

# NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

## NOTICE OF PROPOSED RULEMAKING

### TITLE 20. COMMERCE, BANKING, AND INSURANCE

#### CHAPTER 6. DEPARTMENT OF INSURANCE

[R05-130]

#### PREAMBLE

**1. Sections Affected**

R20-6-1901  
R20-6-1902  
R20-6-1903  
R20-6-1904  
R20-6-1904  
R20-6-1904  
R20-6-1905  
R20-6-1905  
R20-6-1905  
R20-6-1906  
R20-6-1906  
R20-6-1907  
R20-6-1907  
R20-6-1908  
R20-6-1908  
R20-6-1909  
R20-6-1909  
R20-6-1909  
R20-6-1910  
R20-6-1910  
R20-6-1911  
R20-6-1911  
R20-6-1912  
R20-6-1913  
R20-6-1914  
R20-6-1915  
R20-6-1916  
R20-6-1917  
R20-6-1918  
R20-6-1919  
R20-6-1920  
R20-6-1921

**Rulemaking Action**

Amend  
Amend  
Amend  
Repeal  
Re-number  
Amend  
Repeal  
Re-number  
Amend  
Re-number  
Amend  
Re-number  
Amend  
Re-number  
Amend  
New Section  
Repeal  
New Section  
Re-number  
New Section  
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. §§ 20-143, 20-1051(5), 20-1054(A)(2), 20-1078

Implementing statutes: A.R.S. §§ 20-143, 20-1051(5), 20-1054(A)(2) 20-1078

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

Notice of Rulemaking Docket Opening: 10 A.A.R. 2946, July 23, 2004

Notice of Rulemaking Docket Opening: 9 A.A.R. 2122, June 27, 2003

Notice of Rulemaking Docket Opening: 8 A.A.R. 2760, June 28, 2002

Notice of Rulemaking Docket Opening: 7 A.A.R. 2778, June 29, 2001

Notice of Exempt Rulemaking: 7 A.A.R. 2769, June 29, 2001

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

Name: Margaret McClelland  
Address: Department of Insurance  
2910 North 44th St., Second Floor  
Phoenix, AZ 85018  
Telephone: (602) 912-8456  
Fax: (602) 912-8452

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

A.R.S. § 20-1054 (A)(2) provides for issuance of a certificate of authority to an HCSO if the director is satisfied that "The health care services organization [shall constitute] an appropriate mechanism to achieve an effective health care plan pursuant to this Title and any rule that is adopted by the director." An adequate network is one component of an appropriate mechanism to achieve an effective health care plan. The Department proposes rules to establish the standards that HCSOs must meet in order for the Director to determine that an HCSO has an adequate network.

In 2000, the Arizona legislature passed S.B. 1330. Under S.B. 1330, effective July 1, 2001, regulatory authority over health care services organizations (HCSOs), previously bifurcated between the Arizona Department of Health Services (DHS) and the Arizona Department of Insurance (ADOI), became consolidated under ADOI. The consolidated regulatory structure brought new responsibilities to ADOI, including new rulemaking responsibilities and authority to file temporary exempt rules. The HCSO rules in effect at the time, AAC §§ R9-12-101 to R9-12-116, had been promulgated by DHS in 1973 and never amended.

Effective July 1, 2001, the Department adopted temporary exempt rules. The text of these rules was very similar to the text of rules originally promulgated by DHS in A.A.C. R9-12-101 through R9-12-116. The purpose of the temporary rules was to assure the Department had the authority to enforce the extant regulatory standards while proceeding with the complex task of the first revision in 30 years. The Department made technical changes in the temporary rules to substitute references to the Department for references to DHS and comply with current rulewriting standards. The Department also modified the rules as needed to reflect changes in certain statutory requirements or definitions.

In 2001, the Department convened a rulemaking advisory group made up of stakeholders including consumers, HCSOs, and providers from around the state of Arizona. The Department has held more than 20 meetings, including several teleconferences, in Phoenix, Tucson and Prescott to discuss informal drafts of the rulemaking. The Department has provided numerous opportunities to the stakeholder groups for comment on informal drafts, has distributed meeting minutes and comparison drafts between meetings and has made many revisions to the draft rules in response to stakeholder input. The stakeholder participation has been crucial to the Department in understanding and addressing network adequacy issues. The proposed rules are the result of the iterative process between the Department and stakeholders

The Department has addressed only the issue of network adequacy in this rulemaking. There are other important factors that go into deciding whether an HCSO constitutes an appropriate mechanism to achieve an effective health care plan. Early on, however, stakeholders helped the Department to define and prioritize rulemaking topics, with network adequacy at the top of the list. Stakeholders and the Department agreed that quality assurance and other issues were very important but less pressing than network adequacy. A.A.C. R20-6-1911 in the current rule (Section A.A.C. R20-6-1908 in the proposed rule) specifically addresses quality assurance. In deference to the priorities established with the stakeholder group, the Department has made technical and grammatical to make the rule more clear, concise and understandable, but not substantive changes to proposed R20-6-1908. The Department will address the substance of quality assurance and other topics in a future rulemaking with stakeholder input on that issue.

Unless stated otherwise in the rules every reference to "services" or "care" means covered services as defined in the rule. Every reference to "process" means an effective process as defined in the rule.

**Specific Section-By-Section Explanation of This Proposal**

R20-6-1901 explains to whom and to what this Article applies.

R20-6-1902 contains definitions applicable to this Article.

R20-6-1903 requires that HCSO certain documents and information be in writing and readily available for inspection.

R20-6-1904 contains requirements for the HCSO's health care plan.

R20-6-1905 contains the requirements for the HCSO's geographic area.

R20-6-1906 contains the requirements for the HCSO CEO.

R20-6-1907 contains the requirements for the HCSO medical director.

R20-6-1908 contains the requirements for HCSO quality assurance.

R20-6-1909 requires the HCSO to have an effective process to evaluate the adequacy of its network

R20-6-1910 requires the HCSO to have effective processes for referral, prior authorization, pre-certification and handling network exceptions.

R20-6-1911 requires the HCSO to have an effective process for communicating with contracted providers.

R20-6-1912 contains requirements for HCSO network directories.

R20-6-1913 requires HCSOs to report certain demographic information to the Department.

R20-6-1914 requires HCSOs to provide a certain level of enrollee access to services or appointments.

R20-6-1915 permits HCSO to use alternative methods to provide enrollee access to specified services.

R20-6-1916 requires HCSOs to maintain establish and maintain provider-to-enrollee ratios.

R20-6-1917 requires HCSOs to meet distance or travel-time standards in urban areas.

R20-6-1918 requires HCSOs to meet distance or travel-time standards in suburban areas.

R20-6-1919 requires HCSOs to HCSOs to meet distance or travel-time standards in rural areas.

R20-6-1920 permits HCSOs to require enrollees to travel in-area to obtain covered services and requires HCSOs to reimburse enrollees for out-of-area travel expenses.

R20-6-1921 Establishes factors the Department will consider in determining enforcement action or penalties.

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

None

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

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

The consumers impacted by this rulemaking are HCSO members (members), employers that obtain health care coverage from HCSOs (employers), and health care providers. The new network adequacy provisions of these rules will provide protections to members and employers and improve member access to health care services. The updated, realistic network adequacy standards and standardized HCSO communications and processes will benefit and provide protections for health care providers and the members they serve.

The Department does not anticipate any direct increase in costs for members or health care providers as a result of these rules. The rules are minimal standards and should cause little disruption to current HCSO operations. The Department does not anticipate increased costs to HCSOs, but if there are increased costs, they should be minimal. It is possible that HCSOs could pass along those minimal increased costs to employers and enrollees.

