as well as first-time applicants. The rules then go on to describe in section 402 all the materials an ‘applicant’ must submit, e.g. transcripts, etc. It does not stipulate that these only apply to applicants seeking registration for the first time, and presumably do not apply to ‘applicants’ who are merely renewing annual registration. Nor does it specify whether the requirements would apply to individuals who allow their AZ registration to lapse.”	The Department believes there is no confusion regarding the meaning of “applicant” in R9-16-402. R9-16-402(C) includes the phrase, “an applicant <i>for the sanitarian examination...</i> ” to clarify the exact meaning of “applicant” [emphasis added]. Annual registration renewal and what happens to individuals who allow their Arizona registration to lapse is clearly stated in R9-16-404.
One written comment and one individual at the oral proceeding stated that the rules make no mention of reciprocity for sanitarians registered in other jurisdictions.	The issue of reciprocity is clearly stated in R9-16-403(1). The Department does not specifically use the term “reciprocity” because it is not used in statute (A.R.S. § 36-136.01(C)) and to use the term might create more confusion.

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<p>One individual at the oral proceeding asked why the rules (R9-16-405) require 12 hours of continuing education when A.R.S. § 36-136.01(D) requires “at least ten hours.”</p>	<p>The Department has determined that 12 hours of continuing education is an appropriate number of hours to ensure that a registered sanitarian is aware of and able to respond to current issues in public health and safety during the inspection process. This requirement is consistent with the National Environmental Health Association standards for Registered Sanitarian credential maintenance. The Department estimates that 2 more hours will cause a minimal economic burden on affected individuals because continuing education is available from several sources for minimal to no cost.</p>
<p>One individual at the oral proceeding asked why there is no carry-over of continuing education from one calendar year to the next.</p>	<p>The Department lacks statutory authority for carry-over in the rules. A.R.S. § 36-136.01(D) states, for registration renewal, continuing education must be completed “during the previous twelve months.”</p>

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:

Not applicable

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 16. DEPARTMENT OF HEALTH SERVICES
OCCUPATIONAL LICENSING**

ARTICLE 4. REGISTRATION OF SANITARIANS

Section

- R9-16-401. Definitions
- R9-16-402. Sanitarian Examination ~~and Registration~~
- R9-16-403. Sanitarian Registration
- ~~R9-16-403-R9-16-404.~~Annual Registration Renewal
- R9-16-405. Continuing Education
- ~~R9-16-404-R9-16-406.~~Change of Name or Address
- ~~R9-16-405-R9-16-407.~~Time-frames
- ~~R9-16-408. Repealed~~
- ~~R9-16-406-R9-16-408.~~Authority of a Registered Sanitarian
- ~~R9-16-409. Repealed~~
- ~~R9-16-407-R9-16-409.~~Denial, Suspension, or Revocation

ARTICLE 4. REGISTRATION OF SANITARIANS

R9-16-401. Definitions

No change

1. No change
 - a. No change
 - b. No change
 - c. No change
2. No change
3. No change
4. No change
5. No change
6. “Continuing education” means a course, seminar, lecture, conference, workshop, or programmed learning activity related to employment as a registered sanitarian.

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- 6-7. No change
- 7-8. No change
- 8-9. No change
- 9-10. No change
- 10-11. No change
- 11-12. "Practice of a registered sanitarian" means acting under the authority of ~~R9-16-406(A)~~ R9-16-408(A).
- 12-13. No change
- 13-14. No change
- 14-15. No change

