

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 15. BOARD OF MASSAGE THERAPY

[R06-97]

PREAMBLE

1. Sections Affected

R4-15-101
R4-15-102
R4-15-201
R4-15-205
Table 1
Article 3
R4-15-301
R4-15-302
R4-15-303
Article 4
R4-15-401

Rulemaking Action

Amend
Amend
Amend
New Section
Amend
New Article
New Section
New Section
New Section
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 statute: A.R.S. § 32-4203(A)(7)

Implementing statute: A.R.S. §§ 32-4203(A)(1), 32-4203(A)(3), 32-4203(A)(5), 32-4205, 32-4222(B)(1), 32-4225, 32-4226, 32-4227, 41-1062, 41-1073

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 1033, March 31, 2006

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

Name: Dr. Craig Runbeck, Executive Director
Address: 1400 W. Washington, Suite 230
Phoenix, AZ 85007
Telephone: (602) 542-8604
Fax: (602) 542-3093
E-mail: craig.runbeck@npbomex.az.gov

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

The Board is changing the entry level educational requirement for a massage therapist as stated in the current rules in R4-15-201(A)(1)(g) and R4-15-201(B)(3) from 500 hours of classroom hours of supervised training at a Board-approved school to 700 hours as stated in the proposed rules in R4-15-201(A)(1), R4-15-201(A)(2), R4-15-201(B)(1)(g). When the statutes for licensing massage therapists were passed, the legislature supported a minimum of 500 hours of education. However, A.R.S. § 32-4222 includes a provision that states on or after July 1, 2005, the Board may increase the minimum number of classroom hours of supervised instruction at a Board recognized school that an applicant for licensure must successfully have completed to qualify for licensure. The Board received written requests from the American Massage Therapy Association and the Arizona Council of Massage Therapy Educators asking that the hours be increased to 700 classroom hours to enable massage therapists to continue to serve the public

Notices of Proposed Rulemaking

safely. The nationwide trend has been to increase to this level or more. R4-15-201(A) is being amended to show the effective date of this change as January 1, 2008.

The Board is establishing standards for continuing education in a new Article 3; adding requirements for renewal applications, including time-frames for Board approval or denial of a license and a fee for license renewal and delinquent license renewal; repealing R4-15-101(10)(e) in the definition of good moral character; and adding provisions for rehearing or review in a new Article 4. The Board is also reducing its fee for an application for a regular license. The Board originally established this fee in rules that became effective on June 8, 2004. Because the Board was newly established, the Board projected it would receive 3000 applications for a regular license and charged the application fee that it believed was necessary to sustain operations of the Board. The Board actually received over 7000 applications causing revenue surpluses for the Board. Thus, the Board has determined it is appropriate to reduce the fee for a regular license.

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 Board did not review or rely on any study.

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:

As used in this summary, minimal means less than \$1,000, moderate means between \$1,000 and \$10,000, and substantial means greater than \$10,000.

The proposed rules affect the Board, an applicant for a massage therapy license, a licensee, a Board-approved school, a provider of continuing education, a business that chooses to pay for continuing education and a consumer seeking massage therapy services.

In the definition of good moral character the Board is repealing the provision that states the applicant has not practiced massage therapy without the required license in this state or in another jurisdiction within the United States within the five years before the date of the application. The Board determined that the rule language may create an absolute barrier to practicing massage therapy and wants to have discretion to determine whether such an applicant is otherwise qualified to practice. The change would allow the Board to license the applicant with an immediate sanction if the Board so chooses. By applying a sanction the Board is protecting the health and safety of consumers. This change benefits an applicant who may be able to practice massage therapy and consumers who will be able to choose from a larger pool of massage therapists.

The fee reduction for a regular application affects the Board. In its original rulemaking, which became effective on June 8, 2004, the Board stated it anticipated licensing 3000 individuals and charged the application fee it believed was necessary to sustain operations. The Board received many more license applications than expected, which resulted in more than 7000 individuals being licensed. The fees submitted by these individuals resulted in revenue surpluses for the Board. The Board has determined it is appropriate to reduce its regular application fee. In the future, the Board anticipates receiving 500 applications for a regular license each year. The fee reduction will cause the Board to lose \$425,000 each year. However, the purpose of the fee reduction is to bring the Board in line with the amount needed each year for Board operations.

The fee reduction for a regular application will minimally benefit an applicant for a regular license, who will be required to submit a \$165 application fee instead of \$250.

The Board is charging a renewal fee of \$75 and a delinquent renewal fee of \$40.

Licenses expire every two years on the licensee's birthday. Thus, a licensee will pay \$37.50 a year to retain a license. The Board currently licenses 7148 massage therapists and expects to renew between 3,000 and 4,000 licensees every year.

The change in R4-15-201, which increases the number of classroom hours an applicant must complete to qualify for licensure from 500 to 700, affects an applicant who submits a license application after January 1, 2008 and a Board-approved school that provides the classroom instruction. A Board-approved school could increase tuition. The amount of the increase depends on how many classroom hours the Board-approved school currently requires to complete a massage therapy program. Many Board-approved schools have already instituted programs that require 700 or more classroom hours of supervised instruction. The rule should not cause an increase in tuition for an applicant attending one of these schools. An applicant attending a Board-approved school that currently requires less than 700 classroom hours could realize an increase in tuition and the school will benefit from the increase in tuition. The amount will vary depending on the number of classroom hours that need to be increased. An applicant attending a Board-approved school that is currently requiring no more than 500 classroom hours for completion of a massage therapy program could be required to pay as much \$2,600 in additional tuition. A Board-approved school's increased revenue depends on the number of applicants attending the Board-approved school.

Unless a licensee's employer pays for continuing education, the licensee will bear the costs of obtaining a minimum of 25 hours of continuing education for the two-year period immediately preceding license expiration. However, it is the statute in A.R.S. § 32-4225(E) that imposes this requirement. The rule's purpose is to implement the statute. The continuing education requirement benefits a provider of continuing education. Providers of continuing education charge approximately \$15 to \$30 an hour and each licensee is required to complete 25 hours of continuing education every two years. The amount of the increase in revenue ranges from minimal to substantial, depending on how much continuing education is provided by each provider. Some businesses that hire massage therapists may pay for continuing education and will bear the costs of the continuing education.

The Board bears moderate costs for writing rules to implement its statutes and related economic, small business, and consumer impact statement and mailing the new rules to interested persons.

Businesses that hire licensed massage therapists will benefit from the rules because they will have only qualified massage therapists working for them.

A business that chooses to pay for continuing education for its employees may pass the cost onto consumers of massage therapy services. Consumers benefit from the rules because only massage therapists that meet the requirements contained in the rules and statutes will be allowed to practice 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: Dr. Craig Runbeck, Executive Director
Address: 1400 W. Washington, Suite 230
Phoenix, AZ 85007
Telephone: (602) 542-8604
Fax: (602) 542-3093
E-mail: craig.runbeck@npbomex.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 will be conducted by the Board at the following location in the state for the purpose of taking oral and written testimony and providing adequate discussion on the proposed rules from members of the public.

