

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 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

[R05-459]

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| R4-23-601 | Amend |
| R4-23-613 | Amend |
| R4-23-1003 | Amend |
- 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. § 32-1904(A)(1)
Implementing statutes: A.R.S. §§ 32-1904(B)(3) and 36-2523
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 11 A.A.R. 4874, November 18, 2005
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Dean Wright, Compliance Officer
Address: Board of Pharmacy
4425 W. Olive Ave., Suite 140
Glendale, AZ 85302
Telephone: (623) 463-2727, ext. 131
Fax: (623) 934-0583
E-mail: rxcop@cox.net
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
During the Board's June 2005 Five-Year Rule Review, the Board determined that R4-23-1003 (Records and Order Forms) contained two subsections with a three-year records retention clause. The Board has decided to change the records retention requirement for all drug purchases and for drug sales other than on a prescription to two years instead of three to conform to the federal requirement. The Board feels that conforming to the federal two-year requirement will cause less confusion for pharmacists and pharmacies. The proposed rules will change R4-23-1003(A)(1)(f) and (A)(4) to require that inventory records be available for two years instead of three. The Board staff identified R4-23-601 (General Provisions) as containing a subsection with a three-year records retention clause. The proposed rules will change R4-23-601(D)(2) to require that records of receipt and disposal of drugs be kept for two years instead of three. The Board staff also identified R4-23-613 (Procedure for Discontinuing a Pharmacy) as containing three subsections with a seven-year records retention clause. The proposed rules will change R4-613(A)(3), (D)(3)(c), and (F) to require that records of receipt and disposal of drugs be kept for two years instead of seven. The Board feels these changes are necessary to maintain the consistency of the proposed rules with existing Board statutes and rules. The rule will include format, style, and grammar necessary to comply with the current rules of the Secretary of State and Governor's Regulatory Review Council.

Notices of Proposed Rulemaking

The Board believes that approval of these rules benefits the public and the pharmacy community by clearly establishing uniform standards for maintaining the records for receipt, disposal, and inventory of drugs and controlled substances in Arizona.

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 amended rules will impact the Board, pharmacies, and the public. The amended rules' impact on the Board will be the usual rulemaking-related costs which are minimal. The Board estimates the amended rules will have minimal economic impact on pharmacies. A pharmacy's cost of storing the records should decrease when complying with the shorter records retention requirement. Many pharmacies are beginning to image their records. The use of imaging technology may further reduce the storage costs. The amended rules have no economic impact on the public.

The public, Board, and pharmacies benefit from rules that are clear, concise, and understandable. The amended rules benefit the public and the pharmacy community by clearly establishing uniform standards for maintaining the records for receipt, disposal, and inventory of drugs and controlled substances in Arizona.

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: Dean Wright, Compliance Officer
Address: Board of Pharmacy
4425 W. Olive Ave., Suite 140
Glendale, AZ 85302
Telephone: (623) 463-2727, ext. 131
Fax: (623) 934-0583
E-mail: rxcop@cox.net

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:

Comments may be written or presented orally. Written comments must be received by 5 p.m., Tuesday, January 17, 2006. An oral proceeding is scheduled for:

Date: January 17, 2006
Time: 10:00 a.m.
Location: 4425 W. Olive Ave., Suite 140
Glendale, AZ 85302

A person may request information about the oral proceeding by contacting the person listed in item #9.

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

Not applicable

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

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

Section

R4-23-601. General Provisions

R4-23-613. Procedure for Discontinuing a Pharmacy

ARTICLE 10. UNIFORM CONTROLLED SUBSTANCES AND DRUG OFFENSES

R4-23-1003. Records and Order Forms

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-601. General Provisions

- A. Permit required to sell ~~drugs~~ a narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical. A person shall have a current Board permit to:
1. Sell a ~~drug~~ narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical in Arizona, or
 2. Sell a ~~drug~~ narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical from outside Arizona and ship the ~~drug~~ narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical into Arizona.
- B. No change
- C. No change
- D. Record of receipt and disposal of ~~drugs~~ narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals.
1. Every person manufacturing a ~~drug~~ narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical, including repackaging or relabeling, shall prepare and retain the manufacturing, repackaging, or relabeling date for each ~~drug~~ narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical.
 2. Every person receiving, selling, delivering, or disposing of a ~~drug~~ narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical shall record and retain for not less than ~~three~~ two years the following information:
 - a. The name, strength, dosage form, and quantity of each ~~drug~~ narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical received, sold, delivered, or disposed;
 - b. The name, address, and license or permit number, if applicable, of the person from whom each ~~drug~~ narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is received;
 - c. The name, address, and license or permit number, if applicable, of the person to whom each ~~drug~~ narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical is sold or delivered, or of the person who disposes of each ~~drug~~ narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical; and
 - d. The receipt, sale, deliver, or disposal date of each ~~drug~~ receipt, sale, deliver, or disposal each narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical.
 3. No change
 4. No change
- E. Fire- or water-damaged ~~drugs or devices~~ narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals. No person shall expose, sell, or offer to sell any ~~drug or device~~ narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical damaged by water, fire, or from human or animal consumption or use.

R4-23-613. Procedure for Discontinuing a Pharmacy

- A. A pharmacy permittee or pharmacist-in-charge shall provide written notice to the Board and the Drug Enforcement Administration (D.E.A.) at least 14 days before discontinuing operation of the pharmacy. The notice shall contain the following information:
1. No change
 2. Name, address, pharmacy permit number (if applicable), and D.E.A. registration number (if applicable) of the licensee, permittee, or registrant to whom ~~the prescription-only drugs and controlled substances~~ any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical will be sold or transferred;
 3. Name and address of the location where the discontinuing pharmacy's records of purchase and disbursement of ~~controlled substances and prescription-only drugs~~ any narcotic or other controlled substance, prescription-only drug or device, nonprescription drug, precursor chemical, or regulated chemical will be kept and the person responsible for the records. These records shall be kept for a minimum of ~~seven~~ two years from the last transaction date;
 4. No change
 5. No change
- B. No change
- C. No change
- D. The pharmacist-in-charge of the pharmacy discontinuing business shall ensure that:
1. No change
 2. All ~~prescription-only drugs and controlled substances~~ narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals are removed from the premises on or before the date the pharmacy is discontinued; and
 3. All controlled substances are transferred as follows:
 - a. No change
 - b. No change
 - c. Keep the original of the inventory with the discontinued pharmacy's records of drug purchase and disbursement for a minimum of ~~seven~~ two years from the date the pharmacy is discontinued;
 - d. No change
 - e. No change
- E. No change
- F. During the ~~three-year~~ two-year record retention period, the person described in subsection (A)(3) ~~or (4)~~ shall provide to the Board upon its request a discontinued pharmacy's records of the purchase and disbursement of ~~controlled substances and prescription-only drugs, prescription files, and patient profiles~~ narcotics or other controlled substances, prescription-only drugs or devices, nonprescription drugs, precursor chemicals, or regulated chemicals.
- G. During the seven-year record retention period, the person described in subsection (A)(4) shall provide to the Board upon its request a discontinued pharmacy's records of prescription files and patient profiles.