R9-16-402. Sanitarian Examination and Registration

- A. No change
- B. An applicant meeting any one of the requirements in ~~A.R.S. § 36-136.01(F)~~ A.R.S. § 36-136.01(I) may sit for the sanitarian examination.
- C. At least seven days before a Council meeting, an applicant for the sanitarian examination shall:
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. If applying under ~~A.R.S. § 36-136.01(F)(1)~~ A.R.S. § 36-136.01(I)(1) on the basis of the applicant's employment by a public health agency or private industry in a position directly related to environmental health:
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - e. If applying under ~~A.R.S. § 36-136.01(F)(2)~~ A.R.S. § 36-136.01(I)(2) on the basis of military duty:
 - i. No change
 - ii. No change
 - iii. No change
 - f. If applying under ~~A.R.S. § 36-136.01(F)(3)~~ A.R.S. § 36-136.01(I)(3) on the basis of education in natural science:
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - g. No change
 - i. No change
 - ii. No change
 - iii. No change
 - h. No change
 - i. No change
 - ii. No change
 - iii. No change
 - i. No change
 - i. No change
 - ii. No change
 - iii. No change
 - j. No change
 - k. No change
 - l. No change
 - 2. If applying under ~~A.R.S. § 36-136.01(F)(1)~~ A.R.S. § 36-136.01(I)(1), arrange to have a letter provided directly to the Council from each individual who supervised the applicant identifying the dates the individual supervised the applicant, ~~for totaling~~ at least five years of employment directly related to environmental health;
 - 3. If applying under ~~A.R.S. § 36-136.01(F)(2)~~ A.R.S. § 36-136.01(I)(2), arrange to have a letter provided directly to the Council from each individual who supervised the applicant identifying the dates the individual supervised the applicant, ~~for totaling~~ at least five years of full-time military duty in environmental health;
 - 4. If applying under ~~A.R.S. § 36-136.01(F)(3)~~ A.R.S. § 36-136.01(I)(3), arrange to have an official college or university transcript provided directly to the Council from each college or university; and
 - 5. Submit the application fee in ~~A.R.S. § 36-136.01(C)~~ A.R.S. § 36-136.01(F).
- D. After receiving the written notice of approval in ~~R9-16-405(C)(1)(b)~~ R9-16-407(C)(1)(b), an applicant shall submit to the Council, at least 30 days before the scheduled date of a sanitarian examination, a nonrefundable examination fee of \$110

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payable to the Treasurer of the state of Arizona.

- E. No change
- F. No change
 - 1. No change
 - 2. No change
 - a. No change
 - b. No change

R9-16-403. Sanitarian Registration

An applicant for registration as a sanitarian shall submit to the Council the application form, information, and application fee in R9-16-402 and:

- 1. If the applicant is registered, certified, or licensed as a sanitarian in another jurisdiction:
 - a. Submit to the Council:
 - i. A copy of the applicant's sanitarian registration, certification, or licensure from the other jurisdiction;
 - ii. A copy of the examination requirements for registration, certification, or licensure in the other jurisdiction;
 - iii. The name of the testing company that provided the sanitarian examination the applicant passed to be registered, certified, or licensed in the other jurisdiction; and
 - iv. Documentation of a score of 70% or more by the applicant on the other jurisdiction's sanitarian examination;
or
- 2. If the applicant is not registered, certified, or licensed as a sanitarian in another jurisdiction:
 - a. Be approved to take the sanitarian examination.
 - b. Take and pass the sanitarian examination in R9-16-402 with a score of 70% or more, and
 - c. Submit to the Council the examination fee in R9-16-402(D).

~~R9-16-403~~R9-16-404. Annual Registration Renewal

A. Except as provided in subsection (B), a registered sanitarian shall submit an application packet for registration renewal on or before December 31st of each year that includes:

- 1. No change
- 2. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - c. No change
- 3. Documentation of:
 - a. The continuing education required in R9-16-405(A) or (E) including for each continuing education:
 - i. A description of the continuing education's content.
 - ii. The name of the person providing the continuing education.
 - iii. The number of hours the sanitarian participated in the continuing education, and
 - iv. The date the continuing education was completed; or
 - b. A request for deferring continuing education and applicable documentation required in R9-16-405(C);

~~3-4.~~ The fee required in A.R.S. § 36-136.01(C) A.R.S. § 36-136.01(F); and

~~4-5.~~ No change

B. A registered sanitarian who does not submit an application packet for renewal registration by December 31 has a grace period until February 15 to submit the ~~applicant~~ application packet. If the registered sanitarian does not submit the application packet for renewal registration in subsection ~~(C)~~ (A) during the grace period:

- 1. No change
- 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change

R9-16-405. Continuing Education

A. Except as provided in subsections (B) and (C), a registered sanitarian shall obtain 12 hours of continuing education in each calendar year for renewal of registration.

B. A registered sanitarian who has been registered for less than 12 months is not required to obtain continuing education for

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renewal of registration.