Date: May 15, 2006
Time: 1:00
Location: 1400 W. Washington, B-1 Conference Room
Phoenix, AZ 85007

The public record on the proposed rulemaking will close at 5:00 p.m. on May 15, 2006.

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 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 15. BOARD OF MASSAGE THERAPY

ARTICLE 1. GENERAL PROVISIONS

Section
R4-15-101. Definitions
R4-15-102. Fees

Notices of Proposed Rulemaking

ARTICLE 2. LICENSING

Section

- R4-15-201. Qualifications: Application for a Regular License
- R4-15-205. ~~Reserved~~ Application for Renewal of a License
- Table 1. Time-frames (in Days)

ARTICLE 3. CONTINUING EDUCATION

Section

- R4-15-301. Required Continuing Education Hours
- R4-15-302. Approval of Continuing Education
- R4-15-303. Documentation of Completion of Continuing Education

ARTICLE 4. REGULATORY PROVISIONS

Section

- R4-15-401. Rehearing or Review of Board's Decision

ARTICLE 1. GENERAL PROVISIONS

R4-15-101. Definitions

1. "Accredited" means approved by the:
 - a. New England Association of Schools and Colleges
 - b. Middle States Association of Colleges and Secondary Schools
 - c. North Central Association of Colleges and Schools
 - d. Northwest Association of Schools and Colleges
 - e. Southern Association of Colleges and Schools
 - f. Western Association of Schools and Colleges
 - g. National Commission for Certifying Agencies
 - ~~g-h.~~ Commission on Massage Therapy Accreditation
2. "Applicant" means an individual requesting a regular, provisional, temporary, renewal or reciprocity license from the Board.
3. No change
4. No change
5. "Continuing education" means a workshop, seminar, lecture, conference, class, or instruction related to massage therapy.
6. "Correspondence" or "distance learning format" means an instructor of a continuing education and individual receiving the instruction are not located in the same room in which the continuing education is being provided.
- ~~5-7.~~ No change
- ~~6-8.~~ No change
- ~~7-9.~~ No change
- 8-10. "Good moral character" means an applicant:
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. ~~Has not practiced massage therapy without the required license in this state or in another jurisdiction within the United States within the five years before the date of the application.~~
- 9-11. No change
- ~~10-12.~~ No change
- ~~11-13.~~ No change
- ~~12-14.~~ No change
- ~~13-15.~~ No change
- ~~14-16.~~ No change
- ~~15-17.~~ No change
- ~~16-18.~~ No change
- ~~17-19.~~ No change

R4-15-102. Fees

- A. The Board shall charge the following fees that are nonrefundable, unless A.R.S. § 41-1077 applies:
1. Application for a license, ~~\$250~~ \$165
 2. No change
 3. No change
 4. License renewal, \$75
 5. Delinquent renewal of a license, \$40
- B. No change
- C. No change
- D. No change

ARTICLE 2. LICENSING

R4-15-201. Qualifications: Application for a Regular License

- A.** To meet the requirements in A.R.S. § 32-4222(b), an applicant who submits an application:
1. Before January 1, 2008 shall complete 500 classroom hours of supervised instruction at a Board-approved school.
 2. On and after January 1, 2008 shall complete 700 classroom hours of supervised instruction at a Board-approved school.
- ~~A.~~ **B.** No change
1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. Whether the applicant has successfully completed ~~500~~ the classroom hours of supervised instruction required under subsection (A) at a Board-approved school;
 - h. No change
 - i. No change
 - j. No change
 - k. No change
 - l. No change
 - m. No change
 - n. No change
 2. No change
 3. No change
- ~~B.~~ **C.** No change
1. No change
 2. No change
 3. To show proof of completion of ~~500~~ the classroom hours of supervised instruction at a Board-approved school required in subsection (A), academic transcripts from the Board-approved school from which the applicant graduated.

R4-15-205. Reserved Application for Renewal of a License

An applicant for a renewal license shall submit:

1. An application form that contains the applicant's:
 - a. Name.
 - b. Residence and practice addresses, and
 - c. Residence and practice telephone numbers;
2. The information required in R4-15-303; and
3. The fee required in R4-15-102(A).

Table 1. Time-frames (in Days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Regular license R4-15-201	A.R.S. § 32-4222	180	90	90
Temporary License R4-15-201	A.R.S. § 32-4224	60	30	30
Provisional License R4-15-202	A.R.S. § 32-4222	180	90	90
License by Reciprocity R4-15-203	A.R.S. § 32-4223	120	60	60
Out-of-state School Approval R4-15-204	A.R.S. § 32-4228	120	60	60
<u>Renewal License</u>	<u>A.R.S. § 32-4225</u>	<u>60</u>	<u>30</u>	<u>30</u>

ARTICLE 3. CONTINUING EDUCATION

R4-15-301. Required Continuing Education Hours

A. During the two-year period immediately preceding license expiration, a licensee applying for a renewal license shall complete 25 hours or more of continuing education.

B. A licensee may complete a maximum of 12 continuing education hours from a correspondence or distance learning format.

R4-15-302. Approval of Continuing Education

The following continuing education is approved by the Board:

1. Continuing education that is taught by an association, corporation, or organization:
 - a. Accredited by the National Commission for Certifying Agencies, or
 - b. Approved by the NCBTMB.
2. Continuing education sponsored by a massage therapy school or bodywork therapy school that is:
 - a. Affiliated with a community college located in the state of Arizona, or
 - b. Approved by the Arizona State Board for Private Postsecondary Education;
3. Continuing education offered by a regionally accredited post-secondary institution in a state other than Arizona; or
4. Continuing education offered by an institution approved by a post secondary educational entity in a state other than Arizona.

R4-15-303. Documentation of Completion of Continuing Education

When renewing a license, a licensee shall submit with a renewal application documentation of completion of 25 hours of continuing education that includes:

1. The name of the licensee.
2. The title of the continuing education.
3. The subject matter of the continuing education.
4. The date of the continuing education.
5. The hours completed.
6. The location where the continuing education took place.
7. The name of the instructor providing the continuing education, and
8. The signature of the licensee.

ARTICLE 4. REGULATORY PROVISIONS

R4-15-401. Rehearing or Review of Board's Decision

- A.** Except as provided in subsection (F), a party who is aggrieved by a decision issued by the Board may file with the Board, not later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the grounds for rehearing or review. For purposes of this Section, a decision is considered served when personally delivered to the party's last known address or mailed by certified mail to the party at the party's last known address or the party's attorney.
- B.** A party filing a motion for rehearing or review under this rule may amend the motion at any time before it is ruled upon by the Board. Other parties may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion and may permit oral argument.
- C.** The Board may grant a rehearing or review of the decision for any of the following causes materially affecting the party's rights:
1. Irregularity in the proceedings of the Board, administrative law judge, or any abuse of discretion that deprived the party of a fair hearing;
 2. Misconduct of the Board or administrative law judge;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing; or
 7. That the findings of fact or decision is not supported by the evidence or is contrary to law.
- D.** The Board may affirm or modify its decision or grant a rehearing or review to all or any of the parties on all or part of the issues for the reasons specified in subsection (C). An order modifying a decision or granting a rehearing or review shall specify the grounds for the rehearing or review and the rehearing or review shall cover only those matters specified.
- E.** No later than 30 days after a decision is issued by the Board, the Board may, on its own initiative, grant a rehearing or review of its decision for any reasons in subsection (C). An order granting a rehearing or review shall specify the grounds for the rehearing or review.
- F.** If the Board makes specific findings that the immediate effectiveness of the decision is necessary for the preservation of the public health and safety and determines that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without an opportunity for a rehearing or review. If the Board issues the decision as a final decision without an opportunity for a rehearing or review, the aggrieved party may make an application for judicial review within the time limits permitted for an application for judicial review of the Board's final decision under A.R.S. § 41-1092.02.