ARTICLE 10. UNIFORM CONTROLLED SUBSTANCES AND DRUG OFFENSES

R4-23-1003. Records and Order Forms

- A. Records
1. If the pharmacist-in-charge of a pharmacy is replaced by another pharmacist-in-charge, the new pharmacist-in-charge shall complete an inventory of all controlled substances in the pharmacy within 10 days of assuming the responsibility. This inventory and any other required controlled substance inventory shall:
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - i. No change
 - ii. No change
 - e. No change
 - f. Be available in the pharmacy for inspection by the Board or its designee for not less than ~~three~~ two years.
 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change

- e. No change
- 3. No change
- 4. Every person receiving, selling, delivering, or disposing of any controlled substance shall record and retain for not less than ~~three~~ two years the following information:
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- B. No change

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 1. DEPARTMENT OF HEALTH SERVICES
ADMINISTRATION**

[R05-455]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| Article 5 | New Article |
| R9-1-501 | New Section |
| R9-1-502 | New Section |
| R9-1-503 | New Section |
| R9-1-504 | New Section |
| R9-1-505 | New Section |
| R9-1-506 | 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. §§ 36-136(A)(7) and 36-136(F)
Implementing statutes: A.R.S. §§ 36-104(16), 36-2172(B), and 36-2907.06(D)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 11 A.A.R. 2389, June 24, 2005
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|---|
| Name: | Myriam Vega, Office Chief |
| Address: | Arizona Department of Health Services
Office of Health Systems Development
1740 W. Adams, Room 410
Phoenix, AZ 85007 |
| Telephone: | (602) 542-1219 |
| Fax: | (602) 542-2011 |
| E-mail: | vegami@azdhs.gov |
| Or | |
| Name: | Kathleen Phillips, Rules Administrator |
| Address: | Arizona Department of Health Services
Office of Administrative Rules
1740 W. Adams, Room 202
Phoenix, AZ 85007 |
| Telephone: | (602) 542-1264 |
| Fax: | (602) 364-1150 |
| E-mail: | phillik@azdhs.gov |

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

The Department of Health Services (Department) placed the existing sliding fee schedule Article, 9 A.A.C. 2, Article 1, in the Chapter labeled "Tobacco Tax-funded Programs" because the sliding fee schedule rule, R9-2-101, applied to the A.R.S. § 36-2907.06 primary care program funded under former A.R.S. § 36-2921. Former A.R.S. § 36-2921 allocated tobacco tax funds, including allocations to the primary care programs and other Department programs. Laws 2003, Chapter 265, § 30, retroactively effective to July 1, 2003, repealed all versions of A.R.S. § 36-2921. The state's general fund currently funds the programs.

In addition to the primary care program, Department programs, such as the primary care provider loan repayment program under A.R.S. § 36-2172 and 42 CFR Part 62¹; and the J-1 visa waiver program and the national interest waiver program under A.R.S. § 36-104(16) need to reference the sliding fee schedule rules. Therefore, the Department determined to make updated sliding fee schedule rules and to place them in 9 A.A.C. 1, Administration, as a new Article 5, Sliding Fee Schedules. The new Article includes R9-1-501, Definitions; R9-1-502, Family Member Determination; R9-1-503, Family Income Determination; R9-1-504, Sliding Fee Schedule Submission and Contents; R9-1-505, Sliding Fee Schedule Approval Time-frames, and R9-1-506, Fees Payable by Uninsured Individuals.

[¹ 42 CFR 62.55(c)(2) provides that a health professional who participates in a state loan repayment program receiving federal grants authorized by 42 USC 254q-1 shall "charge for his or her professional services at the usual and customary rate prevailing in the area in which such services are provided, except that if a person is unable to pay such charge, such person shall be charged at a reduced rate or not charged any fee."]

In this rulemaking, the Department proposes to provide stakeholders and the public with clear, concise, and understandable rules for sliding fee schedules used by health care providers. The Department determined that hospital inpatient services or medical services at a correctional facility or detention facility should not be subject to a discount contained in a sliding fee schedule. Therefore, an individual or entity is not a provider for sliding fee schedule purposes (sliding-fee-schedule provider) when providing hospital inpatient services or medical services at a correctional facility or detention facility.

The Department determined that the new rules should include requirements for sliding fee schedules containing discounts for uninsured individuals that are expressed as flat fees as well as for sliding fee schedules containing discounts for uninsured individuals that are expressed as percentages of the usual fee for medical services (fee percentages). Sliding-fee-schedule providers must establish sliding fee schedules with flat fees or fee percentages for uninsured individuals with family incomes above 100 percent of the current federal poverty guidelines up to and including 200 percent of the current federal poverty guidelines. The proposed rules allow these providers to submit for the Department's approval a sliding fee schedule with fee percentages, a sliding fee schedule with flat fees, or both.

The Department determined that, for uninsured individuals with family incomes above 100 percent of the current federal poverty guidelines up to and including 200 percent of the federal poverty guidelines, a sliding fee schedule must contain at least three fee percentage levels or three flat fee levels that increase as family income increases. This requirement, which allows sliding-fee-schedule providers to specify the amount and the spread of the fee percentages or flat fees, gives providers flexibility in establishing fee schedules and is consistent with meaningful discounts for low income uninsured individuals.

Under the proposed rules, a sliding fee schedule must contain a 100 percent fee reduction or a \$0 flat fee for uninsured individuals with family incomes at or below the current federal poverty guidelines. The Department determined that sliding-fee-schedule providers can charge these uninsured individuals an administrative fee that does not exceed \$25. For uninsured individuals with family incomes above 100 percent of the federal poverty guidelines up to and including 200 percent of the federal poverty guidelines, providers may charge the administrative fee only as an alternative to the fee calculated according to a sliding fee schedule. Charging an administrative fee may increase providers' revenues, may reduce overuse of health care resources, and may increase the self-esteem of low income uninsured individuals who otherwise would not be charged for the services they receive. The Department believes that an administrative fee of \$25 or less is appropriate for low income uninsured individuals.

In a separate rulemaking the Department will repeal A.A.C. Title 9, Chapter 2, Tobacco Tax-funded Programs, including Article 1, Sliding-fee Schedule; and R9-2-101, Approval of Sliding-fee Schedule. The existing rule will remain in place until the effective date of the new rules.

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:

The Department did not review any study and does not propose to rely on or not rely on any study for this rulemaking.

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:

In fiscal year 2003, more than 30,000 uninsured individuals were determined eligible for the Department's primary care program, bringing the total number of individuals eligible for that program to more than 60,000. Qualifying community health centers contracted with the Department had a total of almost 50,000 visits billable to primary care program funds. For fiscal year 2004, the Department determined that it supports the primary care of nearly 50,000 uninsured individuals.

The Department's primary care program and other Department programs that call for a sliding fee schedule increase access to health care resources for the medically underserved. These programs increase the health care system's capacity to deliver services. Sliding fee schedules establish and limit the amount charged to uninsured individuals at or below 200 percent of the current federal poverty guidelines who receive services under the primary care program or from a provider serving the underserved through the primary care provider loan repayment program, the J-1 visa waiver program, or the national interest waiver program. In the future, providers might be subject to a sliding fee schedule requirement under other programs.