- C. A registered sanitarian may submit, with a renewal application, a request to defer the 12 hours of continuing education for renewal of registration that includes written documentation of the registered sanitarian's illness or active military duty for at least six months of the preceding 12 months that prevented the registered sanitarian from completing the continuing education requirement.
- D. The Council shall approve a registered sanitarian's request for a deferral of the continuing education requirement if the request includes the documentation required in subsection (C).
- E. A registered sanitarian who has had the continuing education requirement deferred in a calendar year shall obtain:
 - 1. The 12 deferred hours of continuing education by the end of the subsequent calendar year, and
 - 2. The 12 hours of continuing education required in subsection (A) for the calendar year.

~~R9-16-404~~R9-16-406. Change of Name or Address

- A. No change
- B. No change

~~R9-16-405~~R9-16-407. Time-frames

- A. No change
- B. No change
 - 1. No change
 - a. No change
 - b. No change
 - c. For an applicant who is registered, certified, or licensed as a sanitarian in another jurisdiction, when the Council receives the application packet required in R9-16-403; or
 - ~~e.d.~~ For an applicant applying to renew the applicant's registration as a sanitarian, when the Council receives the application packet required in ~~R9-16-403~~ R9-16-404.
 - 2. If an application packet in subsection (B)(1)(a) ~~or (B)(1)(c)~~, or (B)(1)(d) is:
 - a. No change
 - i. No change
 - ii. No change
 - b. No change
 - 3. No change
 - a. No change
 - b. No change
- C. No change
 - 1. No change
 - a. No change
 - i. No change
 - ii. No change
 - b. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - 3. If an application for registration as a sanitarian in subsection (B)(1)(c):
 - a. Does not comply with the requirements in this Article, the Council shall provide a comprehensive request for additional information to the applicant and take action as follows:
 - i. If the applicant does not submit the additional information within the time specified in Table 1 or the additional information submitted by the applicant does not demonstrate compliance with this Article and A.R.S. § 36-136.01, the Council shall deny registration and provide the applicant a written notice of appealable agency action that complies with A.R.S. § 41-1092.03(A); or
 - ii. If the applicant submits the additional information within the time specified in Table 1 and the additional information submitted by the applicant demonstrates compliance with this Article and A.R.S. § 36-136.01, the Council shall issue a certificate of registration as a sanitarian to the applicant; or
 - b. Complies with the requirements in this Article and A.R.S. § 36-136.01, the Council shall issue a certificate of registration as a sanitarian to the applicant.
 - ~~3-4.~~ If an application for renewal of registration as a sanitarian in subsection ~~(B)(1)(e)~~(B)(1)(d):
 - a. No change
 - i. No change
 - ii. No change
 - b. No change

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- D. If an applicant receives a written notice of appealable agency action in subsections (C)(1)(a)(i), (C)(2)(b), ~~or (C)(3)(a)(i), or (C)(4)(a)(i)~~, the applicant may file a notice of appeal with the Department within 30 days after receiving the notice of appealable agency action. The appeal shall be conducted according to A.R.S. Title 41, Chapter 6, Article 10.
- E. If the Council grants approval to take the sanitarian examination or issues or renews a certificate of registration as a sanitarian during the administrative completeness review time-frame, the Council shall not issue a separate written notice of administrative completeness.
- F. No change
 - 1. No change
 - 2. No change
 - 3. No change
- G. No change

Table 1. Time-frames (in days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Comprehensive Written Request
Sanitarian Examination (R9-16-402)	A.R.S. § 36-136.01(B)	290 days	30 days	60 days	200 days	60 days
Registration after completing the sanitarian examination (R9-16-402) (R9-16-403)	A.R.S. § 36-136.01(B)	90 days	30 days	N/A	60 days	N/A
<u>Registration of an individual registered, certified, or licensed as a sanitarian in another jurisdiction</u> (R9-16-403)	A.R.S. § 36-136.01(C)	180	90	15	90	15
Annual Registration Renewal (R9-16-403) (R9-16-404)	A.R.S. § 36-136.01 (C) (D)	180 days	90 days	15 days	90 days	15 days

~~R9-16-408.~~ Repealed

~~R9-16-406-R9-16-408.~~ Authority of a Registered Sanitarian

- A. No change
 - 1. No change
 - 2. No change
- B. An individual who is not a registered sanitarian shall not approve or disapprove operation of a food establishment under 9 A.A.C. 8.
- C. No change