Two kinds of small businesses may be indirectly impacted by this rule. First, many physicians or other health care practitioners with small private practices are small businesses. The impact on those small businesses will be essentially the same as the impact on the health care provider as a consumer.

Second, some small businesses purchase health care coverage for their employees from HCSOs. To the extent these rules may increase costs somewhat for HCSOs, the HCSOs may also increase premiums for the small businesses. The impact on the small business employers will be the same as the impact on HCSO enrollees in general.

The Department is not aware of small businesses that will be directly impacted by this rule, therefore, the Department does not believe it is necessary to reduce the impact on small businesses.

There will be a minimal economic impact on the Department, the Secretary of State and the Governor's Regulatory Review Council for costs associated with the rulemaking process.

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

Name: Margaret McClelland  
Address: Department of Insurance  
2910 N. 44th St., 2nd Floor  
Phoenix, AZ 85018

Notices of Proposed Rulemaking

Telephone: (602) 912-8456

Fax: (602) 912-8452

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

ADOI will hold oral proceedings to receive public comments in accordance with A.R.S. § 41-1023 as follows:

Monday, May 23, 2005

11:00 a.m.

Arizona State Office Building  
400 W. Congress St., Room 158  
Tucson, AZ 85701

Tuesday, May 24, 2005

10:00 a.m.

Department of Insurance  
Third Floor Training Room  
2910 N. 44th St.  
Phoenix, AZ 85018

Wednesday, May 25, 2005

6:00 p.m.

Department of Insurance  
Third Floor Training Room  
2910 N. 44th St.  
Phoenix, AZ 85018

Thursday, May 26, 2005

12:00 p.m.

City of Flagstaff Main Library  
300 W. Aspen Ave.  
Public meeting room  
Flagstaff, AZ 86001

ADOI will accept written comments that are received by 5:00 p.m. on Friday, June 3, 2005, or which are postmarked by that date. The comment period will end and the record will close at 5:00 p.m. on Friday, June 3, 2005.

ADOI is committed to complying with the Americans with Disabilities Act. If any individual with a disability needs any type of accommodation, please contact ADOI at least 72 hours before the hearing.

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

Not applicable

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

Not applicable

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

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 19. HEALTH CARE SERVICES ORGANIZATIONS OVERSIGHT

Section

R20-6-1901. Applicability

R20-6-1902. Definitions

R20-6-1903. Documentation

~~R20-6-1904. Service Agreements~~

~~R20-6-1905. Examination and Review~~

~~R20-6-1906~~ R20-6-1904. Health Care Plan

~~R20-6-1907~~ R20-6-1905. Geographic Area

~~R20-6-1908~~ R20-6-1906. Chief Executive Officer

~~R20-6-1909~~ R20-6-1907. Medical Director

~~R20-6-1910.~~ Medical Records

~~R20-6-1911~~ R20-6-1908. Quality Assurance

<u>R20-6-1909.</u>	<u>Evaluation of Network</u>
<u>R20-6-1910.</u>	<u>Process for Referral, Prior Authorization, Pre-certification, or Network Exceptions</u>
<u>R20-6-1911.</u>	<u>HCSO Communication with Providers</u>
<u>R20-6-1912.</u>	<u>Network Directories</u>
<u>R20-6-1913.</u>	<u>Demographic Information Reports</u>
<u>R20-6-1914.</u>	<u>Access</u>
<u>R20-6-1915.</u>	<u>Alternative Access</u>
<u>R20-6-1916.</u>	<u>Availability Ratios</u>
<u>R20-6-1917.</u>	<u>Geographic Availability in an Urban Area</u>
<u>R20-6-1918.</u>	<u>Geographic Availability in a Suburban Area</u>
<u>R20-6-1919.</u>	<u>Geographic Availability in a Rural Area</u>
<u>R20-6-1920.</u>	<u>Travel Requirements</u>
<u>R20-6-1921.</u>	<u>Enforcement Consideration</u>

**ARTICLE 19. HEALTH CARE SERVICES ORGANIZATIONS OVERSIGHT**

**R20-6-1901. Applicability**

- A. ~~These rules apply~~ This Article applies to:
1. All proposed and existing health care services organizations (HCSOs); and
  2. Each product offered by an HCSO under the HCSO's certificate of authority.
- B. The Department shall not issue a certificate of authority to an HCSO unless the HCSO meets the requirements of this Article.
- C. An existing HCSO ~~shall not be~~ is not required to re-file ~~all~~ information already on file with the Department, but ~~if~~ the HCSO shall modify its operations and procedures as may be necessary to comply with this Article and file all additional information necessary to make statements complete and current.
- D. Sections R20-6-1916 through R20-6-1920 apply to inpatient emergency care, but do not apply to emergency services.
- E. This Article applies only to covered services.

**R20-6-1902. Definitions**

In this Article the following definitions apply:

"Access" or "accessibility" means the extent to which an enrollee can obtain timely covered services from a contracted provider at the appropriate level of care, appropriate time, and appropriate location.

"Adult" means an enrollee in the age group the HCSO has designated for an adult.

"Adult PCP" means a primary care provider practicing in any specialty the HCSO designates as adult primary care.

"Ancillary provider" means a provider of laboratory, radiology, pharmacy or rehabilitative services, physical therapy, occupational therapy, or speech therapy, home health services, dialysis and durable medical equipment or medical supplies dispensed by order or prescription of a provider with the appropriate prescribing authority.

"Available" or "availability" means the extent to which the plan has contracted providers of the appropriate type and numbers at geographic locations to afford members access to timely covered services.

"Chief executive officer" or "CEO" means the person who has the authority and responsibility for the operation of the health care services organization according to applicable legal requirements and policies approved by the governing authority.

"Child" means an enrollee in the age group the HCSO has designated for children.

"Contracted" means a provider has a current written agreement or an employment arrangement with an HCSO to provide covered services to an enrollee, or a current written agreement or an employment arrangement with a contracted provider to provide covered services to an enrollee.

**Notices of Proposed Rulemaking**

---

“Covered” or “covered services” means the health care services described as covered benefits in the HCSO’s evidence of coverage.

“Day” means calendar day unless specified otherwise.

“Department” means the Department of Insurance.

“Effective process” means written policies and procedures that:

- a. Outline the steps that the HCSO implements and consistently follows internally.
- b. The HCSO subjects to internal quality improvement, and
- c. The HCSO communicates to providers when established or changed.

“Emergency services” has the meaning in A.R.S § 20-2801(3).

“Enrollee” means an individual who is enrolled in a health plan operated by an HCSO.

“Facility” means an institution that is licensed or authorized to furnish health care services in this state, including general hospitals, special hospitals, residential treatment centers, residential rehabilitation centers, skilled nursing facilities, urgent care centers, and ambulatory surgical treatment centers.

“Governing authority” means a person or body such as a board of trustees or board of directors in whom the ultimate authority and responsibility for the direction of the health care services organization is vested.

“HCSO” means a health care services organization.

“Health care services” has the meaning in A.R.S. § 20-1051(6).

“High profile” means one of no fewer than four specialties designated by the HCSO, but not obstetrics-gynecology. An HCSO may designate a specialty as high profile on the basis of high volume or on any reasonable basis directly related to providing covered services to a member.

“Hospital” means a facility that provides inpatient care, medical services, and continuous nursing services for the diagnosis and treatment of patients.

“Inpatient care” means covered services that an enrollee who is admitted to a hospital receives for at least 24 consecutive hours.

“Inpatient emergency care” means covered services that would be emergency services if provided in a licensed hospital emergency facility.

“License” means documented authorization issued by the appropriate state of Arizona agency to operate a facility in Arizona, or to practice a health care profession in Arizona.

“Licensed hospital emergency facility” means a licensed emergency room or emergency department.

“Medically necessary” has the meaning set forth in the HCSO’s evidence of coverage.