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 6. SCHOOL FACILITIES BOARD

[R06-100]

PREAMBLE

- | | |
|--|--|
| <p>1. <u>Sections Affected</u>
R7-6-302</p> | <p><u>Rulemaking Action</u>
Amend</p> |
| <p>2. <u>The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u>
Authorizing statute: A.R.S. § 15-2011(D)
Implementing statute: A.R.S. § 15-2041(D); Version 2</p> | |
| <p>3. <u>A list of all previous notices appearing in the Register addressing the proposed rule:</u>
Notice of Rulemaking Docket Opening: 12 A.A.C. 881, March 24, 2006</p> | |
| <p>4. <u>The name and address of agency personnel with whom persons may communicate regarding the rulemaking:</u>
Name: Dennis Kirkland, SFB Procurement Officer</p> | |

Notices of Proposed Rulemaking

Address: 1700 W. Washington, Suite 230
Phoenix, AZ 85007

Telephone: (602) 364-0538

Fax: (602) 542-6529

E-mail: dkirkland@azsfb.gov

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

Currently the law requires the School Facilities Board (“SFB”) to help formulate a plan for growing school districts that are currently required to send high school students outside the district by as much as 45 miles to adjoining school districts. Under the current application of the law the only funding source to provide the necessary high school space within the school district is local funds, generally through a locally funded bond issue. The following table identifies several school districts that are on the edge of current development areas projected to have significant growth in the next few years and that provided more than 100 high school students to adjoining districts in Fiscal Year 2005.

CTD	District	FY 2003	FY 2004	FY 2005
020349000	Palominas Elementary District	366	427	444
100351000	Altar Valley Elementary District	346	360	354
110344000	J O Combs Elementary District	137	128	293
110302000	Oracle Elementary District	226	223	209
070381000	Nadaburg Elementary District	159	156	196
130326000	Beaver Creek Elementary District	95	87	106
100339000	Continental Elementary District	93	89	102
020323000	Naco Elementary District	102	107	101

The School Facilities Board is seeking to amend the rule defining the geographic factor exceptions to allow a school district to unify and the School Facilities Board provide funding for needed high school space.

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:

School districts contemplating new or replacement school construction request a “Capacity Review” from the School Facilities Board staff. These reviews compare the school district’s estimates of projected student average daily membership (“ADM”) to those of the SFB to determine when any new or replacement school space may be needed. The SFB used such reviews of the J O Combs School District as a partial basis for the subject rule amendment. These reviews may be obtained by request to the SFB Executive Director.

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:

There are 48 school districts in Arizona that serve only a K-8 population and have no formal access to grades 9-12. Generally high school services are obtained through a tuition process with districts that do provide high school. These districts are typically very small and rural; however, many of them are on the edge of development and are now experiencing substantial growth. The growth has made the current tuition system unpractical, and many of these districts wish to unify and offer their own high school programs.

Under current rules, if a district in this situation unified, it would not be eligible for state funding for high school facilities. The district would have to rely on local property taxes to raise the required funds for school construction. This is inconsistent with the Supreme Court decisions that provided the basis for the Students FIRST system. Districts with substantial property wealth would be able to unify and serve their students locally, while districts with little property wealth would remain dependent on other districts to provide needed educational services.

The current system creates two major impracticalities that will be addressed by the rule change. First, some districts are transporting high numbers of students substantial distances from their communities. Second, in receiving districts that have also experienced growth, the state is building new facilities that will serve students from outside communities. These facilities should be built in the communities they serve.

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

The number of school districts that may be eligible for unification and subsequent high school facility construction, and have the desire to do so, is hard to predict. However, the impact of such construction on the local communities is twofold. The immediate impact is during the construction of the facility, which may yield certain short-term construction job opportunities. The long-term operations of the high schools present job opportunities ranging from educators, facility operations, and maintenance, to increase the need for local, small businesses that may be needed to supply products for the operation and maintenance of the high schools. The rural location of these school districts makes such projections hard to quantify beyond projections of construction costs that are approximated to be between \$25 and \$30 million per high school allocable to the state. The long-term cost of educators and support staff to operate the high schools is to be borne by the school districts. The cost for land is more flexible in that potential donations by landowners may significantly impact this component. Such high schools are anticipated to have initial student populations under 500.

The primary economic impact of this rule amendment is the choice of geographic location of high school facilities. To support the growing student population, the School Facilities Board will continue building high schools. The amended rule allows those facilities to be built in more convenient and cost-effective locations that the unified school districts determine to be most advantageous to the student communities they serve.

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: John Arnold, Acting Executive Director
Address: Arizona School Facilities Board
1700 W. Washington, Suite 230
Phoenix, AZ 85007
Telephone: (602) 542-6147
Fax: (602) 542-6529
E-mail: jarnold@azsfb.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:

No proceedings are scheduled. Persons requesting an oral proceeding may contact Dennis Kirkland at the School Facilities Board on or before May 12, 2006. When requesting an oral proceeding a person shall state the purpose of the proceeding in a written request, delivered to:

Arizona School Facilities Board
Attention: R7-6-302 Rule Amendment
1700 W. Washington, Suite 230
Phoenix, AZ 85007

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

Related Arizona Revised Statutes:
Title 15. Education
Chapter 16. School Capital Finance
Related *Arizona Administrative Code*:
Title 7. Education
Article 6. School Facilities Board

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

None at this time

13. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 6. SCHOOL FACILITIES BOARD

ARTICLE 3. SQUARE FOOTAGE CALCULATIONS

Section
R7-6-302. Modification of Square Footage for Geographic Factors

ARTICLE 3. SQUARE FOOTAGE CALCULATIONS

R7-6-302. Modification of Square Footage for Geographic Factors

- A.** In those school districts where students are transported one hour or more via the most reasonable and direct route or where students reside 45 miles or more from the closest school via the most reasonable and direct route, and where 100 or more students are affected by these conditions within the same region, the School Facilities Board shall provide additional school space to the district to accommodate the educational needs of the affected students. However, the educational space provided may be modified as the Board sees fit in making a conscientious effort to meet the Minimum Adequacy Guidelines without requiring extraordinary expenditures of public funds.
- B.** If an elementary school district that is not a high school district unifies after June 30, 2005, the resulting unified school district may qualify for high school space under A.R.S. § 15-2041 if it meets the following criteria:
1. The elementary school district unifies after June 30, 2005, and
 2. The resulting unified school district is projected to have more than 350 resident high school students being served in school districts other than the student's resident school district within three years following the current fiscal year, and
 3. One of the following is true:
 - a. At least 350 of the high school students would travel 20 miles or more to the receiving school facility; or
 - b. The receiving school district is projected to need additional high school space within seven years. For purposes of this analysis, the projected Average Daily Membership of the receiving district shall include the high school students of both the receiving and sending districts.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