~~R9-16-409.~~ Repealed

~~R9-16-407-R9-16-409.~~ Denial, Suspension, or Revocation

- A. The Council may deny, suspend, or revoke a sanitarian’s registration if the Council determines that ~~an~~ the applicant or a registered sanitarian:
 - 1. Intentionally provided false information on an application or cheated during the sanitarian examination;
 - 2. Had an application for a registration, license, or certificate related to the practice of a registered sanitarian denied or rejected by any state or jurisdiction;
 - 3. Had a registration, license, or certificate related to the practice of a registered sanitarian suspended or revoked by any

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state or jurisdiction or entered into a consent agreement with any state or jurisdiction:

- 2-4. Pled guilty to, was convicted of, or entered into a plea of no contest to a misdemeanor resulting from employment as a registered sanitarian or a felony;
- 3-5. Assisted an individual who is not a registered sanitarian to circumvent the requirements in this Article;
- 4-6. Allowed an individual who is not a registered sanitarian to use the registered sanitarian's registration; or
- 5-7. Failed to comply with any of the requirements in A.R.S. § 36-136.01 or this Article.

- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
- C. No change
- D. No change

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

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

PREAMBLE

- 1. **Sections Affected** **Rulemaking Action**
R9-22-1003 Amend
- 2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 36-2903.01 and 36-2915
Implementing statutes: A.R.S. §§ 36-2903, 36-2903.01, 36-2915, and 36-2916
- 3. **The effective date of the rules:**
September 11, 2004.
- 4. **A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 10 A.A.R. 1397, April 9, 2004
Notice of Proposed Rulemaking: 10 A.A.R. 1425, April 16, 2004
- 5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Mariaelena Ugarte
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4580
Fax: (602) 253-9115
E-mail Address: proposedrules@ahcccs.state.az.us
- 6. **An explanation of the rule, including the agency's reasons for initiating the rule:**
AHCCCS is amending the rule to clarify payment by a contractor to a non-contracting provider.
- 7. **A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
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

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- 9. **The summary of the economic, small business, and consumer impact:**
AHCCCS anticipates minimal impact.
- 10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
No changes were made.
- 11. **A summary of the principal comments and the agency response to them:**
None
- 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 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 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

Section

R9-22-1003. Cost Avoidance

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

R9-22-1003. Cost Avoidance

- 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 or a contractor, when reimbursing a non-contracting provider, 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 non-contracting provider, and
 - 4. A member.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

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

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
R9-28-901	Amend
R9-28-911	Amend
R9-28-913	New Section
R9-28-914	New Section
R9-28-915	New Section
R9-28-916	New Section

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R9-28-917 New Section
R9-28-918 New Section
R9-28-919 New Section

2. The statutory 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, 36-2935 and 36-2915

Implementing statutes: A.R.S. §§ 36-2903, 36-2903.01, 36-2935, 36-2915, and 36-2916

3. The effective date of the rules:

September 11, 2004

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

Notice of Rulemaking Docket Opening: 10 A.A.R. 1398, April 9, 2004

Notice of Proposed Rulemaking: 10 A.A.R. 1427, April 16, 2004

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

Name: Mariaelena Ugarte

Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034

Telephone: (602) 417-4693

Fax: (602) 253-9115

E-mail Address: proposedrules@ahcccs.state.az.us

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

AHCCCS is amending and creating new rules to implement Tax Equity and Fiscal Responsibility Act (TEFRA) liens under 42 U.S.C. 1396p.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule 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. Public Consulting Group, Inc. (PCG) has provided an estimation of possible TEFRA lien-related recoveries by AHCCCS in comparison to other states that have implemented TEFRA liens.

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 define the process and implementation of TEFRA liens in the estate recovery process, and to make minor clarifications to the Undue Hardship criteria.

AHCCCS currently administers an Estate Recovery Program in conjunction with PCG, to recover Medicaid covered expenses from the estate of Arizona Long Term Care System (ALTCS) recipients age 55 and older who were residing in a nursing facility or receiving home community based services (HCBS). PCG contracts with AHCCCS and oversees the day-to-day operations of the AHCCCS Estate Recovery Program. By implementing TEFRA liens, AHCCCS will substantially increase the likelihood of recovering programmatic expenses for this ALTCS population.

Under federal law, Arizona has the option of filing TEFRA liens on real property of Medicaid members if they are determined to be permanently institutionalized (PI) and cannot return home. The TEFRA rules allow AHCCCS to place a lien on the member's real property before the death of the member. If there is an intention to sell or transfer the real property before the death of the member, the lien must be satisfied first. Implementing TEFRA liens will protect the state's interest and right of recovery against real property owned by the member at the time of application to the ALTCS program.