“Network” means the group of providers contracted with an HCSO to provide covered services to an enrollee covered under the HCSO’s health benefit plan.

“Network exception” means an enrollee receives covered services from a non-contracted provider either:

- a. Because there is no contracted provider accessible or available that can provide the enrollee timely covered services,  
or
- b. For any reason the HCSO determines it is in the enrollee’s best interests to receive care from a non-contracted provider.

“Non-contracted” means a provider that does not have a contract with an HCSO to provide services to an enrollee.

“Normal business hours” means 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding state or national holidays.

“Outpatient care” means covered services that an enrollee who is not an inpatient receives.

“Pediatric primary care provider” means a physician or practitioner practicing in any specialty the HCSO designates as pediatric primary care.

“Physician” means a licensed doctor of allopathic, chiropractic, optometric, osteopathic, or podiatric medicine.

“Practitioner” means any individual other than a physician who is licensed to furnish health care services, including behavioral health care services, in this state.

“Preventive care” means health maintenance care the HCSO provides or arranges to prevent illness and to improve the general health of an enrollee, including:

- a. Immunizations.
- b. Health education.
- c. Health supervision including evaluation and follow-up.
- d. Early disease detection.
- e. Screening tests most appropriate for a person’s age and gender, and
- f. Periodic health care examinations.

“Primary care” means ~~initial treatment or screening of enrollees~~ any specialty the HCSO designates as primary care.

“Primary care physician” means a general practitioner, family physician, internist or pediatrician.

**Notices of Proposed Rulemaking**

---

“Primary care physician” or “PCP” means a physician or practitioner practicing in a specialty the HCSO designates as primary care.

“Provider” means any physician, practitioner, ancillary provider, or facility.

“Quality improvement” means an HCSO’s system for assessing and improving the level of performance of key process and outcomes.

“Routine care” means covered primary care for an enrollee’s non-urgent, symptomatic condition.

“Rural” means a zip code area with fewer than 1,000 persons per square mile as calculated annually by a population data gathering service designated by the director.

“Service area” means any geographic area designated by any HCSO and approved by the director under A.R.S. § 20-1053(A)(11).

“Specialty care provider” or “SCP” means a physician or practitioner who has education, training, or qualifications in a specialty, other than primary care, beyond the education or qualifications required for the individual’s license.

“Specialty” or “specialty care” means a specific area of medicine practiced by a physician or practitioner who has education, training, or qualifications in that specific area of medicine in addition to the education or qualifications required for the individual’s license.

“Special hospital” means a hospital that is licensed to provide hospital services within a specific area of medicine, or limits patient admission according to age, gender, type of disease, or medical condition.

“Suburban area” means any zip code area with 1,000-3,000 persons per square mile, as calculated annually by a population data gathering service designated by the director.

“Telemedicine” means diagnostic, consultation, and treatment services that occur in the physical presence of an enrollee on a real-time basis through interactive audio, video, and data communication.

“Timely” means when medically necessary.

“Travel expenses” has the meaning set forth in writing by an HCSO.

“Urban area” means a zip code with more than 3,000 persons per square mile as calculated annually by a population data gathering service designated by the director.

“Urgent care” means unscheduled services for an enrollee’s condition that requires medical attention not amenable to scheduling in order to avoid a serious risk of harm.

**R20-6-1903. Documentation**

The chief executive officer (CEO) ~~CEO~~ shall ensure that the HCSO's policies, procedures, plans, class specifications, orders, reports, minutes of meetings, contracts, agreements, records, and duty schedules are in writing, compiled and indexed in one or more manuals, and readily available for inspection by the Director.

**~~R20-6-1904. Service Agreements~~**

The HCSO shall have a written service agreement with each primary care physician who provides services on a continuing basis, except for HCSO employees that specifies the terms and conditions for services provided to the HCSO.

**~~R20-6-1905. Examination and Review~~**

The Director may inspect an HCSO facility and the facility of any primary care physician with whom the HCSO contracts for services.

**~~R20-6-1906~~ R20-6-1904. Health Care Plan**

- A. The applicant shall submit a statement to the Department that describes the proposed health care plan, ~~facilities, and personnel.~~
- B. The HCSO shall have an organized system for the delivery of health care services contained in subsection ~~(F)~~ (D) of this Section that includes the following:
  1. ~~Physicians, registered nurses and other professional and technical personnel who~~ Contracted providers that provide services under the plan;
  2. ~~Procedure that promotes~~ An effective process to promote a continuing relationship between an enrollee and the same primary care physician PCP; and
  3. ~~A procedure for~~ An effective process for referrals that ensures continuity of care to enrollees an enrollee.
- C. The HCSO shall list:
  1. The proposed or actual enrollment;
  2. The number and names of ~~physicians~~ contracted, employed, or owned providers that will serve the enrollees and the board eligibility or certification of each physician, if any applicable; and
  3. ~~The number and type of support staff that will serve enrollees;~~ and
  4. ~~The plan for providing specialty medical~~ covered services to enrollees as required under this Article.
- ~~D.~~ All care provided by the HCSO, whether provided by its own personnel or on a contract basis, shall be by a licensed:
  1. ~~Practitioner of the healing arts;~~
  2. ~~Health care institution;~~ or
  3. ~~Clinical laboratory.~~
- E. The health care services described in subsections ~~(E)(1), (2), (3), and (6)~~ of this Section ~~(E)(1) through (E)(3) and (E)(6)~~ shall be provided seven days per week, and 24 hours per day.
- ~~F.~~ D. The health care plan shall provide, within the geographic area served, ~~at least~~ the following basic health care services ~~that shall be covered by the monthly charges set forth~~ in the evidence of coverage:
  1. Emergency care that includes emergency services and inpatient emergency care defined in A.R.S. § 20-2801(3);
  2. Inpatient ~~general hospital~~ care;
  3. ~~Physician care~~ Specialty care, primary care, or ancillary care that includes necessary include diagnostic and therapeutic services provided by a person who has a current, and valid Arizona license to practice medicine and surgery;
  4. Outpatient care; ~~that includes preventive, diagnostic, and therapeutic services, including primary care, furnished by, or under the direction of, a physician, laboratory, or radiology services. Primary care may include services provided by the following:~~
    - a. A physician's assistant who has a current and valid registration under the applicable provisions of A.R.S. Title 32, Chapters 13, 17 and 25, to provide patient services as specified in the job description or approved program; or
    - b. A registered nurse certified by the Arizona State Board of Nursing, to function in specialty areas under A.R.S. § 32-1601(B)(6).
  5. Health maintenance care designed to prevent illness and to improve the general health of enrollees, offered when medically necessary or indicated that shall include the following:
    - a. Immunizations;
    - b. Health education; and
    - c. Periodic health examinations, excluding certified health examinations for insurance qualification, school attendance, and employment. The periodic examinations shall include screening for vision and hearing and shall be offered when medically necessary or indicated, and on at least on the following schedule:
      - i. Enrollees aged 0 – 1 year — 1 exam every 4 months
      - ii. 2 – 5 years — 1 exam every year
      - iii. 6 – 40 years — 1 exam every 5 years
      - iv. 41 – 50 years — 1 exam every 3 years
      - v. 51 – 60 years — 1 exam every 2 years

Notices of Proposed Rulemaking

vi. 61 years and over -- 1 exam every year

vii. A medical history and health examination offered to each new enrollee within 12 months after enrollment.

5. Preventive care; and

6. Emergency ambulance services under A.R.S. § 20-2801(2), and other ambulance services when approved by a plan physician.

~~G.E.~~ The HCSO shall provide appropriate coverage for out-of-area emergency care to ~~enrollees when~~ an enrollee traveling outside the area served by the HCSO.