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

[R06-93]

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|------------------------------------|---------------------------------|
| R9-1-201 | Amend |
| R9-1-203 | Amend |
| R9-1-301 | New Section |
| R9-1-302 | New Section |
| R9-1-303 | New Section |
| R9-1-311 | Repeal |
| R9-1-312 | 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. §§ 36-104(9), 36-105, 36-107, 36-136(H)(11), 36-324, 36-342, 36-351, and 41-1033

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

Notice of Rulemaking Docket Opening: 11 A.A.R. 2448, July 1, 2005

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

Name: Kathleen Phillips, Rules Administrator
Address: Arizona Department of Health Services
Office of Administrative Rules
1740 W. Adams, Suite 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:

Existing R9-1-203, R9-1-311, and R9-1-312, were substantially revised effective July 15, 2002. On August 3, 2004, the Governor's Regulatory Review Council approved the Department's five-year-review report of 9 A.A.C. 1, Articles 1 through 4, which included R9-1-203, R9-1-311, and R9-1-312. This rulemaking will make the processes for requesting the Department to make, amend, or repeal a rule or to review a Department practice or substantive policy statement and for the Department's disclosure of records containing individuals' health information more clear, concise, and understandable.

A.R.S. § 41-1033 authorizes a person to petition an agency to request the making of a final rule or the review of an existing agency practice or substantive policy statement that the petitioner alleges to be a rule. The statute authorizes an agency to prescribe the petition's manner and form. The Department established in R9-1-203 the requirements for a petition for rulemaking or review of a practice or policy. The Department is amending R9-1-203 according to the 2004 five-year-review report for consistency with the time period in A.R.S. § 41-1033(A). The Department is also making other changes to improve the rule.

For definitions applicable to 9 A.A.C. 1, Article 2, the Department is revising R9-1-201 by adding definitions of terms used in revised R9-1-203. The added definitions include "amendment," "Arizona Administrative Code," "citation," "person," "rulemaking," and "text." The Department is deleting the definition of "oral proceeding," because that term is no longer used in 9 A.A.C. 1, Article 2. The Department is also making other changes to improve R9-1-201.

Existing A.A.C. R9-1-311 contains the definitions that pertain to medical record disclosure by a Department employee or volunteer. Existing R9-1-312 contains the substantive provisions on medical record disclosure by a Department employee or volunteer. To improve the public's access to the rules, the Department will repeal existing R9-1-311 and R9-1-312 and make new rules at R9-1-301, R9-1-302, and R9-1-303. The Department will incorporate into the new rules changes described in the 2004 five-year-review report. The Department will incorporate additional changes for consistency with state and federal law and to increase the clarity, conciseness, and understandability of the new rules.

In 2004 and 2005, the legislature amended A.R.S. Title 12, Chapter 13, Article 7.1, Medical Records. Among other things, the legislature added provisions for the confidentiality of payment records related to a patient's health care. To fulfill its statutory duties, the Department creates, obtains, and maintains medical records and payment records, as defined in A.R.S. § 12-2291. Some Department components create, obtain, or maintain health information for purposes of patient diagnosis or treatment (medical records). The Arizona State Hospital, which provides inpatient psychiatric care to the most seriously mentally ill Arizonans pursuant to A.R.S. § 36-202, is such a component. Some Department components create, obtain, or maintain health information related to payment for a patient's health care (payment records). The Division of Behavioral Health Services, which coordinates, plans, administers, regulates, and monitors Arizona's public behavioral health system pursuant to A.R.S. Title 36, Chapters 5 and 34, is such a component. Under new R9-1-302, the Department will disclose medical records and payment records only when certain requirements are met.

To fulfill its statutory duties, the Department also creates, obtains, and maintains public health records. These records contain health information for purposes other than patient diagnosis or treatment or payment for a patient's health care. The purposes of the Department's public health records include public health surveillance, investigation, and intervention; public health statistics; vital records; and health oversight. Many Department components, such as the Office of Health Registries that includes the Cancer Registry and Birth Defects Monitoring Program pursuant to A.R.S. § 36-133, create, obtain, and maintain public health information. New R9-1-303 clarifies that, with the specified exceptions, A.R.S. Title 39, Chapter 1, Article 2, Searches and Copies [of public records], governs the Department's disclosure of public health records. The exceptions are:

- Disclosing public health records in the course of giving information and advice to government agencies and other persons under A.R.S. § 36-104(9).

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- Disclosing public health records in the course of giving information, under A.R.S. § 36-105, to “any agency of the United States which is charged with the administration of health services.”
- Limiting copies of or access to vital records to eligible persons and government agencies, including the U.S. Public Health Service and the Arizona Department of Economic Security, under A.R.S. § 36-324.
- Prohibiting inspection of vital records by the general public and disclosure or copies of vital records to the general public under A.R.S. § 36-342.
- Submitting registered birth certificates and registered death certificates to the Arizona State Library, Archives and Public Records for access by the general public only after 75 and 50 years, respectively, under A.R.S. §§ 36-351 and 41-1339(D).
- At the direction of the Human Subjects Review Board, disclosing public health records that have not been de-identified when the disclosure is for research and meets the requirements of 45 CFR 164.512(i)(2).

The Department is changing the heading of 9 A.A.C. 1, Article 3 to Disclosure of Medical Records, Payment Records, and Public Health Records. In R9-1-301, the Department is defining terms used in the Article. The Department is also making R9-1-302, Medical Records or Payment Records Disclosure, and R9-1-303, Public Health Records Disclosure.

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 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:

The Department believes that this rulemaking will not impose additional costs on any individual or entity. Revising R9-1-201 and R9-1-203, and remaking the records disclosure rules will improve Articles 2 and 3, make them consistent with state and federal statutes and regulations, and make them more understandable and accessible to readers. The benefits from revising R9-1-201 and R9-1-203, and remaking the records disclosure rules outweigh the costs.

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: Kathleen Phillips, Rules Administrator
 Address: Arizona Department of Health Services
 Office of Administrative Rules
 1740 W. Adams, Suite 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, Conference Room 411(A) Phoenix, AZ 85007	May 17, 2006	1:30 p.m.