For purposes of this preliminary economic impact summary, "minimal" means under \$1000, "moderate" means \$1000 to \$10,000, and "substantial" means more than \$10,000.

Uninsured individuals receiving medical services from providers subject to a sliding fee schedule requirement

Uninsured individuals receiving services covered by a sliding fee schedule benefit from no fees or reduced fees, according to the flat fees or fee percentages established by the schedule. The Department determined that sliding-fee-schedule providers must establish a \$0 flat fee or a 100 percent reduction for uninsured individuals with family incomes at or below the current federal poverty guidelines. These uninsured individuals may be responsible for an administrative fee of \$25 or less.

For low income uninsured individuals, the cost of any fee assessed is offset by improved health status and quality of life for them and their families from the increased availability of health care. Increased availability of health care allows prevention or earlier diagnosis and treatment of medical conditions, decreasing the need for more costly treatments. Individuals who are responsible for a fee may place greater value on the services they receive. Additionally, individuals who share in paying for the services they receive may have enhanced self-esteem. Finally, a charge for services may reduce overuse of health care resources.

Providers subject to a sliding fee schedule requirement

Under the new sliding fee schedule rules, sliding-fee-schedule providers range from solo medical practices to non-profit organizations and county health departments. Excluding hospital inpatient services and medical services at a correctional facility or a detention facility generally limits the applicability of a sliding fee schedule to outpatient settings.

Under the new rules, sliding-fee-schedule providers will incur minimal to moderate staff-related costs for:

- Reviewing the annual update of the U.S. Department of Health and Human Services' Poverty Guidelines published in the Federal Register²,
- Preparing annually a sliding fee schedule based on the updated Poverty Guidelines,
- Submitting the sliding fee schedule to the Department.

[² The 2005 annual update is published at 70 FR 8373, February 18, 2005, and is available online at <http://aspe.os.dhhs.gov/poverty/05fedreg.htm>.]

Under the proposed sliding fee schedule rules, a sliding-fee-schedule provider can charge low income uninsured individuals at least the \$25 administrative fee. The administrative fees and the fees calculated according to a sliding fee schedule can provide an important source of revenue for sliding-fee-schedule providers. The revenue from uninsured individuals' fees may enable facilities and providers to expand services.

The Department

The Department annually will incur moderate to substantial costs to review sliding fee schedules submitted by facilities and individual providers. These costs result from the requirements in state statutes, state administrative rules, or federal regulations for a system of reduced health care fees for low income uninsured individuals.

The general public

Arizonans in general benefit from sliding-fee-schedule providers' reduced fees for low income uninsured individuals. Increased access to health care by the underserved, including low income uninsured individuals, allows for earlier and less expensive treatment and helps to control the total bill for health care in the state.

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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: Myriam Vega, Office Chief
 Address: Arizona Department of Health Services
 Office of Health Systems Development
 1740 W. Adams, Room 410
 Phoenix, AZ 85007
 Telephone: (602) 542-1219
 Fax: (602) 542-2011
 E-mail: vegami@azdhs.gov

Or

Name: Kathleen Phillips, Rules Administrator
 Address: Arizona Department of Health Services
 Office of Administrative Rules
 1740 W. Adams, Room 202
 Phoenix, AZ 85007
 Telephone: (602) 542-1264
 Fax: (602) 364-1150
 E-mail: phillik@azdhs.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:

ORAL PROCEEDING		
LOCATION	DATE	TIME
Arizona Department of Health Services 1740 W. Adams, Room 411 Phoenix, AZ 85007	Thursday, January 19, 2006	9:00 a.m.

CLOSE OF RECORD
5:00 p.m., January 19, 2006

Until the close of record, a person may submit written comments on the proposed rules or the preliminary economic, small business, and consumer impact summary to the individuals listed in items #4 and #9.

Persons with a disability may request a reasonable accommodation by contacting Lynn Golder at golderl@azdhs.gov or (602) 364-3958. Requests should be made as early as possible to allow sufficient time to arrange for 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 9. HEALTH SERVICES

**CHAPTER 1. DEPARTMENT OF HEALTH SERVICES
ADMINISTRATION**

ARTICLE 5. SLIDING FEE SCHEDULES

Section

<u>R9-1-501.</u>	<u>Definitions</u>
<u>R9-1-502.</u>	<u>Family Member Determination</u>
<u>R9-1-503.</u>	<u>Family Income Determination</u>
<u>R9-1-504.</u>	<u>Sliding Fee Schedule Submission and Contents</u>
<u>R9-1-505.</u>	<u>Sliding Fee Schedule Approval Time-frames</u>
<u>R9-1-506.</u>	<u>Fees Payable by Uninsured Individuals Under a Sliding Fee Schedule</u>

ARTICLE 5. SLIDING FEE SCHEDULES

R9-1-501. Definitions

In this Article, unless otherwise specified:

1. “Administrative fee” means a fee payable by an uninsured individual that is established and charged according to R9-1-506(E).
2. “AHCCCS” means the Arizona Health Care Cost Containment System.
3. “Business day” means the same as in A.R.S. § 10-140.
4. “Calendar year” means January 1 through December 31.
5. “Child” means an individual under age 19.
6. “Consideration” means valuable compensation for something received or to be received.
7. “Correctional facility” means the same as in A.R.S. § 13-2501.
8. “Costs of producing rental income” means payments made by a rental-income recipient that are attributable to the premises or the portion of the premises generating the income, including payments for:
 - a. Property taxes.
 - b. Insurance premiums.
 - c. Mortgage principal and interest.
 - d. Utilities, and
 - e. Maintenance and repair.
9. “Costs of producing self-employment income” means payments made by a self-employment-income recipient that are attributable to generating the income, including payments for:
 - a. Equipment, machinery, and real estate;
 - b. Labor;
 - c. Inventory;
 - d. Raw materials;
 - e. Insurance premiums;
 - f. Rent; and
 - g. Utilities.
10. “Current federal poverty guidelines” means the most recent annual update of the U.S. Department of Health and Human Services’ Poverty Guidelines published in the Federal Register.
11. “Deduction” means an amount subtracted from a payment, before an individual receives the payment, for:
 - a. Federal income tax.
 - b. Social Security tax.
 - c. Medicare tax.
 - d. State income tax.
 - e. Insurance other than OASDI.
 - f. Pension, or
 - g. Other amounts required by law or authorized by the individual to be subtracted.
12. “Department” means the Department of Health Services.
13. “Detention facility” means a place of confinement, including:
 - a. A juvenile facility under:

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- i. A county board of supervisors, or
 - ii. A county jail district authorized by A.R.S. Title 48, Chapter 25;
 - b. A juvenile secure care facility under the Department of Juvenile Corrections; or
 - c. A facility for individuals who are not United States citizens and who are in the custody of the U.S. Immigration and Customs Enforcement, Department of Homeland Security.
- 14. "Earned income" means work-related payments received by an individual, including:
 - a. Wages,
 - b. Commissions and fees,
 - c. Salary,
 - d. Profit from self-employment,
 - e. Profit from rent received from an individual or entity, and
 - f. Any other work-related monetary payments received by an individual.
- 15. "Family income" means the amount determined according to R9-1-503(B).
- 16. "Family member" means an individual, determined according to R9-1-502, whose income is included in family income.
- 17. "Fee percentage" means a part of a provider's usual charges for medical services that is:
 - a. Expressed in hundredths, and
 - b. Established by a provider in a sliding fee schedule for medical services rendered to an uninsured individual.
- 18. "Fetus" means the same as in A.R.S. § 36-2152.
- 19. "Flat fee" means a dollar amount that is:
 - a. Established by a provider in a sliding fee schedule for a medical service or group of medical services rendered to an uninsured individual, and
 - b. Less than the provider's usual charges for the medical service or group of medical services.
- 20. "Gift" means money, real property, personal property, a service, or anything of value other than unearned income for which the recipient does not provide consideration of equal or greater value.
- 21. "Hospital services" means the same as in A.A.C. R9-10-201.
- 22. "Income" means combined earned and unearned income.
- 23. "Inpatient services" means hospital services provided to an individual who is anticipated to receive the services for 24 consecutive hours or more.
- 24. "Interrupted income" means income that stops for at least 30 continuous days during the current calendar year and then resumes.
- 25. "KidsCare" means the children's health insurance program, a federally funded program administered by AHCCCS under A.R.S. Title 36, Chapter 29, Article 4.
- 26. "Lowest contracted charge" means the smallest reimbursement a provider has agreed to accept for a medical service service:
 - a. Determined by the provider's review of all the contracts between the provider and third party payors as defined in A.R.S. § 36-125.07(C), that:
 - i. Cover the medical service, and
 - ii. Are in effect at the time the medical service is provided to an uninsured individual; and
 - b. Subject to limitations of federal or state laws, rules, or regulations.
- 27. "Medical services" means the same as in A.R.S. § 36-401.
- 28. "Medicare tax" means the amount subtracted from a payment for the health care insurance program for the aged and disabled under Title XVIII of the Social Security Act, 42 USC 1395 et seq.
- 29. "New income" means income that begins at least 30 days after the start of the current calendar year.
- 30. "OASDI" means old age, survivors, and disability insurance.
- 31. "Profit" means the remainder after subtracting:
 - a. The costs of producing rental income from the rent received from an individual or entity, or
 - b. The costs of producing self-employment income from the self-employment income.
- 32. "Provider" means an individual or entity that:
 - a. Provides medical services;
 - b. Participates in a program that is authorized under A.R.S. §§ 36-104(16), 36-2907.06, or 36-2172, and that requires participants to use a sliding fee schedule;
 - c. Includes:
 - i. A dentist licensed under A.R.S. Title 32, Chapter 11;
 - ii. A physician licensed under A.R.S. Title 32, Chapter 13 or Chapter 17;
 - iii. A registered nurse practitioner defined in A.R.S. § 32-1601 and licensed under A.R.S. Title 32, Chapter 15;
 - iv. A physician assistant licensed under A.R.S. Title 32, Chapter 25 and practicing according to A.R.S. § 32-2531;
 - v. A health care institution licensed under A.R.S. Title 36, Chapter 4; or

- vi. An office or facility that is exempt from licensing under A.R.S. § 36-402(3); and
- d. Excludes an individual or entity when the individual or entity provides:
 - i. Inpatient services.
 - ii. Medical services at a correctional facility, or
 - iii. Medical services at a detention facility.
- 33. “Secure care” means the same as in A.R.S. § 41-2801.
- 34. “Self-employment” means earning income from one’s own business, trade, or profession rather than receiving a salary or wages from an employer.
- 35. “Sliding fee” means flat fee or fee percentage that increases or decreases based on one or more factors.
- 36. “Sliding fee schedule” means a document containing a provider’s flat fees or fee percentages based on:
 - a. Family members determined according to R9-1-502, and
 - b. Family income determined according to R9-1-503.
- 37. “Social Security tax” means the amount subtracted from a payment for OASDI under Title II of the Social Security Act, 42 USC 401 et seq.
- 38. “State health benefits risk pool” means:
 - a. A state-established organization qualifying under 26 USC 501(c)(26);
 - b. A state-established qualified high risk pool described in Section 2744(c)(2) of the Public Health Service Act, 42 USC 300gg-44(c)(2); or
 - c. A state-sponsored arrangement, for which the state specifies the membership, primarily established and maintained to provide health insurance coverage for state residents with a medical condition or a history of a medical condition that:
 - i. Prevents them from obtaining coverage for the condition through insurance or from a health maintenance organization, or
 - ii. Enables them to obtain coverage for the condition only at a rate substantially more than the rate available through the state-sponsored arrangement.
- 39. “Support payment” means an amount, received at regular intervals by an individual, for food, shelter, furniture, clothing, and medical expenses.
- 40. “Terminated income” means income received during the current calendar year that stops and will not resume.
- 41. “Training stipend” means an amount, received at regular intervals by an individual, during a course or program for the development of the individual’s skills.
- 42. “Unearned income” means payments received by an individual that are not gifts and are not work-related, including:
 - a. Unemployment insurance;
 - b. Workers’ compensation;
 - c. Disability payments;
 - d. Social Security payments;
 - e. Public assistance payments, excluding food stamps;
 - f. Periodic insurance or annuity payments;
 - g. Retirement or pension payments;
 - h. Strike benefits from union funds;
 - i. Training stipends;
 - j. Child support payments;
 - k. Alimony payments;
 - l. Military family allotments or other support payments from a relative or other individual not residing with the recipient;
 - m. Investment income;
 - n. Royalty payments;
 - o. Periodic payments from estates or trusts; and
 - p. Any other monetary payments received by an individual that are not gifts, are not work-related, and are not capital gains, lump-sum inheritance or insurance payments, or payments made to compensate for personal injury.
- 43. “Uninsured individual” means an individual who does not have health care coverage under:
 - a. A group health plan as defined in Section 2792(a)(1) of the Public Health Service Act, 42 USC 300gg-91(a)(1), including a small employer’s group health plan under A.R.S. Title 20, Chapter 13 or under the laws of another state;
 - b. A church plan as defined in Section 3(33) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 USC 1002(33);
 - c. Medicare, the health insurance program for the aged and disabled under Title XVIII of the Social Security Act, 42 USC 1395 et seq.;
 - d. Medicaid, the program that pays for medical assistance for certain individuals and families with low incomes and resources, through AHCCCS or another state’s Medicaid agency, under Title XIX of the Social Security Act, 42