The increase in recovery dollars from TEFRA liens is anticipated to be an additional \$300,000 within the first year.

After the Estate Recovery Program matures the total recovery dollars are estimated to approach \$2M to \$2.5M.

The TEFRA lien process will help eliminate the possibility of a sale or transfer of real property to avoid estate recovery before the death of a member.

The TEFRA lien will secure the state's interest in the debt so that it increases the likelihood that AHCCCS will be able to recover an ALTCS covered service debt compared to seeking recovery of that debt without a lien.

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One-time expenses that AHCCCS would experience upon implementation would involve system changes, changes to the application, revising recovery brochure, training, updating manuals, and a minimal increased cost for hearings.

Providers may be moderately impacted by the possible loss of members if property is sold and the person loses eligibility.

The increase in recovery that TEFRA liens will bring to both the public and private sector will require a moderate increase in the workload, but it is not anticipated to result in changes to the number of employees required to process estate recovery operations.

Small businesses and a small number of AHCCCS providers, who meet the definition of a small business in A.R.S. § 41-1001(19) will not be impacted by the changes to the rules because their role in the recovery process is not changed.

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

#7 Preamble	Amended Preamble #7. Document in the NOFR the PCG document used to project estimated recoveries is an estimation rather than a study. (See item 11, number 1)
R9-28-901(4)	R9-28-901(4), Defined home as primary residence. (See item 11, number 2)
R9-28-901(7)	R9-28-901(7), Changed the word “lien” to “claim” for clarification.
R9-28-911(A)	R9-28-911(A) Included Title II to conform with Federal law.
R9-28-911(C)	R9-28-911(C) Clarified that personal property may be applied to satisfy a debt, even when an undue hardship waiver has been granted for recovery from the individual’s real property. (See item 11, number 4)
R9-28-913(A)	R9-28-913(A) Clarified that a lien also may be placed after the member is deceased. (See item 11, number 3)
R9-28-918(A)(3)	R9-28-918(A)(3), Referenced both Title II and XVI for conformance with federal law and since both have a medical determination for disability.
R9-28-919(2)	R9-28-919 Clarified “return home”. (See item 11, number 6)
General	AHCCCS made the rules clearer, concise, and understandable by making grammatical and structural changes throughout the rules.
General	AHCCCS made minor technical changes at the suggestion of the Governor’s Regulatory Review Council staff.

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

At the public hearing two commenters were present. The following comments were received from the two commenters representing Jackson White Attorneys at Law.

Item #	Comment	Analysis/ Recommendation
1.	Requested that an explanation be provided on how AHCCCS arrived at the estimated recovery figures. Suggested that a study be completed or used.	Preamble item #7. No study was used. However, AHCCCS will document in the NOFR the PCG document used to project estimated recoveries is an estimation rather than a study.
2.	Please provide a better definition for “real property” and “home”.	Will define home as primary residence. See R9-28-901. In the State Plan AHCCCS defined “property” as it is defined at A.R.S. § 14-1201.41. “Property” includes both real and personal property. Therefore, addition to the rule package is not necessary.