CLOSE OF RECORD
5:00 p.m., May 17, 2006

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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 individual 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:

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 1. DEPARTMENT OF HEALTH SERVICES
ADMINISTRATION**

ARTICLE 2. PUBLIC PARTICIPATION IN RULEMAKING

Section

R9-1-201. Definitions

R9-1-203. Petition for a ~~Rule~~; Department Rulemaking and Petition for Review of a Rule, an Agency Department Practice; or a Substantive Policy Statement

ARTICLE 3. DISCLOSURE OF MEDICAL RECORDS, PAYMENT RECORDS, AND PUBLIC HEALTH RECORDS

Section

R9-1-301. ~~Reserved~~ Definitions

R9-1-302. ~~Reserved~~ Medical Records or Payment Records Disclosure

R9-1-303. ~~Reserved~~ Public Health Records Disclosure

R9-1-311. ~~Definitions~~ Repealed

R9-1-312. ~~Disclosure of a Medical Record~~ Repealed

ARTICLE 2. PUBLIC PARTICIPATION IN RULEMAKING

R9-1-201. Definitions

In addition to the definitions in R9-1-101(A), the following definitions apply in this Article, unless otherwise specified:

1. “Amendment” means a change to a rule, including added or deleted text.
2. “Oral proceeding” means a public gathering, held by the Department, for the purpose of receiving comment and answering questions about a proposed rule.
2. “Arizona Administrative Code” means the publication described in A.R.S. § 41-1012.
3. “Citation” means the number that identifies a rule.
4. “Person” means the same as in A.R.S. § 41-1001(13).
5. “Rulemaking” means the same as in A.A.C. R1-1-101.
- 4-6. “Rulemaking record” means a file maintained by the Department as specified in A.R.S. § 41-1029.
- 3-7. “Substantive policy statement has means the same meaning as in A.R.S. § 41-1001(20).
8. “Text” means a letter, number, symbol, table, or punctuation in a rule.

R9-1-203. Petition for a Rule; Department Rulemaking and Petition for Review of a Rule, an Agency Department Practice or a Substantive Policy Statement

A. ~~An individual submitting a~~ A petition to the Department ~~to make a rule~~ for rulemaking under A.R.S. § 41-1033 shall include the following ~~on the petition~~:

1. The name and address of the individual ~~submitting~~ who submits the petition;
2. An identification of the ~~rule~~; rulemaking, including:
 - a. A statement of the rulemaking sought.
 - b. The Arizona Administrative Code citation of each existing rule included in the petition, and

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- c. A description of each new rule included in the petition;
 3. The suggested language specific text of the rule each new rule or amendment;
 4. The reason reasons why a new rule should be made with supporting information, including, if applicable for request- ing the rulemaking, supported by:
 - a. Statistical data with references to attached exhibits, and;
 - b. If the statistical data refers to exhibits, the exhibits;
 - ~~b. c.~~ An identification of the persons who would be affected by the rule rulemaking and how the persons would be affected the type of effect; and
 - d. Other information supporting the rulemaking;
 5. The signature of the individual submitting who submits the petition; and
 6. The date the petition is signed; and
 7. A copy of each existing rule included in the petition.
- B.** An individual submitting a A petition to the Department under A.R.S. § 41-1033 requesting that the Department for review of an agency a Department practice or substantive policy statement that the individual alleges allegedly constitutes a rule shall include the following on the petition:
1. The name and address of the individual submitting who submits the petition,
 2. The reason the individual alleges reasons why the agency the Department's practice or substantive policy statement allegedly constitutes a rule,
 3. The signature of the individual submitting who submits the petition, and
 4. The date the petition is signed; and
 5. A copy of the Department's substantive policy statement or a description of the Department's practice.
- ~~C.~~ An individual who submits a petition under subsection (B) shall attach a copy of the substantive policy statement or a description of the agency practice to the petition.
- ~~D. C.~~ The Director According to A.R.S. § 41-1033(A), the Department shall notify an individual who files submits a subsection (A) or subsection (B) petition under subsection (A) or (B) of the Department's decision in writing within seven days of 60 days after receipt of the petition.
- D.** If the Department denies a subsection (A) or subsection (B) petition, the individual who submitted the petition may proceed according to either A.R.S. § 41-1033(B) or A.R.S. § 41-1034 or according to both A.R.S. § 41-1033(B) and A.R.S. § 41-1034.

ARTICLE 3. DISCLOSURE OF MEDICAL RECORDS, PAYMENT RECORDS, AND PUBLIC HEALTH RECORDS

R9-1-301. Reserved Definitions

In addition to the definitions in R9-1-101(A), the following definitions apply in this Article, unless otherwise specified:

1. "Behavioral health services" means the assessment, diagnosis, or treatment of an individual's mental, emotional, psychiatric, psychological, psychosocial, or substance abuse issues.
2. "Business day" means the same as in A.R.S. § 10-140.
3. "Commercial purpose" means the same as in A.R.S. § 39-121.03(D).
4. "Consent" means permission by an individual or by the individual's parent, legal guardian, or other health care decision maker to have medical services provided to the individual.
5. "Correctional facility" means the same as in A.R.S. § 13-2501(2).
6. "Court of competent jurisdiction" means a court with the authority to enter a certain type of order.
7. "De-identified" means a public health record from which the information listed in 45 CFR 164.514(b)(2)(i) for an individual and the individual's relatives, employers, or household members has been removed.
8. "Diagnosis" means an identification of a disease or an injury by an individual authorized by law to make the identification.
9. "Disclose" means to release, transfer, provide access to, or divulge information in any other manner.
10. "Disclosure" means the release, transfer, provision of access to, or divulging of information in any other manner by the person holding the information.
11. "Disease" means a condition or disorder that causes the human body to deviate from its normal or healthy state.
12. "Documentation" means written supportive evidence.
13. "Emancipated minor" means an individual less than age 18 who:
 - a. Is determined to be independent of parents or legal guardians under A.R.S. Title 12, Chapter 15, Article 1, as added by Laws 2005, Chapter 137, § 3, effective August 12, 2005;
 - b. Meets the requirements for recognition as an emancipated minor in A.R.S. § 12-2455, as added by Laws 2005, Chapter 137, § 3, effective August 12, 2005;
 - c. Has the ability to make a contract under A.R.S. § 44-131 or to consent to medical services under A.R.S. § 44-