~~R20-6-1907~~ **R20-6-1905. Geographic Area**

~~A.~~ The applicant shall submit a statement that describes the geographic area in which it will provide services that are reasonably convenient to prospective enrollees.

1. The applicant shall attach a map to the statement that describes the boundaries of the proposed geographic area and the location of each facility in which primary care will be provided under the plan; and

2. The applicant shall describe the proposed geographic area in at least one of the following ways:

a. Legal description;

b. Local governmental jurisdiction such as city or county;

c. Census tracts;

d. Street boundaries; or

e. Area within a specified radius of a specified intersection, or a specified primary care center.

~~A.~~ The applicant shall describe the proposed geographic area in at least one of the following ways:

1. Legal description.

2. Local governmental jurisdiction such as city or county;

3. Census tracts.

4. Street boundaries, or

5. Area within a specified radius of a specified intersection or a specified primary care center.

~~B.~~ The applicant shall submit a map that shows the boundaries for the proposed geographic area.

~~C.~~ An applicant shall submit a description of the proposed network including the data required under R20-6-1913(A)(2) and (A)(3).

~~B.D.~~ All advertising matter and sales material provided to a prospective ~~enrollees~~ enrollee shall include a description of the geographic area in terms readily understandable by the general public.

~~R20-6-1908~~ **R20-6-1906. Chief Executive Officer**

A. The governing authority shall appoint a CEO who ~~shall have~~ has appropriate education and experience to manage the HCSO. The governing authority shall define the authority and duties of the CEO in writing. The CEO ~~shall be~~ is the appointed representative of the governing authority and ~~shall be~~ is the executive officer of the HCSO.

B. The CEO shall have at least the following duties and responsibilities:

1. Management of the HCSO;

2. Establish and implement policies, ~~and~~ procedures, ~~and~~ effective processes of the HCSO;

3. Act as liaison between the governing authority and the providers of healthcare and other services to the HCSO; and

4. Establish a written plan of authority that will be in place in the CEO's absence.

C. When there is a change of CEO, the governing authority shall notify Department within 10 days after the effective date of change.

D. The HCSO shall ~~assure~~ ensure that all HCSO employees and ~~health practitioners covered by service agreements contracted providers~~ are knowledgeable about and qualified to perform the duties assigned to them through employment or by contract.

E. The HCSO shall designate a central place of business within the major geographic area served at which the CEO shall be based and from which the HCSO shall direct administrative activities.

~~R20-6-1909~~ **R20-6-1907. Medical Director**

A. The HCSO shall designate a physician as medical director.

B. The medical director shall be responsible for planning and implementing the method for the continuing review and evaluation of health care provided by the HCSO and the continuing education of its providers of health care services. The medical director may also serve as the CEO; if the medical director has appropriate education and experience to manage the HCSO.

C. The medical director's responsibilities shall include:

1. Supervision of medical staff;

2. Performance planning and evaluation of staff;

3. Coordination of activities of medical staff; and

4. Development of medical care policies.

**R20-6-1910: Medical Records**

- ~~A.~~ The HCSO shall maintain a medical record system that is capable of readily providing necessary information and assures continuity of enrollee care.
- ~~B.~~ The HCSO shall maintain a centralized medical record in accordance with acceptable professional standards. The record shall include records that detail all symptoms presented, diagnoses made and medical treatment the HCSO provided to each enrollee during the term of enrollment. This requirement applies to all HCSO services provided to enrollees, whether provided by employees of the HCSO or non-employees at the request of the HCSO.
- ~~C.~~ The HCSO shall designate a person to be generally responsible for administration of records.
- ~~D.~~ The HCSO shall ensure that medical records are kept confidential and that only authorized personnel shall have access to the records.
- ~~E.~~ Medical records shall not be removed from the premises where they are filed, except by subpoena, court order, or written permission or request of the patient who is the subject of the records. The HCSO may route the record, including X ray film, to practitioners of the healing arts for consultation or evaluation.
- ~~F.~~ Under A.R.S. § 20-1058(D) and A.R.S. § 20-1064, the HCSO shall make records available for review by the Director or representatives of the Director. During routine surveys, the Department representatives shall review medical records of the HCSO on a random sample basis or upon complaint or special investigations, specific medical records may be reviewed.
- ~~G.~~ The HCSO shall ensure that complete records are preserved for at least 10 years. If the enrollee is a minor, the record shall be maintained for at least two years after the enrollee has reached majority.
- ~~H.~~ If an enrollee discontinues enrollment in the HCSO, the HCSO shall furnish, to the enrollee, upon written request, a written summary covering all pertinent phases of health care provided during enrollment. The summary shall include a copy of pertinent reports and results of diagnostic tests that might be used for comparative purposes, a record of immunizations and the last periodic health examination to another provider of health care services, as specified by the enrollee. This summary shall be furnished within 30 days after the enrollee requests disenrollment. The HCSO may charge a reasonable fee for the summary, based upon the cost of providing it.

~~R20-6-1911~~ **R20-6-1908, Quality Assurance**

- ~~A.~~ The HCSO shall ~~provide an effective method~~ have an effective process for a continuing review and evaluation of the ~~health care provided~~ covered services it provides to enrollees to ensure that treatment and level of ~~care were~~ covered services are appropriate and adequate; and that the quality of health care provided ~~met~~ meets acceptable standards; ~~and that corrective action occurred or will occur, if indicated.~~
- ~~B.~~ The HCSO shall have a quality assurance committee that includes at least the ~~chief executive officer, CEO or designee, the medical director, practitioners of the healing arts, and allied health professionals and providers.~~ Services performed by practitioners of the healing arts shall be reviewed and evaluated by colleagues within their disciplines. The committee shall adopt administrative procedures covering frequency of meetings, types of records to be kept, and arrangements for committee reports and dissemination of the reports. The quality assurance committee shall:
  - 1. Arrange for physicians or practitioners to review and evaluate covered services provided by others physicians or practitioners within their disciplines.
  - 2. Adopt administrative procedures covering frequency of meetings, types of records to be kept, and arrangements for committee reports and dissemination of the reports.
- ~~C.~~ The HCSO shall ~~have a quality assurance that includes procedures to be used for each of~~ effective process for quality assurance shall include the following:
  - 1. Establishment of standards ~~Standards~~ for health care;
  - 2. Monitoring of care ~~provided~~;
  - 3. Analysis of any problems ~~identified~~;
  - 4. Correction of deficiencies including a time ~~Correcting a deficiency including a schedule for correction~~ correcting the deficiency and a link to a where appropriate, continuing education program for the provider; and
  - 5. Follow-up and periodic reassessment of the ~~plan~~ deficiency.

**R20-6-1909. Evaluation of Network**

Each HCSO shall have an effective process to evaluate the adequacy of its network to provide an enrollee with timely covered services.

**R20-6-1910. Process for Referral, Prior Authorization, Pre-certification, or Network Exceptions**

- A. An HCSO shall have an effective process for assisting an enrollee to obtain timely covered services when an enrollee or enrollee's referring provider cannot find a contracted provider who is timely accessible or available.
- B. An HCSO shall have an effective process during normal business hours for handling referrals, prior authorizations, pre-certifications, or network exceptions necessary for timely routine care. This process may include the HCSO's procedure for standing referrals required in A.R.S. § 20-1057.01.

Notices of Proposed Rulemaking

- C. Each HCSO shall have an effective process seven days a week to handle referrals or network exceptions necessary for timely urgent care.
- D. An HCSO that requires prior authorization or precertification for urgent care shall have an effective process 24 hours a day, 7 days a week, to handle requests for prior authorization or precertification.
- E. An HCSO shall have an effective process for handling network exceptions that ensures the HCSO reimburses an enrollee for any cost the enrollee incurs that the enrollee would not have incurred if the enrollee had received the services in-network.