Arizona Administrative Register / Secretary of State

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3.	Section R9-28-911(A) is unclear regarding the surviving spouse.	<p>No change. R9-28-911(A) parallels federal law at 42 U.S.C.1396p(B)(2).</p> <p>However, R9-28-913(A) was changed to clarify that a lien may also be placed after the member is deceased.</p>
4.	Section R9-28-911(C) needs further clarification on how personal property is pursued. It does not clearly express its intent of what and whose personal assets are pursued.	<p>Agree. The following language was inserted in R9-28-911 (C) <u>When the estate contains personal property and real property that meet the criteria of subsection (B)(1), AHCCCS shall not grant an undue hardship waiver; however, AHCCCS shall adjust its claim to the value of the personal property.</u></p>
5.	Does federal law permit the filing of liens against life estates and beneficiary deeds given the definition of “estate”?	<p>Yes. Federal law provides that the Medicaid agency (AHCCCS) “shall seek adjustment or recover from the individual’s estate or upon the sale of the property subject to a lien imposed on account of medical assistance paid on behalf of the individual” under 42 U.S.C. 1396p(b)(1)(A). Therefore, the state is not limited to property in the deceased recipient’s estate when attempting recovery; the state can also seek recovery from real property upon which a lien was placed prior to the recipient’s death. Under federal regulations, the state may place a lien on property including “the homestead and all other...real property in which the recipient has a legal interest.” 42 CFR 433.36(b). Life estates and ownership of property subject to a beneficiary deed are both legal interests. Furthermore, under state law regarding beneficiary deeds, where the recipient is the owner, the beneficiary, by statute, takes the property subject to the lien. A.R.S. 33-405(A). Therefore, no change to the rule is necessary.</p>
6.	How will it be determined that a member has “returned home”? Will that include discharge from a nursing facility and admission to an assisted living facility?	<p>“Return home” was clarified in R9-28-919. Federal law requires that a lien be “dissolved upon that individual’s discharge from the medical institution and return home.” under 42 USC 1396p(a)(3). Federal law does not include a specific definition for the term “return home;” therefore, it is interpreted consistent with its common meaning. Discharge to a nursing facility and admission to an assisted living facility is not a “return home.” To be considered a “return home,” the member must, following a discharge from a medical institution or HCBS facility, physically reside in the home with the intention of remaining.</p>

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7.	As an alternative to imposing and recovering on liens, do not treat real estate of permanently institutionalized persons as an exempt resource.	Federal law does not permit the state to do this. The federal standards for the treatment of residential real estate differ depending on whether the issue is exclusion from resource assessment relating to eligibility or the issue is imposition or recovery on liens. A.A.C. R9-28-407(B) states that AHCCCS shall employ the SSI standards for determining resource eligibility. 20 CFR 416.1212 defines "home" as real estate in which the individual has an ownership interest and is the individual's principle place of residence. That real estate remains the individual's home (and is exempt from the resource test) so long as the individual has intent to return. In contrast, a lien cannot be placed on an individual's home unless there has been a determination that the individual cannot reasonably be expected to be discharged from the medical facility and return home. Under 42 USC 1396p(a)(1)(B)(ii), a member may have the intent to return home even though that return is unlikely. In such a circumstance, AHCCCS must still consider the home an exempt asset, but may place a lien on the home (assuming all other applicable criteria are met). No change will be made to the rule.
8.	There are fears in the community, what measures will be made to inform people that no liens will apply to the property of a well spouse?	We will incorporate TEFRA lien information into our current estate recovery processes. PCG will send notification at least 30 days prior to filing a TEFRA lien. In addition, the information will be available in a brochure; on the eligibility application; and the member or member's representative will have been verbally informed about TEFRA liens and the estate recovery program during the intake interview. No change will be made to 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. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM**

ARTICLE 9. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

Section

- R9-28-901. Definitions
- R9-28-911. Estate Recovery and Undue Hardship
- R9-28-913. TEFRA Liens-General
- R9-28-914. TEFRA Liens-Affected Members
- R9-28-915. TEFRA Liens-Prohibitions
- R9-28-916. TEFRA Liens-AHCCCS Notice of Intent
- R9-28-917. TEFRA Liens and Estate Recovery-Member's Request for a State Fair Hearing

R9-28-918. TEFRA Liens-Recovery

R9-28-919. TEFRA Liens-Release

ARTICLE 9. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

R9-28-901. Definitions

In addition to the definitions in A.R.S. §§ 36-2901 and 36-2931, 9 A.A.C. 22, Article 1, and 9 A.A.C. 28, Article 1, the following ~~definition~~ definitions apply to this Article:

1. “Consecutive days” means days following one after the other without an interruption based on discharge.
2. “Estate” has the meaning in A.R.S. § 14-1201.
3. “File” means the date that AHCCCS receives a request for a State Fair Hearing under R9-28-917, as established by a date stamp on the request or other record of receipt.
4. “Home” means property in which a member has an ownership interest and which serves as the member’s principal place of residence. This property includes the shelter in which a member resides, the land on which the shelter is located, and related outbuildings.
5. “Member” means a person eligible for AHCCCS-covered services under A.R.S. Title 36, Chapter 29, Article 2.
6. “Place” means AHCCCS recording a lien on a member’s property with the judicial system.
7. “Recover” means that AHCCCS takes action to collect from a claim.
8. “TEFRA lien” means a lien under 42 U.S.C. 1396p of the Tax Equity and Fiscal Responsibility Act of 1982.