- 132; or
- d. Is married or is a U.S. armed forces enlisted member.
14. "Employee" means an individual who works for the Department for compensation.
15. "Enlisted member" means the same as in 32 USC 101(9).
16. "Epidemic" means a disease that affects a disproportionately large number of individuals in a population, community, or region at the same time.
17. "Estate" means the same as in A.R.S. § 14-1201(16).
18. "Financial institution" means a bank, a savings and loan association, a credit union, or a consumer lender.
19. "Halfway house" means a residential facility that temporarily provides shelter, food, and other services to an individual after the individual completes a confinement in a correctional facility or a stay in a health care institution.
20. "Health care decision maker" means the same as in A.R.S. § 12-2291(3).
21. "Health care institution" means the same as in A.R.S. § 36-401(23).
22. "Health care system" means the facilities, personnel, and financial resources in place in a state or other geographic area for delivering behavioral health services, medical services, nursing services, and health-related services to individuals in the state or other geographic area.
23. "Health oversight activity" means:
- a. Supervision of the health care system.
 - b. Determining eligibility for health-related government benefit programs.
 - c. Determining compliance with health-related government regulatory programs, or
 - d. Determining compliance with civil rights laws for which health-related information is relevant.
24. "Health-related services" means the same as in A.R.S. § 36-401(24).
25. "Homeless minor" means an individual described in A.R.S. § 44-132(C).
26. "Homeless shelter" means the same as in A.R.S. § 16-121(D).
27. "Human Subjects Review Board" means individuals designated by the Director to:
- a. Review human subjects research that is conducted, funded, or sponsored by the Department for consistency with 45 CFR Part 46, Subpart A, dealing with the protection of the human subjects;
 - b. Review requests for Department information from external entities conducting or planning to conduct human subjects research; and
 - c. Establish guidelines for the submission and review of human subjects research.
28. "Incapacitated person" means the same as in A.R.S. § 14-5101(1).
29. "Incidence" means the rate of cases of a disease or an injury in a population, community, or region during a specified period.
30. "Individually identifiable health information" means the information described in 42 USC 1320d(6).
31. "Injury" means trauma or damage to a part of the human body.
32. "Jurat" means the same as in A.R.S. § 41-311(6).
33. "Legal guardian" means an individual:
- a. Appointed by a court of competent jurisdiction under A.R.S. Title 8, Chapter 10, Article 5 or A.R.S. Title 14, Chapter 5;
 - b. Appointed by a court of competent jurisdiction under another state's laws for the protection of minors and incapacitated persons; or
 - c. Appointed for a minor or an incapacitated person in a probated will.
34. "Medical records" means the same as in A.R.S. § 12-2291(5).
35. "Medical services" means the same as in A.R.S. § 36-401(31).
36. "Minor" means the same as in A.R.S. § 36-798(5).
37. "Nursing services" means the same as in A.R.S. § 36-401(35).
38. "Outbreak" means an unexpected increase in the incidence of a disease as determined by the Department or a health agency as defined in A.R.S. § 36-671(5).
39. "Parent" means a biological or adoptive mother or father of an individual.
40. "Patient" means an individual receiving behavioral health services, medical services, nursing services, or health-related services.
41. "Payment records" means the same as in A.R.S. § 12-2291(6).
42. "Person" means the same as in A.R.S. § 41-1001(13).
43. "Personal representative" means the same as in A.R.S. § 14-1201(38).
44. "Probated will" means a will that has been proved as valid in a court of competent jurisdiction.
45. "Public health intervention" means responding to and containing:
- a. Outbreaks or epidemics of disease, or
 - b. The incidence of injury.
46. "Public health investigation" means identifying and examining:
- a. Outbreaks or epidemics of disease, or

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- b. The incidence of injury.
- 47. “Public health records” means information created, obtained, or maintained by the Department for:
 - a. Public health surveillance, public health investigation, or public health intervention;
 - b. A system of public health statistics;
 - c. A system of vital records; or
 - d. Health oversight activities.
- 48. “Public health surveillance” means monitoring the incidence and spread of a disease or an injury.
- 49. “Research” means the same as in 45 CFR 164.501.
- 50. “State” means the same as in A.R.S. § 36-841.
- 51. “Surviving spouse” means the individual:
 - a. To whom a deceased individual was married at the time of death, and
 - b. Who is currently alive.
- 52. “System of public health statistics” means the same as in A.R.S. § 36-301(31).
- 53. “System of vital records” means the same as in A.R.S. § 36-301(32).
- 54. “Third person” means a person other than:
 - a. The individual identified by medical records; or
 - b. The individual’s parent, legal guardian, or other health care decision maker;
- 55. “Treatment” means a procedure or method to cure, improve, or palliate a disease or an injury.
- 56. “Valid authorization” means written permission to disclose individually identifiable health information that contains all the elements described in 45 CFR 164.508(c)(1).
- 57. “Veteran” means the same as in 38 USC 101(2).
- 58. “Vital record” means the same as in A.R.S. § 36-301(33).
- 59. “Volunteer” means an individual who works for the Department without compensation.
- 60. “Will” means the same as in A.R.S. § 14-1201(59).

R9-1-302. Reserved Medical Records or Payment Records Disclosure

- A.** Except as provided in subsection (B), an employee or volunteer shall not disclose to a third person medical records or payment records containing individually identifiable health information that the employee or volunteer obtained or accessed as a result of the employment or volunteering.
- B.** Unless otherwise prohibited by law, an employee or volunteer may disclose to a third person medical records or payment records containing individually identifiable health information:
 - 1. With the valid authorization of the individual identified by the information in the medical records or payment records, if the individual:
 - a. Is at least age 18 or an emancipated minor, and
 - b. Is not an incapacitated person;
 - 2. With the valid authorization of the parent, legal guardian, or other health care decision maker of the individual identified by the information in the medical records or payment records, if the individual is:
 - a. Less than age 18, other than an emancipated minor; or
 - b. An incapacitated person;
 - 3. With the valid authorization of the individual identified by the information in the medical records or payment records, regardless of age, if:
 - a. The information to be disclosed resulted from the consent given by the individual under A.R.S. § 44-132.01 or A.R.S. § 36-663; and
 - b. The individual is not an incapacitated person;
 - 4. With the valid authorization of the individual identified by information in the medical records or payment records if:
 - a. The information to be disclosed resulted from the individual’s treatment under A.R.S. § 44-133.01;
 - b. The individual was at least age 12 at the time of the treatment under A.R.S. § 44-133.01 as established by documentation, such as a copy of the individual’s:
 - i. Driver license issued by a state, or
 - ii. Birth certificate; and
 - c. The individual is not an incapacitated person;
 - 5. If the individual identified by the information in the medical records or payment records is deceased, upon the written request to the Department according to subsection (D) for disclosure of the deceased individual’s medical records or payment records to:
 - a. The deceased individual’s health care decision maker at the time of death;
 - b. The personal representative of the deceased individual’s estate; or
 - c. If the deceased individual’s estate has no personal representative, a person listed in A.R.S. §§ 12-2294(D)(1) through 12-2294(D)(6);
 - 6. At the direction of the Human Subjects Review Board, if the medical records or payment records are sought for