**R20-6-1911. HCSO Communication with Providers**

An HCSO shall have an effective process for communicating with contracted providers regarding the following:

- 1. The providers in the network.
- 2. Contractual or administrative changes relating to access or availability, and
- 3. HCSO procedures for handling claims and grievances submitted by providers.

**R20-6-1912. Network Directories**

A. An HCSO shall publish a provider network directory as follows:

- 1. Lists the name, address, telephone number, specialty, and hospital affiliation for all in-area contracted physicians or practitioners;
- 2. An HCSO may list ancillary providers by corporate or group name and is not required to list individual physicians or practitioners.
- 3. An HCSO is not required to list physicians or practitioners in the following areas of specialties or areas of practice:
  - a. Emergency medicine;
  - b. Anesthesiology, except anesthesiologists who provide pain management services;
  - c. Hospital-based pathology;
  - d. Hospital-based radiology; and
  - e. Hospitalists.
- 4. An HCSO that lists any of the physicians or practitioners in subsection R20-6-1916(A)(2)(a) through (A)(2)(e) may do so by corporate or group name and is not required to list individual physicians or practitioners.
- 5. An HCSO that uses hospitalists is not required to list the hospital affiliations of PCPs that do not admit or attend hospitalized members.

B. An HCSO shall publish a network directory that lists all its contracted facilities and contains:

- 1. The name, address, and telephone number of each facility;
- 2. For each hospital at which the HCSO uses hospitalists, if any, a statement that the HCSO uses hospitalists at that hospital;
- 3. For an HCSO that uses hospitalists and does not list them in the directory, information on how an enrollee can find out what hospitalists or group of hospitalists it uses at each hospital;

C. The network directory shall conspicuously state in the directory the following:

- 1. Changes occur in the network after the directory is published and some providers listed in the directory may no longer be contracted;
- 2. Enrollee coverage may depend on the contract status of the provider;
- 3. Where the enrollee can obtain more recent directory information;
- 4. The effective date of the network directory; and
- 5. The method for an enrollee or prospective enrollee to find out which PCPs are accepting new enrollees from the HCSO.

D. Each HCSO shall make its network directory available on paper to enrollees or prospective enrollees requesting it. The HCSO shall:

- 1. Publish the paper directory at least once a year;
- 2. Update or supplement the information in the paper directory at least every six months;
- 3. Explain in the paper directory how a an enrollee or prospective enrollee can use or get assistance using the HCSO's online or telephone directories, if any; and
- 4. Not be required to list physicians' or practitioners' hospital affiliations in its paper directory.

E. Each HCSO that has an online network directory shall:

- 1. Update the online directory at least monthly;
- 2. Make the online directory easy to use and user friendly; and
- 3. Explain, in the online directory, how an enrollee or prospective enrollee can obtain a paper directory.

**R20-6-1913. Demographic Information Reports**

A. An HCSO shall report the following data to the Department:

- 1. For each enrollee, report annually:
  - a. Street address,

Notices of Proposed Rulemaking

- b. Zip code.
  - c. Gender, and
  - d. Year of birth.
  - 2. For all contracted providers report semi-annually:
    - a. Provider name.
    - b. Street address or addresses at which the provider provides covered services.
    - c. Zip code, and
    - d. Arizona license number.
  - 3. For all contracted physicians or practitioners:
    - a. Specialty, and
    - b. Medical or other applicable degree or information that designates the type of physician or practitioner.
- B.** The HCSO shall report the information in subsection (A) to the Department by the following deadlines:
- 1. For information in subsection (A)(1) as of December 31 of each calendar year, by February 15 of the next calendar year.
  - 2. For information in subsection (A)(2) as of June 30, by August 15 of the same calendar year.
  - 3. For information in subsection (A)(2) as of December 31, by February 15 of the next calendar year.

**R20-6-1914. Access**

An HCSO shall provide to or arrange for its enrollees services or appointments for services as follows:

- 1. For preventive care services from a contracted PCP, an appointment date that is within 60 days of the enrollee's request, or sooner if necessary for the member to be immunized on schedule.
- 2. For routine care services from a contracted PCP, an appointment date that is within 15 days of the enrollee's request to the PCP or sooner if medically necessary.
- 3. For specialty care services from a contracted SCP, an appointment date that is within 60 days of the enrollee's request or sooner if medically necessary.
- 4. In-area urgent care services from a contracted provider seven days per week.
- 5. Timely, non-emergency, inpatient services from a contracted facility.
- 6. Timely services from a contracted physician or practitioner in a contracted facility including inpatient emergency care.
- 7. Services from a contracted ancillary provider during normal business hours, or sooner if medically necessary.

**R20-6-1915. Alternative Access**

- A.** As an alternative to providing access to covered services from a physician, an HCSO may provide access to covered services from an appropriately licensed practitioner.
- B.** As an alternative to providing access to covered services at a hospital, an HCSO may provide access to covered services at another appropriately licensed facility.
- C.** As an alternative to providing access to covered services from a physician or practitioner who sees an enrollee in person, an HCSO may provide access to necessary covered services through:
  - 1. Telephone calls and messages.
  - 2. Electronic mail.
  - 3. Communication with the physician's or practitioner's staff.
  - 4. Coverage by another physician or practitioner, or
  - 5. Telemedicine.
- D.** An HCSO that panels enrollees to PCPs may, as an alternative to paneling members to physicians, panel members to appropriately licensed practitioners.

**R20-6-1916. Availability Ratios**

- A.** Each HCSO shall maintain a ratio of contracted adult PCPs to adults that is adequate to provide those adults with covered services. An HCSO with a Medicare Advantage (MA) plan may have one ratio for its insured and MA populations, or a separate ratio for each.
- B.** Each HCSO shall maintain a ratio of contracted pediatric PCPs to children that is adequate to provide those children with covered services.
- C.** Each HCSO shall maintain a ratio of contracted high profile SCPs to enrollees that is adequate to provide those enrollees with covered services that include services at contracted facilities. An HCSO with a MA plan may have one ratio for its insured and MA populations, or a separate ratio for each.

**R20-6-1917. Geographic Availability in an Urban Area**

An HCSO shall provide each enrollee living in an urban area within the HCSO's service area the following:

- 1. Primary care services from a contracted PCP located within 10 miles or 30 minutes of the enrollee's home;

Notices of Proposed Rulemaking

- 2. High profile specialty care services from a contracted SCP located within 15 miles or 45 minutes of the enrollee's home; and
- 3. Inpatient care in a contracted general hospital, or contracted special hospital, within 25 miles or 75 minutes of the enrollee's home.

**R20-6-1918. Geographic Availability in a Suburban Area**

Each HCSO shall provide each enrollee member living in a suburban area, within the HCSO's service area, the following:

- 1. Primary care from a contracted PCP located within 15 miles or 45 minutes of the enrollee's home;
- 2. High profile specialty care services from a contracted SPC within 20 miles or 60 minutes of the enrollee's home; and
- 3. Inpatient care in a contracted hospital, or a contracted special hospital within 30 miles or 90 minutes of the enrollee's home.

**R20-6-1919. Geographic Availability in a Rural Area**

An HCSO shall provide each enrollee living in a rural area with primary care services from a contracted physician or practitioner within 30 miles or 90 minutes of the member's home.

**R20-6-1920. Travel Requirements**

- A. An HCSO may require an enrollee to travel a greater distance in area to obtain covered services from a contracted provider than the enrollee would have to travel to obtain equivalent services from a non-contracted provider, except where a network exception is medically necessary. Nothing in this Section creates an exception to R20-6-1918 through R20-6-1920.
- B. If the HCSO prior-authorizes services that require an enrollee to travel outside the HCSO service area, the HCSO shall reimburse the enrollee for travel expenses. Except as provided under R20-6-1904(E)(6), an HCSO is not required to reimburse an enrollee for travel expenses the enrollee incurs to obtain covered services in-area.