- e. USC 1396 et seq., excluding a state program for distribution of pediatric vaccines under 42 USC 1396s; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) or Tricare, the medical and dental care programs for members of the armed forces, certain former members, and their dependents under 10 USC 1071 et seq. and 32 CFR Part 199;
 - f. A medical care program of the Indian Health Service or of a tribal organization;
 - g. The Federal Employees Health Benefits Program for U.S. government employees, certain former employees, and their family members under 5 USC 8901 et seq. and 5 CFR Parts 890 and 891;
 - h. Peace Corps plans under Section 5(e) of the Peace Corps Act, 22 USC 2504(e), including:
 - i. Medical and dental care for Peace Corps applicants, Peace Corps volunteers, and minor children living with Peace Corps volunteers under 32 CFR 728.59;
 - ii. Form PC-127C authorization for payment for evaluation of the Peace Corps related conditions of former Peace Corps volunteers;
 - iii. Treatment of the Peace Corps related conditions of former Peace Corps volunteers under 32 CFR 728.53; and
 - iv. CorpsCare coverage for the non-Peace Corps related conditions of former Peace Corps volunteers and their dependents.
 - i. A state health benefits risk pool;
 - j. An individual policy or contract issued by:
 - i. An insurer for medical expenses, including a preferred provider arrangement;
 - ii. A health care service organization under A.R.S. Title 20, Chapter 4, Article 9 or a health maintenance organization as defined in Section 2792(b)(3) of the Public Health Service Act, 42 USC 300gg-91(b)(3); or
 - iii. A nonprofit hospital, medical, dental, and optometric service corporation, a nonprofit hospital service corporation, a nonprofit medical corporation, or a nonprofit medical and hospital service corporation, including Blue Cross Blue Shield of Arizona, under A.R.S. Title 20, Chapter 4, Article 3, or organized under the laws of another state;
 - k. An individual policy or contract made available through the Health Care Group of Arizona administered by AHCCCS under A.R.S. §§ 36-2912, 36-2912.01, and 36-2912.02;
 - l. A health insurance plan of a state or of a political subdivision as defined in A.R.S. § 35-511 or determined under the laws of another state;
 - m. A policy or contract issued to a member of a bona fide association as defined in Section 2791(d)(3) of the Public Health Service Act, 42 USC 300gg-91(d)(3); or
 - n. KidsCare or another state's children's health insurance program under Title XXI of the Social Security Act, 42 USC 1397aa et seq.
44. "Variable income" means income in an amount that changes from payment to payment.

R9-1-502. Family Member Determination

A provider shall determine the family members of an uninsured individual seeking medical services.

1. A family with one member consists of:
 - a. A non-pregnant child who does not live with:
 - i. A parent;
 - ii. A spouse;
 - iii. An individual with whom the child has a common biological or adopted child;
 - iv. A biological or adopted child; or
 - v. A biological or adopted child of an individual with whom the child has a common biological or adopted child; or
 - b. A non-pregnant individual over age 19 who does not live with:
 - i. A spouse;
 - ii. An individual with whom the individual over age 19 has a common biological or adopted child;
 - iii. A biological or adopted child; or
 - iv. A biological or adopted child of an individual with whom the individual over age 19 has a common biological or adopted child.
2. A family with two or more members consists of:
 - a. An individual and:
 - i. The biological or adopted children who live with the individual; and
 - ii. If the individual or a child under subsection (2)(a)(i) is pregnant, each fetus;
 - b. Two individuals, who have a common biological or adopted child and who live together, and:
 - i. The common biological or adopted children living with the two individuals,
 - ii. The biological or adopted children of either individual living with the two individuals; and
 - iii. If an individual or a child under subsection (2)(b)(i) or subsection (2)(b)(ii) is pregnant, each fetus; or

- c. Two individuals, who are married to each other, who live together, and who do not have a common biological or adopted child, and
 - i. The biological or adopted children of either individual living with the two individuals; and
 - ii. If an individual or a child under subsection (2)(c)(i) is pregnant, each fetus.

R9-1-503. Family Income Determination

- A.** A provider shall establish flat fees or fee percentages for medical services rendered to uninsured individuals with family incomes, including earned and unearned income, equal to or less than 200 percent of the current federal poverty guidelines.
- B.** A provider shall determine an uninsured individual's family income by:
 1. Multiplying a weekly payment received by a family member, before deductions, by 52;
 2. Multiplying a biweekly payment received by a family member, before deductions, by 26;
 3. Multiplying a monthly payment received by a family member, before deductions, by 12;
 4. For variable income received by a family member:
 - a. Adding at least four payments, before deductions;
 - b. Dividing the sum obtained in subsection (B)(4)(a) by the number of payments included; and
 - c. Multiplying the quotient obtained in subsection (B)(4)(b) by 52, 26, or 12 as appropriate;
 5. Counting the actual payments received by a family member, before deductions, for:
 - a. Interrupted income,
 - b. New income, and
 - c. Terminated income; and
 6. Adding the amounts calculated under subsections (B)(1) through (B)(5).

R9-1-504. Sliding Fee Schedule Submission and Contents

- A.** By April 1 of each year, a provider shall submit to the Department the provider's sliding fee schedule, including:
 1. A sliding fee schedule with fee percentages,
 2. A sliding fee schedule with flat fees, or
 3. A sliding fee schedule with fee percentages and a sliding fee schedule with flat fees.
- B.** A sliding fee schedule with fee percentages shall contain:
 1. A statement that the sliding fee schedule applies to charges for all medical services provided to uninsured individuals by or through the provider;
 2. The current federal poverty guidelines;
 3. For an uninsured individual with a family income equal to or less than 100 percent of the current federal poverty guidelines, a 100 percent reduction; and
 4. For uninsured individuals with family incomes more than 100 percent of the current federal poverty guidelines but not more than 200 percent of the current federal poverty guidelines, at least three fee percentage levels that increase as family income increases.
- C.** A sliding fee schedule with flat fees shall contain:
 1. The requirements listed in subsections (B)(1) and (B)(2);
 2. The flat fee amounts for each medical service or group of medical services;
 3. For an uninsured individual with a family income equal to or less than 100 percent of the current federal poverty guidelines, a \$0 flat fee for each medical service or group of medical services included under subsection (C)(2); and
 4. For uninsured individuals with family incomes more than 100 percent of the current federal poverty guidelines but not more than 200 percent of the current federal poverty guidelines, at least three flat fee levels that increase as family income increases for each medical service or group of medical services included under subsection (C)(2).