- research and the disclosure meets the requirements of 45 CFR 164.512(i)(2); or
7. As required by an order issued by a court of competent jurisdiction.
- C.** For purposes of subsection (B)(1), an individual less than age 18 who claims emancipated minor status shall submit to the Department a valid authorization signed by the individual less than age 18 and:
1. A copy of an order emancipating the individual issued by the Superior Court of Arizona;
 2. If the individual was an emancipated minor in a state other than Arizona:
 - a. Documentation establishing that the individual is at least age 16, such as a copy of the individual's:
 - i. Driver license issued by a state, or
 - ii. Birth certificate; and
 - b. Documentation of the individual's emancipation, such as a copy of:
 - i. An order emancipating the individual issued by a court of competent jurisdiction of a state other than Arizona,
 - ii. A real property purchase agreement signed by the individual as the buyer or the seller in a state other than Arizona,
 - iii. An order for the individual to pay child support issued by a court of competent jurisdiction of a state other than Arizona, or
 - iv. A financial institution loan agreement signed by the individual as the borrower in a state other than Arizona;
 3. A copy of the individual's marriage certificate issued by a state;
 4. If the individual is a homeless minor, documentation such as:
 - a. A statement on the letterhead of a homeless shelter or halfway house that:
 - i. Is dated within 10 days before the date the Department receives the document,
 - ii. States the homeless shelter or halfway house is the individual's primary residence,
 - iii. Is signed by an authorized signer for the homeless shelter or halfway house, and
 - iv. States the authorized signer's title or position at the homeless shelter or halfway house; or
 - b. A statement signed by the individual that:
 - i. The individual does not live with the individual's parents, and
 - ii. The individual lacks a fixed nighttime residence;
 5. If the individual is a U.S. armed forces enlisted member, a copy of the individual's U.S. armed forces:
 - a. Enlistment document, or
 - b. Identification card; or
 6. If the individual is a U.S. armed forces veteran, a copy of the individual's discharge certificate.
- D.** A request to the Department under subsection (B)(5) to disclose medical records or payment records shall include:
1. The name of the individual identified by the information in the medical records or payment records;
 2. A statement that the individual identified by the information in the medical records or payment records is deceased;
 3. The description and dates of the medical records or payment records requested;
 4. The name, address, and telephone number of the person requesting the medical records or payment records disclosure;
 5. Whether the person requesting the medical records or payment records disclosure:
 - a. Was the deceased individual's health care decision maker at the time of death,
 - b. Is the personal representative of the deceased individual's estate, or
 - c. Is a person listed in A.R.S. § 12-2294(D);
 6. The signature of the individual requesting the medical records or payment records disclosure;
 7. Documentation that the individual identified by the information in the medical records or payment records is deceased, such as a copy of:
 - a. The individual's death certificate,
 - b. A published obituary notice for the individual, or
 - c. Written notification of the individual's death; and
 8. Documentation establishing the relationship to the deceased individual indicated under subsection (D)(5), such as a copy of:
 - a. Appointment as the deceased individual's legal guardian by a court of competent jurisdiction,
 - b. Appointment as the personal representative of the deceased individual's estate by a court of competent jurisdiction,
 - c. The deceased individual's birth certificate naming the person requesting the medical records or payment records as a parent,
 - d. The birth certificate of the person requesting the medical records or payment records naming the deceased individual as a parent, or
 - e. If the person requesting the medical records or payment records disclosure is the deceased individual's surviving spouse:
 - i. A copy of the person's marriage certificate naming the deceased individual as spouse, and

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- ii. The person's statement that the person and the deceased individual were not divorced or legally separated at the time of the deceased individual's death, or
- iii. A copy of the deceased individual's probated will naming the person as the deceased individual's surviving spouse.

E. The Department shall send a response to a request for medical records or payment records disclosure under subsection (B)(5) that meets the requirements of subsection (D):

- 1. By regular mail.
- 2. To the address provided under subsection (D)(4), and
- 3. Within 30 days after the date the Department receives the request.

R9-1-303. ~~Reserved~~ Public Health Records Disclosure

A. A.R.S. Title 39, Chapter 1, Article 2 governs the Department's disclosure of public health records, except for:

- 1. Disclosure of public health records under A.R.S. §§ 36-104(9) and 36-105;
- 2. Disclosure of vital records under A.R.S. §§ 36-324, 36-342, and 36-351; and
- 3. At the direction of the Human Subjects Review Board, disclosure of public health records that are not de-identified when:
 - a. The public health records are sought for research, and
 - b. The disclosure meets the requirements of 45 CFR 164.512(i)(2).

B. For disclosure of public health records under A.R.S. Title 39, Chapter 1, Article 2, an individual shall submit to the Department a public records request that contains:

- 1. The request date;
- 2. The requester's name, address, and telephone number;
- 3. If applicable, the name, address, and telephone number of the requester's organization;
- 4. A specific identification of the public health records to be disclosed, including the description and dates of the records;
- 5. Whether the public health records identified in subsection (B)(4) will be used for commercial purposes;
- 6. If the requester indicates under subsection (B)(5) that the public health records will be used for commercial purposes, an explanation of each commercial purpose;
- 7. The requester's signature; and
- 8. If the requester indicates under subsection (B)(5) that the public health records will be used for a commercial purpose:
 - a. A jurat completed by an Arizona notary; or
 - b. A notarization from another state indicating that the notary:
 - i. Verified the signer's identity,
 - ii. Observed the signing of the document, and
 - iii. Heard the signer swear or affirm the truthfulness of the document.

C. The Department shall send a response to a public records request that meets the requirements of subsection (B):

- 1. By regular mail.
- 2. To the address provided under subsection (B)(2), and
- 3. Within 15 business days after the date the Department receives the request.

D. The Department's response shall:

- 1. Acknowledge receipt of the public records request;
- 2. Include a list of categories of public health records that are not subject to disclosure; and
- 3. Include a statement that the Department notifies an individual submitting a public records request when disclosure of the public health records that are not listed under subsection (D)(2) will be provided.

E. If the Department provides disclosure of the public health records that are subject to disclosure and the list described in subsection (D)(2) within 15 business days, the Department does not issue a separate response to a public records request according to subsections (C) and (D).

F. The Department shall ensure that public health records disclosed pursuant to a public records request are de-identified.

G. For copies of public health records disclosed pursuant to a public records request:

- 1. If the copies are for a commercial purpose, the Department shall charge:
 - a. The amount determined according to A.R.S. § 39-121.03, and
 - b. Based on the requester's explanation under subsection (B)(6);
- 2. If the copies are not for a commercial purpose, the Department shall charge:
 - a. Twenty-five cents per page and,
 - b. If applicable, mailing costs; or
- 3. If the copies are for a purpose stated in A.R.S. § 39-122(A), the Department shall not impose a charge.

R9-1-311. Definitions Repealed

In this Article, unless otherwise specified:

1. "Incompetent" means an individual who is determined by a court of competent jurisdiction to require a legal guardian to protect the interests of and to represent the individual.
2. "Medical record" means all communications listed in A.R.S. § 12-2291(4).
3. "Employee" means an individual who works for the Department for compensation.
4. "Human Subjects Research Committee" means individuals designated by the Director to review and approve the release of medical information.
5. "Legal guardian" means an individual appointed by the court under A.R.S. Title 14, Chapter 5 or Title 36, Chapter 5.
6. "Parent" means a biological or adoptive mother or father of an individual.
7. "Volunteer" means an individual who works for the Department without compensation.

R9-1-312. Disclosure of a Medical Record Repealed

A. Except as authorized in subsection (B), an employee or volunteer shall not disclose a medical record the employee or volunteer has obtained or has access to as a result of being employed by or volunteering with the Department that allows an individual to be identified.