**R20-6-1921. Enforcement Consideration**

In determining the appropriate enforcement action or penalties for failure to comply with these rules, the Department shall consider any documentation the HCSO provides regarding:

- 1. Whether seasonal shifts in demand affect access and availability of services;
- 2. Whether the HCSO's demographic information has changed significantly since the HCSO's most recent report;
- 3. Whether an enrollee has refused to accept services the HCSO has offered in the time-frames or locations required by this Article;
- 4. Whether an enrollee has requested and obtained services from contracted whose locations, or appointment availability, or capacity result in the HCSO's non-compliance; and
- 5. Whether market factors indicate that on a short term basis, compliance is not possible. Market factors may include shortage of providers, enrollee or provider location, and provider practice or contracting patterns.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 17. ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION**

[R05-124]

**PREAMBLE**

**1. Sections Affected**

- Article 1
- R12-17-101
- R12-17-102
- R12-17-103
- R12-17-104
- R12-17-105
- R12-17-106
- R12-17-107
- R12-17-108
- R12-17-109
- R12-17-110

**Rulemaking Action**

- 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. §§ 37-1122(A)(1) and 37-1123(C)

Implementing statutes: A.R.S. §§ 37-1121, 37-1122, 37-1123, 37-1124, and 37-1126

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

Notice of Rulemaking Docket Opening: 11 A.A.R. 1198, March 25, 2005

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

Name: George Mehnert, Director  
Address: Arizona Navigable Stream Adjudication Commission  
1700 W. Washington, Room 304  
Phoenix, AZ 85007  
Telephone: (602) 542-9214  
Fax: (602) 542-9220  
E-mail: streams@mindspring.com

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

**Background**

“The State of Arizona owns and administers several different types of interests in rivers and streams within the state’s borders by virtue of being the sovereign representative of the people. These rights are the property of the state, and the state’s powers with respect to these property rights are similar in certain ways to the rights of private property owners, but are governed by the law of public trust. These rights are grounded in English common law, as interpreted and applied by the federal and state court systems of the United States.

The terms of the trust, which governs the management of sovereign trust lands, whether in riverbeds or elsewhere, are found in the statutes and the decisions of the judiciary and collectively comprise what is commonly referred to as the Public Trust Doctrine. This Doctrine originated in early Roman law and, as incorporated into English Common law, held that certain resources were available in common to all humankind by ‘natural law.’ Among those common resources were ‘the air, running water, the sea and consequently the shores of the sea.’ Navigable waterways were declared to be ‘common highways, forever free,’ and available to all the people for whatever public uses may be made of those waterways.

The state is guardian of those rights that fall under the protection of the ancient ‘Public Trust Doctrine,’ which in England governed certain rights and responsibilities that were entrusted to the King. As a result these rights collectively are often referred to as ‘sovereign’ rights, or ‘sovereign lands.’

The state owns, as trustee for the public, the beds of tidal navigable rivers and streams up to the Ordinary High Water Mark (under natural conditions, that elevation reached by the average of all tides over an 18.6 year period). The state similarly owns, in its sovereign capacity, the beds of all nontidal, navigable rivers and streams up to the Ordinary Low Water Mark. (The term ‘ordinary’ in each of the above statements is a legal term of art that refers to property boundaries, which may sometimes, but not necessarily always, visible from the ground). Where the state owns the fee interest in the underlying land, its ownership has some of the same characteristics as private property ownership, but is subject to the constraints of the public trust doctrine. For example, the state can and does require compensation to the public for any private use of its property, including both surface use and the extraction of resources from the land. However, the state does not have the unfettered right to alienate its trust property.

“Along navigable nontidal waterways, the state also owns a right often termed a ‘public trust easement’ in the area between the Ordinary Low Water Mark and High Water Mark. The state has both the right and the obligation to balance competing land uses in the easement area. In general, the title of the private owner of the fee underlying the state’s easement is subservient to the easement, although the fee owner may use the lands in any way ‘not inconsistent with public trust needs.’”

Because the matter regarding the navigability of Arizona’s watercourses has never been resolved, the watercourse navigability question that the Arizona Navigable Stream Adjudication Commission (ANSAC) is attempting to answer is a legacy left over from Arizona’s days as part of the Western frontier. Arizona’s legislature could have dealt with the navigability issue at statehood, February 14, 1912, but did not.

This oversight went largely unnoticed for 75 years, until two claimants to riverbed property asked a court to decide the rightful owner. The judge responded that he was unable to decide the matter because he didn’t know whether the river in question was navigable at the time of statehood.

There are estimated to be more than 100,000 clouded property titles related to streambeds in Arizona, and determining which watercourses were navigable at statehood and which were not is one of ANSAC’s primary goals. ANSAC’s other major goal is to determine the public trust values associated with those watercourses that are determined to have been navigable or susceptible to navigability as of statehood.

**Notices of Proposed Rulemaking**

**Who Owns the Water?**

A navigability or non-navigability determination of a particular watercourse or a portion of a watercourse deals only with the streambed for title purposes and has nothing to do with water ownership. Water ownership, water use, the legal right to divert or channel water, etc., are regulated by laws specifically related to these topics and are not within the jurisdiction of ANSAC.

**ANSAC's History**

ANSAC began holding navigability hearings in 1996. After engineering studies were completed and other evidence obtained, ANSAC scheduled individual hearings for each major watercourse in each county into which a major watercourse traveled. For example, the Gila River travels into six Arizona counties and a hearing was held in each of these counties relating to the Gila River. Small and minor watercourses, of which there are more than 39,000 throughout the state, were studied on a countywide basis and hearings were scheduled in each county into which each watercourse traveled.

ANSAC had completed 49 of 54 hearings when, on February 13, 2001, an Arizona Court of Appeals decision declared that some of the laws under which ANSAC was operating were unconstitutional. Although the Superior Court had previously ruled that the laws were constitutional, the Appeals Court decision required the legislature to change the laws regarding ANSAC's work.

Under the old law ANSAC held hearings and reported those findings to the legislature. The legislature made the final determinations regarding watercourse navigability. Under Arizona's current law, ANSAC not only holds the hearing, but also makes the final determinations with a right of appeal to Superior Court.

In 1993, due to an oversight, the Commission failed to submit its Five-Year Review Report to the Governor's Regulatory Review Council under A.R.S. § 41-1056(E). This failure resulted in the expiration of ANSAC's administrative rules. This rulemaking establishes the requirements necessary and proper to carry out the provisions and purposes of Title 37, Chapter 7, Article 1 of the Arizona Revised Statutes.

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

None

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

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

**A. *Estimated Costs and Benefits to the Arizona Navigable Stream Adjudication Commission.***

This rulemaking clarifies the requirements of ANSAC. This statewide program covers the cost of holding statewide hearings to determine whether navigable streams in Arizona were navigable as of February 14, 1012.

Current records show the follow number of hearings and Commission navigability determinations for the last five years.

Year	Watercourse Navigability Hearings	Number of Watercourses
2000	8	19,549
2001	2	4,823
2002	3	8,217
2003	12	6,787
2004	10	7,855

Although there are actually 39,039 watercourses in Arizona, the "Number of Watercourses" column totals 47,231. This five-year total reflects the new laws that were enacted in 2001. These new laws were the outcome of a lawsuit that was finalized on February 2001 that temporarily prevented the Commission from holding navigability hearings. After the lawsuit was resolved, watercourses that were previously adjudicated had to be reheard.

**B. *Estimated Costs and Benefits to Political Subdivisions.***

Political subdivisions of this state are not directly affected by the implementation of this rulemaking.