R9-1-505. Sliding Fee Schedule Approval Time-frames

- A.** The overall time-frame described in A.R.S. § 41-1072(2) for a request for sliding fee schedule approval is 32 days.
 1. A provider and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
 2. An extension of the substantive review time-frame and the overall time-frame shall not exceed eight days.
- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for a request for sliding fee schedule approval is 11 days, beginning on the day the Department receives the request.
 1. Except as provided in subsections (B)(3) and (B)(4), the Department shall mail to a provider a written notice of administrative completeness when the provider's request for sliding fee schedule approval is complete.
 2. If a request for sliding fee schedule approval is incomplete, the Department shall mail to the provider a written notice of incompleteness that:
 - a. Lists the missing documents or incomplete information, and
 - b. Suspends the administrative completeness review time-frame and the overall time-frame from the postmark date of the notice of incompleteness;

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- i. Until the date the Department receives a complete request for sliding fee schedule approval; or
 - ii. For 60 days, whichever comes first.
 3. If the Department does not receive all the additional documents or information required under subsection (B)(1) within 60 days after the postmark date of the notice of incompleteness, the Department deems the request for sliding fee schedule approval withdrawn.
 4. If the Department approves a sliding fee schedule during the administrative completeness review time-frame, the Department does not issue a separate written notice of administrative completeness.
 - C. The substantive review time-frame described in A.R.S. § 41-1072(3) for a request for sliding fee schedule approval is 21 days, beginning on the postmark date of the Department's notice of administrative completeness under subsection (B)(1).
 1. The Department shall mail to a provider a written notice of sliding fee schedule approval or disapproval according to A.R.S. § 41-1076 by the last day of the substantive review time-frame and the overall time-frame.
 2. If the Department issues to a provider a written request for additional information according to A.R.S. § 41-1075(A), the request for additional information suspends the substantive review time-frame and the overall time-frame from the postmark date of the request for additional information:
 - a. Until the date the Department receives all the information requested; or
 - b. For 60 days, whichever comes first.
 3. If the Department does not receive all the information requested under subsection (C)(2) within 60 days after the postmark date of the request for additional information, the Department shall disapprove the sliding fee schedule.
 - D. If a time-frame's last day falls on a Saturday, a Sunday, or a state service holiday listed in A.A.C. R2-5-402, the Department considers the next business day the time-frame's last day.

R9-1-506. Fees Payable by Uninsured Individuals Under a Sliding Fee Schedule

- A. A provider:
 1. Shall not charge an uninsured individual with a family income equal to or less than 100 percent of the current federal poverty guidelines the fee determined according to subsection (C) or subsection (D), and
 2. May charge an individual described in subsection (A)(1) only the administrative fee determined according to subsection (E).
- B. A provider may charge an uninsured individual with a family income more than 100 percent of the current federal poverty guidelines but not more than 200 percent of the current federal poverty guidelines the fee determined according to subsection (C), subsection (D), or subsection (E).
- C. If a provider uses a sliding fee schedule with fee percentages, an uninsured individual's fee for medical services shall not exceed the amount calculated by applying the fee percentage for the individual's family income to the balance remaining on the lowest contracted charge for each medical service provided that is not subject to payment under A.R.S. §§ 36-2907.05 or 36-2907.06.
- D. If a provider uses a sliding fee schedule with flat fees, an uninsured individual's fee for medical services shall not exceed the balance remaining on the lowest contracted charge for each medical service provided that is not subject to payment under A.R.S. §§ 36-2907.05 or 36-2907.06.
- E. A provider may:
 1. Establish an administrative fee that does not exceed \$25; and
 2. Charge the administrative fee to:
 - a. Uninsured individuals with a family income equal to or less than 100 percent of the current federal poverty guidelines; and
 - b. Uninsured individuals with family incomes more than 100 percent of the current federal poverty guidelines but not more than 200 percent of the current federal poverty guidelines only in lieu of the fee calculated under subsection (C) or subsection (D).

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

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

[R05-460]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| Chapter 2 | Repeal |
| Article 1 | Repeal |
| R9-2-101 | Repeal |

- 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. §§ 36-136(A)(7), and 36-136(F)
Implementing statutes: A.R.S. § 36-2907.06(D)

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

Notice of Rulemaking Docket Opening: 11 A.A.R. 2390, June 24, 2005

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

Name:	Myriam Vega, Office Chief
Address:	Arizona Department of Health Services Office of Health Systems Development 1740 W. Adams, Room 410 Phoenix, AZ 85007
Telephone:	(602) 542-1219
Fax:	(602) 542-2011
E-mail:	vegami@azdhs.gov
	or
Name:	Kathleen Phillips, Rules Administrator
Address:	Arizona Department of Health Services Office of Administrative Rules 1740 W. Adams St., Room 202 Phoenix, AZ 85007
Telephone:	(602) 542-1264
Fax:	(602) 364-1150
E-mail:	phillik@azdhs.gov

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

The Department placed the existing sliding fee schedule Article, 9 A.A.C. 2, Article 1, in the Chapter labeled "Tobacco Tax-funded Programs" because sliding fee schedules applied to the A.R.S. § 36-2907.06 primary care program Part B, funded under former A.R.S. § 36-2921. Laws 2003, Chapter 265, § 30, retroactively effective to July 1, 2003, repealed all versions of A.R.S. § 36-2921, which allocated tobacco tax funds. The state's general fund currently funds the Department's primary care program Part B.

Other Department programs, such as the primary care provider loan repayment program under A.R.S. § 36-2172 and 42 CFR Part 62¹ and the J-1 visa waiver program and the national interest waiver program under A.R.S. § 36-104(16), also need to reference the sliding fee schedule rules. Therefore, the Department determined to repeal 9 A.A.C. 2, including Article 1, Sliding-fee Schedule; and R9-2-101, Approval of Sliding-fee Schedule. In a separate rulemaking the Department is making new sliding fee schedule rules in 9 A.A.C. 1, Article 5.

[¹ 42 CFR 62.55(c)(2) provides that a health professional participating in a state loan repayment program that receives federal grants authorized by 42 USC 254q-1 shall "charge for his or her professional services at the usual and

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customary rate prevailing in the area in which such services are provided, except that if a person is unable to pay such charge, such person shall be charged at a reduced rate or not charged any fee.”]

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:**
The Department did not review any study and does not propose to rely on or not rely on any study for this rulemaking.
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:**
Under A.R.S. § 41-1055(D)(3) this rulemaking is exempt from the economic, small business, and consumer impact statement requirement. Repealing 9 A.A.C. 2 imposes no costs on stakeholders or the general public. The Department is making new sliding fee schedule rules at 9 A.A.C. 1, Article 5.
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:**
None
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:**
No oral proceeding is scheduled. Written comments will be accepted at the addresses listed in item #4 until the close of record at 5:00 p.m., January 26, 2006, unless a person requests an oral proceeding before the close-of-record date.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable
12. **Incorporations by reference and their location in the rules:**
None
13. **The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

CHAPTER 2. ~~DEPARTMENT OF HEALTH SERVICES~~
~~TOBACCO TAX FUNDED PROGRAMS REPEALED~~

ARTICLE 1. ~~SLIDING FEE SCHEDULE REPEALED~~

Section

R9-2-101. ~~Approval of Sliding-fee Schedule Repealed~~

ARTICLE 1. ~~SLIDING FEE SCHEDULE REPEALED~~

R9-2-101. ~~Approval of Sliding-fee Schedule Repealed~~

- ~~A.~~ For purposes of this Section, “sliding-fee schedule” means a document that sets forth the relationship between an individual’s income and family size and states the percentage of the charges for health care services provided pursuant to A.R.S. § 36-2907.06 for which the individual will be responsible.
- ~~B.~~ At least 30 calendar days before implementation of the sliding-fee schedule, a qualifying community health center shall submit an application for approval of the schedule to the Department of Health Services. Submission occurs at the time the Department receives a correctly completed application. The application shall contain:
 1. The qualifying community health center’s name and street address including city, state, and zip code;
 2. The qualifying community health center’s telephone number; and
 3. The name of the qualifying community health center’s administrator.
- ~~C.~~ The Department of Health Services shall notify the qualifying community health center in writing of approval or disapproval within 20 calendar days of submission of application. A sliding fee schedule shall not be implemented without approval. If an application is disapproved, the Department shall set forth the reasons for the disapproval in the written notice. Within 15 calendar days of receiving a written disapproval, a qualifying community health center may file a written request for a hearing with the Department to appeal the disapproval.