R9-28-911. Estate Recovery and Undue Hardship

A. Any recovery of a claim by AHCCCS against a member’s estate shall be made only after the death of the member’s surviving spouse and only at a time:

1. When there exists no surviving minor child under age 21; and
2. When there exists no surviving child who receives benefits under either Title II or Title XVI of the Social Security Act because the child is blind or disabled as defined in 42 U.S.C. 1382c.

B. Undue hardship request. A member’s representative may request an undue hardship. If the member’s representative wishes to request an undue hardship, within 30 days from the receipt of the notification of AHCCCS claim against the estate the member’s representative shall submit a written statement to AHCCCS describing the factual basis for a claim that the property should be exempt from estate recovery as provided under this Section. AHCCCS shall respond to the member or member’s representative in writing within 30 days of receiving an undue hardship request, unless the parties mutually agree to a longer period of time.

A.C. AHCCCS shall waive the recovery of funds a claim against a member’s estate because of undue hardship if either any of the following situations exist:

1. ~~When estate assets include real property or both real and personal property. There is property in the estate, and the property is listed as residential property by the Arizona Department of Revenue or County Assessor’s Office, and the heir or devisee:~~

The estate consists only of real property that is listed as residential property by the Arizona Department of Revenue or County Assessor’s Office, and the heir or devisee:

- a. Owns a business that is located at the residential property; and:
 - i. The business was in operation at the residential property for at least 12 months preceding the death of the member;
 - ii. The business provides more than 50 percent of the ~~heir~~ heir’s or devisee’s livelihood; and
 - iii. The recovery of the property would result in the heir losing the ~~heir~~ heir’s or devisee’s means of livelihood; or
- b. Currently resides in the residence; and:
 - i. Resided there at the time of the member’s death,
 - ii. Made the residence his or her primary residence for the 12 months immediately ~~preceding~~ before the death of the member; and
 - iii. Owns no other residence; or

2. ~~When the~~ The estate consists only of assets contain personal property, ~~only~~; and:

- a. The heir or devisee’s annual gross income for the household size is less than 100 percent of the Federal Poverty Level (FPL). New sources of income such as employment or Social Security that may not have yet been received, ~~are shall be~~ included in determining the household’s annual gross income; and
- b. The heir or devisee does not own a home, land, or other real property.

D. When the estate consists of both personal property and real property that qualify for the undue hardship criteria at subsection (B), AHCCCS shall not grant an undue hardship waiver; however, AHCCCS shall adjust its claim to the value of the personal property.

E. Subsections (A), (B), and (C) are not applicable to TEFRA liens.

F. AHCCCS shall exempt the following income, resources, and property of Native Americans (NA) and Alaska Natives (AN) from estate recovery:

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1. Income and resources from tribal land and other resources currently held in trust and judgment funds from the Indian Claims Commission or U.S. Claims Court;
2. Ownership interest in trust or non-trust property;
3. Ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources;
4. Any other ownership interests in or property rights that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional life style according to applicable Tribal law or custom; and
5. Income left as a remainder in an estate derived from any property listed in subsection (E)(1)-(4), that was either collected by a NA, or by a Tribe or Tribal organization and distributed to a NA.

R9-28-913. TEFRA Liens-General

- A. Purpose.** The purpose of TEFRA is to allow AHCCCS to place a lien on an AHCCCS member's real property before the member is deceased or to place a lien on a deceased member's estate.
- B. Life estates and beneficiary deeds.** Except for members under R9-28-915, AHCCCS shall place a TEFRA lien on a member's real property interest held in a life estate or beneficiary deed created before or after the member's eligibility. Except for members under R9-28-918, AHCCCS shall enforce recovery against the remainder beneficiary following the member's death or upon transfer of the property.
- C. Recovery.** As provided under R9-28-918, AHCCCS shall recover a TEFRA lien under R9-28-910.

R9-28-914. TEFRA Liens-Affected Members

- A.** Except for members under R9-28-915, AHCCCS shall place a TEFRA lien against the real property of all members who are:
 1. Receiving ALTCS services,
 2. 55 years of age or older, and
 3. Permanently institutionalized.
- B.** A rebuttable presumption exists that a member is permanently institutionalized if the member has continually resided in a nursing facility, ICF/MR, or other medical institution defined in 42 CFR 435.1009 for 90 or more consecutive days. A member may rebut the presumption by providing a written opinion from a treating physician, rendered to a reasonable degree of medical certainty, that the member's condition is likely to improve to the point that the member will be discharged from the medical institution and will be capable of returning home by a date certain.