**C. *Businesses or Persons Directly Affected By the Rulemaking.***

A.R.S. § 37-1122(A)(3) states “*the Commission shall conduct its proceedings informally without adherence to judicial rules of procedure or evidence.*” This rulemaking provides a clear understanding of the responsibilities and procedures of an ANSAC’s hearing. Title 37, Chapter 7, Article 1 of the Arizona Revised Statutes establishes the foundation of ANSAC hearings. This rulemaking adds the additional criteria required under A.R.S. §§ 37-1122(A)(1) and 37-1123(C).

**D. *Estimated Costs and Benefits to Private and Public Employment.***

Private and public employment is not directly affected by the implementation of this rulemaking.

**E. *Estimated Costs and Benefits to Consumers and the Public.***

Consumers and the public are not directly affected by the implementation enforcement of this rulemaking.

**F. *Estimated Costs and Benefits to State Revenues.***

This rulemaking will have no impact on state revenues.

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

Name: George Mehnert, Director  
Address: Arizona Navigable Stream Adjudication Commission  
1700 W. Washington, Room 304  
Phoenix, AZ 85007  
Telephone: (602) 542-9214  
Fax: (602) 542-9220  
E-mail: streams@mindspring.com

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

Date: Tuesday, May 31, 2005  
Time: 1:00 p.m.  
Location: 4th Floor Conference Room  
1700 W. Washington  
Phoenix, AZ 85007  
Nature: Oral Proceeding

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by Tuesday, May 31, 2005. Persons with a disability may request a reasonable accommodation, other than a sign language interpreter, by contacting George Mehnert, Director, at (602) 542-9214. Requests should be made as early as possible to allow time to arrange the accommodation.

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

None

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

None

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

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 17. ~~EXPIRED~~ ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION**

**ARTICLE 1. HEARINGS**

Section

R12-17-101. Petition to Modify Priorities  
R12-17-102. Computation of Time  
R12-17-103. Service of Documents  
R12-17-104. Notice of Appearance as a Party  
R12-17-105. Evidence  
R12-17-106. Hearings  
R12-17-107. Hearing Record

Notices of Proposed Rulemaking

- R12-17-108. Legal Memoranda  
R12-17-109. Hearing to Identify Public Trust Values  
R12-17-110. Hearing Log

**ARTICLE 1. HEARINGS**

**R12-17-101. Petition to Modify Priorities**

If a person is aggrieved by the undetermined navigability status of a watercourse and submits a petition under A.R.S. § 37-1123(F), the Commission shall meet within 30 days following receipt of the petition to consider whether to modify the priorities listed in A.R.S. § 37-1123(E).

**R12-17-102. Computation of Time**

The Commission shall consider any period of time prescribed or allowed under this Article as calendar days.

**R12-17-103. Service of Documents**

When a party has appeared by an attorney, service upon the attorney is deemed service upon the party.

1. Method of service.
  - a. Hand delivery with receipt or certificate of delivery.
  - b. Legible facsimile with confirmed receipt.
  - c. Personal service, or
  - d. By regular mail.
2. Service is deemed made at the time of personal service of the document or five days after deposit of the document in the United States mail, postage prepaid, in a sealed envelope, and addressed to the person being served, at the last known address of record.

**R12-17-104. Notice of Appearance as a Party**

A person may appear as a party at a Commission hearing by:

1. Providing notice to the Commission in writing before or at the hearing.
2. Appearing at the hearing, or
3. Filing a post hearing opening legal memorandum or a response legal memorandum.

**R12-17-105. Evidence**

**A. Submission of evidence.**

1. Any person may submit evidence to the Commission in person or by mail to the Arizona Navigable Stream Adjudication Commission, 1700 W. Washington, Suite 304, Phoenix, AZ 85007, on or before the published hearing date.
2. A person may submit evidence at the hearing for which the evidence is intended.
3. A person is not required to resubmit evidence previously submitted to the Commission before August 9, 2002, that relates to the navigability of a particular watercourse.
4. A person submitting evidence shall submit an original and seven copies of the evidence.
  - a. The evidence shall, where practical, be printed on one side of 8 1/2 x 11-inch paper.
  - b. For computer-generated presentations, such as PowerPoint, only paper printouts of the presentation slides are accepted.
5. All evidence submitted, including maps, charts, photographs, transparencies, audiotapes, and videotapes, are the property of the Commission.

**B. Evidence review. A person may review any evidence submitted for a hearing and may request, at the person's expense, a copy of any item suitable for copying.**

**C. Objection to an item of evidence.**

1. Any person may object to the admission or exclusion of an item of evidence by making the objection on the record at the public hearing at which the item of evidence is offered.
2. The Commission shall admit the evidence, decline the evidence, or take the matter under advisement for later determination.

**D. Record keeping. The Commission shall maintain all relevant evidence submitted for each hearing.**

**R12-17-106. Hearings**

**A. Evidence.**

1. The Commission shall receive, review, and consider only evidence relevant to the matter being heard.
2. The Presiding Officer shall announce the time for which evidence is no longer accepted for consideration.

**B. Any person acting as a party may be represented by legal counsel or may proceed without legal counsel.**

**C. A party may respond and present evidence and arguments on all relevant issues.**

1. The Presiding Officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

2. If any Commissioner objects to a ruling by the Presiding Officer regarding the exclusion of evidence, the entire Commission shall vote on the ruling.
- D.** The Presiding Officer shall exercise reasonable control over the manner and order of examining witnesses and presenting evidence to ascertain the truth, to avoid needless consumption of time, and to protect witnesses from harassment or undue embarrassment. The Presiding Officer shall determine:
  1. The order in which a party will testify.
  2. The time limit for testimony, if any, and
  3. The order and duration a party may question a witness.
- E.** If any Commissioner objects to the Presiding Officer's ruling on a procedural motion, the entire Commission shall vote on the motion.
- F.** The Commission shall, as a whole, rule on any motion involving a matter of law or fact.
- G.** The Presiding Officer may, for good cause, continue or reschedule any hearing before the Commission
- H.** Public participation.
  1. The Commission shall provide an opportunity for public comment to any item on the meeting agenda.
  2. The Presiding Officer may establish time limits for public comments.
  3. The Presiding Officer may exclude any person if the person disrupts or obstructs a hearing, or willfully refuses to comply with an order of the Presiding Officer.

**R12-17-107. Hearing Record**

- A.** The Presiding Officer shall ensure that a record is created of the proceeding. The Presiding Officer may tape record or secure a court reporter to produce a record of the proceedings. The Commission shall retain the original audiotape recording or the court reporter's transcript of the hearing, whichever method is used.
- B.** A person may obtain a duplicate copy of an audiotape recording of a hearing by requesting a copy of the audiotape and by providing the Commission with replacement blank audiotapes. The Commission will not provide a transcript of the hearing.
- C.** A person may obtain a copy of a court reporter's transcript by making arrangements directly with the court reporter.

**R12-17-108. Legal Memoranda**

- A.** Opening legal memoranda.
  1. A party may file an opening legal memorandum with the Commission within 30 days, or as determined by the Presiding Officer, after conclusion of the hearing.
  2. The party shall serve a copy of its opening legal memorandum upon all other parties to the hearing and shall file proof of service with the Commission.
  3. Unless allowed by the Commission, an opening legal memorandum may not exceed 25 typewritten pages.
- B.** Response memoranda.
  1. A party may file a response legal memorandum with the Commission within 20 days, or as determined by the Presiding Officer, after service of the opening legal memorandum.
  2. The party shall serve a copy of its response legal memorandum upon all other parties appearing before the Commission at the hearing and shall file proof of service with the Commission.
  3. Unless allowed by the Commission, a response legal memorandum may not exceed 15 typewritten pages.