- ~~D.~~ The sliding fee schedule shall cover income levels from 0 to at least 200% of the federal poverty level.
- ~~E.~~ A qualifying community health center shall not deny health care services to an individual eligible for health care services pursuant to A.R.S. § 36-2907.06 because the individual is unable to pay for the health care services.
- ~~F.~~ A qualifying community health center shall apply a 100% discount for an eligible individual with an income at or below 100% of the federal poverty level. A qualifying community health center may establish a minimum fee for administrative processing costs for all eligible individuals without regard to income level. A qualifying community health center shall charge the greater of either the administrative fee or the amount of the charges for services for which an eligible individual is determined to be responsible according to the sliding fee schedule.
- ~~G.~~ An individual covered by a sliding fee schedule shall not be responsible for an amount greater than the amount determined by applying the sliding fee schedule to the lowest contracted charge for each service received. The lowest contracted charge for a service is determined by reference to contracts covering that service, in effect at the time that the service is rendered, between the qualifying community health center and any payor, subject to limitations of federal and state laws and regulations.
- ~~H.~~ The qualifying community health center shall post a notice at or near the main entrance and in each waiting room. The notice shall be in both English and Spanish and shall contain the following information:
 - ~~1.~~ The qualifying community health center provides primary care services to uninsured Arizona residents with family incomes of 200% or less of the federal poverty guidelines and who meet the eligibility requirements of the Tobacco Tax Primary Care Program, A.R.S. § 36-2907.06.
 - ~~2.~~ The name of the individual or unit within the qualifying community health center that interested persons may contact to have an eligibility determination interview for the Tobacco Tax Primary Care program.
 - ~~3.~~ The qualifying community health center's use of an Arizona Department of Health Services approved sliding fee schedule to determine the payment responsibility or eligible persons.
 - ~~4.~~ The name and phone number of the qualifying community health center's staff member responsible for receiving and hearing any complaints from eligible persons regarding their payment responsibility for Tobacco Tax Primary Care program services.
- ~~I.~~ The qualifying community health center shall keep a log and file of all complaints dealing with payment responsibility under the sliding fee schedule. The log and file shall indicate the name and address of the eligible person, the nature of the complaint, the date the complaint was received, the date the decision was rendered, and the date the decision letter was sent to the eligible person. The qualifying community health center shall retain the log and file for 12 months after the decision letter is sent.

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION TITLE, REGISTRATION, AND DRIVER LICENSES

[R05-436]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R17-4-401 | Amend |
| R17-4-411 | New Section |
| R17-4-412 | New Section |
- 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. § 28-366
Implementing statute: Laws 2005, Chapter 312, A.R.S. §§ 28-673, 28-1301, 28-1321, 28-1383, 28-1401, 28-1402, 28-1403, 28-1441, 28-1461, 28-1463, 28-1464, 28-3159, 28-3166, 28-3319, 28-3320, 28-3322
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 11 A.A.R. 5221, December 9, 2005

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

Name: Troy A. Walters, Rules Analyst
Address: Administrative Rules Unit
Department of Transportation, Mail Drop 530M
1801 W. Jefferson St.
Phoenix, AZ 85007
Telephone: (602) 712-8994
Fax: (602) 712-3081
E-mail: twalters@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.azdot.gov/mvd/mvdrules/rules.asp.

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

Laws 2005, Chapter 312 amends Title 28, Chapter 4, Arizona Revised Statutes by adding Article 3.1 (A.R.S. §§ 28-1401, 1402, and 1403), regarding the creation of a special ignition interlock restricted driver license "SIIRD". Additionally, conforming amendments were made to A.R.S. §§ 28-673, 28-1301, 28-1321, 28-1383(A)(3), 28-1441, 28-1461, 28-1463, 28-1464, 28-3159, 28-3166, 28-3319, 28-3320, and 28-3322. Effective February 1, 2006, a SIIRD is created for qualifying individuals during a period of suspension or revocation for alcohol related offences. A person whose Class D or G Driver License has been suspended for refusal to submit to a blood alcohol concentration test or revoked for an extreme or aggravated DUI may apply to the Division for a SIIRD, which allows a person to operate a motor vehicle as restricted by law and equipped with a certified ignition interlock device "CIID" during the period of suspension or revocation. Also, the new law states that the Division shall issue a SIIRD to a person under eighteen years of age, or a person age eighteen, nineteen, or twenty, who has a court ordered restriction pursuant to A.R.S. §§ 28-3320 or 28-3322, respectively.

The Division is proposing this rule to:

- Clarify application requirements for a person to be eligible for a SIIRD;
- Set application fees for the SIIRD, which are age appropriate and consistent with a non-SIIRD driver license application fee;
- Clarify the driving restrictions for SIIRD holders;
- Clarify installer reporting requirements and criteria;
- Ensure financial responsibility requirements are met;
- Clarify when the Division will extend a SIIRD; and
- Clarify hearing procedures when a SIIRD is extended.

A subsection, Burden of proof and presumptions, was added at the request of the Division's Executive Hearing office.

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:

The agency will not rely on any written study for this rulemaking.

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 Division may experience a minimal to moderate economic impact for rulemaking, programming, training, and advertising. An applicant for a SIIRD may experience a minimal impact for the \$25 application fee associated with the SIIRD and any screening/education that may be required. The number of SIIRDLs issued is not readily quantifiable as this is a new credential being issued by the Division. The cost for the SIIRD to a qualified individual does not outweigh the benefit of that individual having a clearly marked credential allowing them to drive to their jobs and other locations as restricted during the period of suspension or revocation. CIID installers may experience a moderate impact for acquiring the capability to report required information electronically, to the Division, as required by this rule. The benefit of safety to the motoring public outweighs the cost to an installer as the Division will be able to identify those individuals with a SIIRD and CIID who attempt to operate the vehicle while their blood alcohol concentration is above the presumptive limit as prescribed by law, and take appropriate action as necessary, to make the public roadways safe. Additionally, the benefit to law enforcement to easily determine when an individual is required to have a functioning CIID in the vehicle the individual is operating will increase public safety by removing violators from the public highways.

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:

A concerned person may communicate with the agency official listed in item #4 concerning the economic impact statement.

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:

No oral proceeding is scheduled for this rulemaking. A request for an oral proceeding may be made to the agency official in item #4. If no request for an oral proceeding is made, the public record for this rulemaking will close at 4:30 p.m. on January 17, 2006.

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

Not applicable

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

None

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES**

ARTICLE 4. DRIVER LICENSES

Section

R17-4-401. Definitions

R17-4-411. ~~Recodified~~ Special Ignition Interlock Restricted Driver License; Application; Restrictions; Reporting; Fee

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ARTICLE 4. DRIVER LICENSES

R17-4-401. Definitions

The following definitions apply to this Article unless otherwise specified:

“Certified ignition interlock device has the meaning prescribed in A.R.S. § 28-1301(1).