R9-28-915. TEFRA Liens-Prohibitions

AHCCCS shall not place a TEFRA lien against a member's home if one of the following individuals is lawfully residing in the member's home:

1. Member's spouse;
2. Member's child who is under the age of 21;
3. Member's child who is blind or disabled under 42 U.S.C. 1382c; or
4. Member's sibling who has an equity interest in the home and who was residing in the member's home for at least one year immediately before the date the member was admitted to the nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1009.

R9-28-916. TEFRA Liens-AHCCCS Notice of Intent

- A. Time-frame.** At least 30 days before filing a TEFRA lien, AHCCCS shall send the member or member's representative a Notice of Intent.
- B. Content of the notice of intent.** The Notice of Intent shall include the following information:
 1. A description of a TEFRA lien and the action that AHCCCS intends to take,
 2. How a TEFRA lien affects a member's property,
 3. The legal authority for filing a TEFRA lien,
 4. The time-frames and procedures involved in filing a TEFRA lien,
 5. The member's right to request a State Fair Hearing, and
 6. The process and time-frames for requesting a State Fair Hearing.
- C. Request for exemption.** A member's representative may request an exemption. To request an exemption the member or the member's representative shall submit a written statement to AHCCCS within 30 days from the receipt of the Notice of Intent describing the factual basis for a claim that the property should be exempt from placement of a TEFRA lien or from recovery of lien based on R9-28-914(B), R9-28-915 or R9-28-918. AHCCCS shall respond to the member or member's representative in writing within 30 days of receiving a request for exemption, unless the parties mutually agree to a longer period of time.

R9-28-917. TEFRA Liens and Estate Recovery-Member's Request for a State Fair Hearing

- A.** A member or member's representative may request a State Fair Hearing:
 1. Within 30 days of the receipt of AHCCCS' Notice of Intent or notification of AHCCCS' claim against the estate; or
 2. Within 30 days of receipt of a denial of a request for exemption under R9-28-916(C) or denial of a request to waive

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estate recovery because of undue hardship under R9-28-911(B).

- B.** Hearings regarding AHCCCS' intent to place a TEFRA lien shall be conducted under A.A.C. Title 9, Chapter 34, Article 1.

R9-28-918. TEFRA Liens-Recovery

- A.** AHCCCS shall seek to recover a TEFRA lien upon the sale or transfer of the real property subject to the lien. However, AHCCCS shall not seek to recover the TEFRA lien or attempt recovery against any real property subject to the TEFRA lien so long as the member is survived by the member's:

1. Spouse.
2. Child under the age of 21, or
3. Child who receives benefits under either Title II or Title XVI of the Social Security Act as blind or disabled, as defined under 42 U.S.C. 1382c.

- B.** AHCCCS shall not recover a TEFRA lien on an individual's home if the member is survived by:

1. A sibling of the member who currently resides in the deceased member's home and who was residing in the member's home for a period of at least one year immediately before the date of the member's admission to the nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1009; or
2. A child of the member resides in the deceased member's home who:
 - a. Was residing in the member's home for a period of at least two years immediately before the date of the member's admission to the nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1009; and
 - b. Provided care to the member, which allowed the member to reside at home rather than in an institution.

- C.** To determine whether a child of the member provided care under subsection (B)(2), AHCCCS shall require the following information:

1. Physician's statement that describes the member's physical condition and service needs for the previous two years;
2. Verification that the child actually lived in the member's home;
3. Statement from the child providing the services that describes and attests to the services provided;
4. Any statement made by the member prior to death regarding the services received; and
5. Statement from physician, friend, or relative as witness to the care provided.

R9-28-919. TEFRA Liens-Release

AHCCCS shall issue a release of a TEFRA lien within 30 days of:

1. Satisfaction of the lien; or
2. Notice that the member has been discharged from the nursing facility, ICF/MR, or other medical institution, defined under 42 CFR 435.1009, and the member has returned home and is physically residing in the home with the intention of remaining in the home. Discharge to an alternative HCBS setting defined at R9-28-101(B) does not constitute a return to the home.