**R12-17-109. Hearing to Identify Public Trust Values**

If the Commission determines that a watercourse was navigable as of February 14, 1912, the Commission shall, within 90 days of its final determination, hold a hearing to identify any trust values associated with the watercourse.

**R12-17-110. Hearing Log**

The Commission shall maintain a log of all Commission hearings and shall assign a number to each hearing regarding a particular watercourse. The hearing log shall include:

1. The hearing number.
2. The name and date of the hearing.
3. The final determination date.
4. The Commission report date; and
5. The county recording or close date.

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

[R05-127]

PREAMBLE

1. **Sections Affected** **Rulemaking Action**  
R7-2-606 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. § 15-203(A)  
Implementing statutes: A.R.S. § 15-203(A)(14) and (A)(17)
3. **A list of all previous notices appearing in the Register addressing the proposed rule:**  
Notice of Rulemaking Docket Opening: 11 A.A.R. 1505, April 22, 2005
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Vince Yanez  
Executive Director, State Board of Education  
  
Address: 1535 W. Jefferson, Room 418  
Phoenix, AZ 85007  
  
Telephone: (602) 542-5057  
Fax: (602) 542-3046  
E-mail: vyanez@ade.az.gov
5. **An explanation of the rule, including the agency's reasons for initiating the rule:**  
The State Board of Education is seeking to adopt a performance assessment for teacher certification. This assessment would ensure that continuing teachers have demonstrated proficiency with the Arizona teaching standards.
6. **A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
Not applicable
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
The proposed rules will not diminish any previous grant of authority of a political subdivision of this state.
8. **The preliminary summary of the economic, small business, and consumer impact:**  
The Department of Education may be subject to additional costs in order to develop and implement the performance assessment. Neither the State Board of Education or any school district or other political subdivision will be subject to additional costs by these rules. There will be no effect on small business or on state revenues, and there is not a less-intrusive method for accomplishing the goals achieved by these rules.  
  
There will be an expected economic and consumer impact as fees will be assessed to applicants for the administration and evaluation of the performance assessment.
9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**  
Name: Vince Yanez  
Executive Director, State Board of Education  
  
Address: 1535 W. Jefferson, Room 418  
Phoenix, AZ 85007  
  
Telephone: (602) 542-5057  
Fax: (602) 542-3046  
E-mail: vyanez@ade.az.gov

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

An oral proceeding on the proposed rulemaking is scheduled as follows:

Date: August 8, 2005  
Time: 1:00 p.m.  
Location: State Board of Education  
1535 W. Jefferson, Room 417  
Phoenix, AZ 85007

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

Not applicable

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

None

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

**TITLE 7. EDUCATION**

**CHAPTER 2. STATE BOARD OF EDUCATION**

**ARTICLE 6. CERTIFICATION**

Section

R7-2-606. Proficiency Assessments

**ARTICLE 6. CERTIFICATION**

**R7-2-606. Proficiency Assessments**

- A. No change
- B. No change
- C. No change
- D. The performance assessment portion of the Arizona Teacher Proficiency Assessment shall assess proficiency as described in R7-2-602(B), R7-2-602(C), R7-2-602(D), R7-2-602(E), R7-2-602(F) and R7-2-602(G) as a requirement for certification of elementary secondary and special education teachers. In lieu of a passing score on the performance portion of the Arizona Teacher Proficiency Assessment, teacher who holds a provisional teaching certificate may convert such certificate within two months prior to its expiration to a standard elementary, secondary, or special education teaching certificate pursuant to R7-2-606(H) until the Board adopts the performance assessment portion of the Arizona Teacher Proficiency Assessment, or make a decision that performance assessment will no longer be required as part of the Arizona Teacher Proficiency Assessment no later than June 30, 2005, as a requirement for conversion of a provisional elementary or secondary certificate to a standard elementary or secondary certificate. The performance assessment portion of the Arizona Teacher Proficiency Assessment shall assess proficiency as described in R7-2-602(B), R7-2-602(C), R7-2-602(D), R7-2-602(E), R7-2-602(F), R7-2-602(G), and R7-2-602(J) as a requirement for conversion of a provisional special education certificate to a standard special education certificate.
- E. If a performance assessment is not available for the content area for which a teacher is seeking certification, a teacher who holds a provisional certificate may convert such certificate within two months prior to its expiration to a standard elementary, secondary, or special education teaching certificate pursuant to R7-2-606(I) until such time as a performance assessment is available for that content area.
- ~~E.F.~~ The Arizona Administrator Proficiency Assessment shall assess professional knowledge as described in R7-2-603 as a requirement for certification of administrators, supervisors, principals, and superintendents.
- ~~F.G.~~ The passing score for each assessment shall be determined by the Board using the results of validity and reliability studies. The passing score for each assessment shall be reviewed by the Board at least every three years.
- ~~G.H.~~ The proficiency assessments for professional knowledge and subject knowledge shall be administered at least six times each calendar year, at times and places determined by the Department.
- ~~H.I.~~ The provisional elementary, secondary, or special education certificate allows the beginning teacher up to four semesters or two school years of teaching experience before completing the performance assessment portion of the Arizona Teacher Proficiency Assessment.
  - 1. If the Board has adopted the performance assessment portion of the Arizona Teacher Proficiency Assessment a performance assessment is available for the content area for which a teacher is seeking certification but the teacher does not have full-time teaching experience for four semesters or two school years, the certificate shall, upon the written

request of the holder, be extended once for the equivalent of the time the teacher was not employed during the provisional certification period.

2. If ~~the Board has adopted the performance assessment portion of the Arizona Teacher Proficiency Assessment~~ a performance assessment is available for the content area for which a teacher is seeking certification and the teacher has been employed for four semesters or two school years and has taken but not passed the performance assessment, the certificate shall be extended once, for one year, upon the written request of the holder.
  3. If the teacher has been employed full-time for four semesters or two school years in a private school, public school, charter school, or parochial school in the United States or any Department of Defense dependent school or in a closely related education field and ~~the Board has not yet adopted the performance portion of the Arizona Teacher Proficiency Assessment~~ a performance assessment is not available for the content area for which a teacher is seeking certification, the provisional certificate shall be converted within two months prior to its expiration to a standard teaching certificate upon verification by the teacher to the Department that he or she has had four semesters or two school years of teaching experience or experience in a closely related education field. "Closely related education field" means employment involving the presentation of instruction to K-12 students whether self-employed or employed by a private, parochial, public, or charter school.
  4. If the teacher has not been employed full-time for four semesters or two school years in a private school, public school, charter school, or parochial school in the United States or any Department of Defense dependent school or in a closely related education field, and ~~the Board has not yet adopted the performance assessment portion of the Arizona Teacher Proficiency Assessment~~ a performance assessment is not available for the content area for which a teacher is seeking certification, the provisional certificate shall be extended once for two years, upon written request of the holder to the Department. "Closely related education field" means employment involving the presentation of instruction to K-12 students whether self-employed or employed by a private, parochial, public, or charter school.
  5. If the performance assessment becomes available for the content area for which a teacher is seeking certification prior to the expiration of a teacher's provisional certificate, the provisional certificate shall be extended once for two years, upon written request of the holder to the Department, to allow the teacher additional time in which to take the performance portion of the assessment.
- I.J.** If the provisionally certified teacher has taken but not passed the performance assessment by the expiration date on the extended certificate pursuant to subsection ~~(H)~~(I)(1) or ~~(H)~~(I)(2) of this Section, the individual may reapply for a provisional certificate after one year, upon verification of the following:
1. Efforts to remediate deficiencies identified in the performance assessment;
  2. Passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment; and
  3. Completion of the requirements for the provisional certificate which are in effect at the time of reapplication.