1. “Division” means the Arizona Department of Transportation, Motor Vehicle Division.

“Education” has the meaning prescribed in A.R.S. § 28-1301(3).

2. “Financial responsibility (accident) suspension” means suspension by the Division of:

a. The Arizona driver license or driving privilege of an owner of a vehicle that:

i. Lacks the coverage required by A.R.S. § 28-4135, and

ii. Is involved in an accident in Arizona; and

b. The Arizona registration of a vehicle specified under R17-4-402(A), unless the Division receives proof the vehicle was sold.

“Ignition interlock device” has the meaning prescribed in A.R.S. § 28-1301(4).

3. “Proof the vehicle was sold” means a written statement to the Division from an owner that includes the following:

a. The seller’s name,

b. The VIN,

c. The sale date, and

d. The purchaser’s name and address.

4. “Restricted permit” means written permission from the Division for:

a. A person subject to a financial responsibility (accident) suspension to operate a motor vehicle only:

i. Between the person’s home and workplace,

ii. During the person’s work-related activities, or

iii. Between the person’s home and school; and

b. A vehicle with an Arizona registration subject to a financial responsibility (accident) suspension to be operated by a person specified under R17-4-402 only:

i. Between the person’s home and workplace;

ii. During the person’s work-related activities; or

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- iii. Between the person's home and school.
- "Screening" has the meaning prescribed in A.R.S. § 28-1301(8).
- 5. "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
- 6. "SR22" means a certificate of insurance that complies with requirements under A.R.S. § 28-4077(A).
- "Tampering" has the meaning prescribed in A.R.S. § 28-1301(9).
- "Treatment" has the meaning prescribed in A.R.S. § 28-1301(10).
- 7. "VIN" or "vehicle identification number" is defined in A.R.S. § 13-4701(4).
- 8. "Withdrawal action" means a Division action that invalidates a person's Arizona driving privilege or a vehicle's Arizona registration that includes:
 - a. A suspension;
 - b. A revocation;
 - c. Any outstanding warrant; or
 - d. Any unresolved citation.

R17-4-411. ~~Revised~~ Special Ignition Interlock Restricted Driver License, Application, Restrictions, Reporting, Fee

- A.** In addition to the requirements prescribed in A.R.S. § 28-3158, an applicant for a special ignition interlock restricted driver license shall:
 - 1. If the applicant is suspended for a first offense of A.R.S. § 28-1321:
 - a. Have completed ninety consecutive days of the period of suspension required, and
 - b. Maintain a functioning certified ignition interlock device during the remaining period of the suspension.
 - 2. If the applicant is revoked for a first offense of A.R.S. § 28-1383(A)(3):
 - a. Have completed not less than ninety consecutive days of the required period of suspension pursuant to A.R.S. § 28-1385.
 - b. Submit proof satisfactory to the Division that the applicant has completed an approved alcohol or drug screening and/or treatment program, and
 - c. Maintain a functioning certified ignition interlock device during the remaining period of the revocation.
 - 3. If the applicant has a court ordered restriction pursuant to A.R.S. §§ 28-3320 or 28-3322:
 - a. Be subject to the restrictions provided for in subsection (C) of this Section, and
 - b. Maintain a functioning certified ignition interlock device during the remaining period of a court ordered restriction.
 - 4. The Division shall not issue a special ignition interlock restricted driver license if the applicants driver license or driving privilege is suspended or revoked for a reason not related to subsection (A)(1), (2), and (3) of this Section.
- B.** An applicant for a special ignition interlock restricted driver license shall pay the following fees:
 - 1. Age 50 or older \$10.00
 - 2. Age 45 – 49 \$15.00
 - 3. Age 40 – 44 \$20.00
 - 4. Age 39 or younger \$25.00
- C.** A special ignition interlock restricted driver license issued pursuant to subsection (A), only permits a person to operate a motor vehicle that is equipped with a functioning certified ignition interlock device within the limitations as prescribed in A.R.S. § 28-1402(A).
- D.** Reporting. On the 11th month after the initial date of installation and each 11th month thereafter for as long as the person is required to maintain a functioning certified ignition interlock device, each installer shall electronically provide the Division all of the following information as recorded by the certified ignition interlock device:
 - 1. Date installed.
 - 2. Client's full name.
 - 3. Client's date of birth.
 - 4. Client's customer/driver license number.
 - 5. Installer and manufacturer name.
 - 6. Installer fax number.
 - 7. Date report interpreted.
 - 8. Report period.
 - 9. Any tampering or circumventing of the device within the meaning of A.R.S. § 28-1301(9).
 - 10. Any failure to provide proof of compliance or inspection as prescribed in A.R.S. § 28-1461.
 - 11. Any attempts to operate the vehicle with an alcohol concentration exceeding the presumptive limit as prescribed in A.R.S. § 28-1381(G)(3), or if the person is under 21 years of age, attempted to operate the vehicle with any spirituous liquor in the person's body.
 - 12. Any other information as required by the Director.

E. An applicant for a special ignition interlock restricted driver license shall provide proof of financial responsibility as prescribed in Title 28, Arizona Revised Statutes, Chapter 9, Article 3.

R17-4-412. ~~Recodified~~ Extension of a Special Ignition Interlock Restricted Driver License; Hearing; Burden of Proof and Presumptions

A. Extension. The Division shall extend a special ignition interlock restricted driver license for a period of one year when the Division has reasonable grounds to believe:

1. The person tampered with the certified ignition interlock device within the meaning of A.R.S. § 28-1301(9);
2. The person fails to provide proof of compliance as prescribed in A.R.S. § 28-1461; or
3. The person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit as prescribed in A.R.S. § 28-1381(G)(3) three or more times during the period of license restriction or limitation, or if the person is under 21 years of age, attempted to operate the vehicle with any spirituous liquor in the person's body three or more times during the period of license restriction or limitation.

B. Hearing. When an individual's special ignition interlock restricted driver license is extended pursuant to subsection (A), the individual may submit to the Division a written request for a hearing within 15 days after the date of the order of extension of the restriction. A request for hearing stays the extension of the restriction.

C. Burden of proof and presumptions.

1. A presumption shall arise that the person's whose special ignition interlock restricted driver license was extended in accordance with subsection (A)(3), was the person in control of the vehicle and attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit as prescribed in A.R.S. § 28-1381, or tampered with the device within the meaning of A.R.S. § 28-1301(9).
2. The presumption may be rebutted by a showing of clear and convincing evidence that the individual whose special ignition interlock restricted driver license was extended, was not the person in control of the vehicle or attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit as prescribed in A.R.S. § 28-1381, or tampered with the device within the meaning of A.R.S. § 28-1301(9).

D. Except for subsection (A)(2), if the Division suspends, revokes, cancels, or otherwise rescinds a person's special ignition interlock restricted driver license or driving privilege for any reason, the Division shall not issue a new license or reinstate the special ignition interlock restricted driver license during the original period of suspension or revocation or while the person is otherwise ineligible to receive a license.