B. Unless otherwise prescribed by law, an employee or volunteer may disclose a medical record:

1. If an individual who is 18 years of age or older and is not incompetent is identified in the medical record, only with the written permission of the individual.
2. If an individual who is less than 18 years old or is incompetent is identified in the medical record, only with written permission from the individual's parent or legal guardian;
3. To the surviving spouse or legal representative of an individual's estate, upon the surviving spouse or legal representative's written request;
4. At the direction of the Director, or the Human Subjects Research Committee, if the medical record is sought for a scientific or medical research purpose; or
5. As required by a court order issued by a court of competent jurisdiction.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 23. DEPARTMENT OF HEALTH SERVICES

ORAL HEALTH

[R06-96]

PREAMBLE

1. Sections Affected

R9-23-101
Article 2
R9-23-201
R9-23-202
R9-23-203
R9-23-204
Article 3
R9-23-301
R9-23-302
R9-23-303
R9-23-304
R9-23-305

Rulemaking Action

Amend
New Article
New Section
New Section
New Section
New Section
New Article
New Section
New Section
New Section
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 statute: A.R.S. §§ 36-136(A)(7) and 36-136(F)
Implementing statute: A.R.S. §§ 36-104(1)(c) and 36-132(A)(10)

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

Notice of Rulemaking Docket Opening: 11 A.A.R. 3183, August 19, 2005

Notices of Proposed Rulemaking

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

Name: Joyce Flieger, RDH, M.P.H.
Chief, Office of Oral Health

Address: Department of Health Services
1740 W. Adams St., Suite 205
Phoenix, AZ 85007

Telephone: (602) 542-1866

Fax: (602) 542-2936

E-mail: fliegej@azdhs.gov

Or

Name: Kathleen Phillips, Rules Administrator

Address: Department of Health Services
1740 W. Adams St., Suite 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:

A.R.S. § 36-104 requires the Director to administer community health services including dental care prevention. A.R.S. § 36-132(A)(10) requires the Department to encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The purpose of this rulemaking is to amend the rules for oral health in A.A.C. Title 9, Chapter 23, Article 1 and Article 3. In the proposed rules, the Department is amending Article 1 and 3 and adding a new Article to the Chapter. The Department is amending the definitions in Article 1 to reflect the changes made in the Chapter. The new Article 2 contains the eligibility requirements, the application process, and the application prioritization criteria for the Arizona Dental Sealant Program. The Department is amending Article 3 to include the eligibility requirements, the application process, and the application prioritization criteria for the Arizona Fluoride Mouthrinse Program. The proposed rules will conform to current statutory authority, rulemaking format and style requirements, industry practice, and departmental policy.

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 or rely on any study during 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:

A.R.S. § 36-104 requires the Director to administer community health services including dental care prevention. A.R.S. § 36-132(A)(10) requires the Department to encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The purpose of this rulemaking is to amend the rules for oral health in A.A.C. Title 9, Chapter 23, Article 1 and Article 3. The rules will conform to current statutory authority, rulemaking format and style requirements, industry practice, and departmental policy.

Currently, the Department is providing dental health care services to Arizona's low-income school children through the Arizona Dental Sealant Program and the Arizona Fluoride Mouthrinse Program. The Arizona Dental Sealant Program is a school-based program that provides eligible children with dental sealants for their permanent molars to help prevent tooth decay. During the 2004-2005 school year, the Department provided an estimated 7134 students with dental sealants at participating 126 schools. The Arizona Fluoride Mouthrinse Program is a school-based program that provides fluoride mouthrinse to eligible children to help prevent tooth decay. In 2004-2005, the Department provided fluoride mouthrinse to 70 schools and an estimated 21,444 students used the fluoride mouthrinse.

Annual cost/revenues are designated as minimal when less than \$1,000.00, moderate when between \$1,000.00 and \$10,000.00, and substantial when greater than \$10,000.00.

The cost to the Department to implement the rules will be substantial. The Department used money from the Maternal and Child Health Block Grant (MCH) and reimbursement from the Arizona Health Care Cost Containment System

(AHCCCS) to provide approximately \$350,000.00 in dental health services to fund the Arizona Dental Sealant Program and the Arizona Fluoride Mouthrinse Program during the 2004-2005 school year. However, the rules are consistent with the Department's current practices and will have an overall minimal impact on the Department.

The proposed rules are consistent with the Department's current practices and will have an overall minimal impact on the Department. The proposed rules benefit any person receiving dental health care services from the Department by providing clarity in the eligibility and application requirements and ensuring that the Department processes applications in a fair, consistent, and timely manner. The amended rules conform to current statutory authority, rulemaking format and style requirements, industry practice, and departmental policy.

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: Joyce Flieger, RDH, M.P.H.
Chief, Office of Oral Health

Address: Department of Health Services
1740 W. Adams St., Suite 205
Phoenix, AZ 85007

Telephone: (602) 542-1866

Fax: (602) 542-2936

E-mail: fliegej@azdhs.gov

Or

Name: Kathleen Phillips, Rules Administrator

Address: Department of Health Services
1740 W. Adams St., Suite 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:

Date: May 8, 2006

Time: 10:00 a.m.

Location: Department of Health Services
1740 W. Adams St., Room 204
Phoenix, AZ 85007

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

Not applicable

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

The following is incorporated by reference in R9-23-101:

7 CFR 210.1(2004) incorporated by reference, on file with the Department, and including no future editions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capital Street, NW Washington, DC 20401.

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 23. DEPARTMENT OF HEALTH SERVICES
ORAL HEALTH**

ARTICLE 1. DEFINITIONS

Section
R9-23-101. Definitions

~~ARTICLE 2. STANDARDS FOR THE PROVISION OF ORAL HEALTH SERVICES~~ ARTICLE 2. ARIZONA DENTAL SEALANT PROGRAM

Section
R9-23-201. ~~Expired~~ Eligibility Requirements
R9-23-202. ~~Expired~~ Application Process
R9-23-203. ~~Expired~~ Approval Criteria
R9-23-204. Participation Requirements

~~ARTICLE 3. ORAL HEALTH SERVICES~~ ARTICLE 3. ARIZONA FLUORIDE MOUTHRINSE PROGRAM

Section
R9-23-301. ~~Expired~~ Eligibility Requirements
R9-23-302. ~~Expired~~ Eligibility Application Process
R9-23-303. ~~Expired~~ Approval Criteria
R9-23-304. ~~Expired~~ Participation Requirements
R9-23-305. ~~Expired~~ Continuing Participation

ARTICLE 1. DEFINITIONS

R9-23-101. Definitions

In this Chapter, unless the context otherwise requires:

1. "Amalgam" means a combination of silver alloy and mercury used for dental restorations.
2. "Bitewing radiograph" means an x-ray film designed to show the crowns of the upper and lower posterior teeth simultaneously.
3. "Board eligible" means a dentist who has successfully completed an approved training program in a specialty field recognized by the American Dental Association.
4. "Caries" means areas of decay in or on a tooth.
5. "Chief executive officer" means the person who has the authority and responsibility for the operation of a prepaid dental plan organization in accordance with the applicable legal requirements and policies approved by the governing authority.
1. "Child" means an individual who is:
 - a. 18 years of age or less, or
 - b. More than 18 years of age and attending school.
6. "Composite" means a mixture of a filler, usually quartz, ceramic, or glass particles, and a resin blend used for dental restorations.
2. "Contact person" means an individual acting on behalf of a school.
7. "Contracting agency" means a governmental or nonprofit organization that has contracted with the OOH to provide clinical and/or administrative services.
8. "Copal base" means a liquid resin placed under a restoration to insulate the pulpal tissue.
9. "Dental facility" means a dental health clinic or institutional department staffed by licensed dentists or licensed dental hygienists, or both.
3. "Dental hygienist" means an individual licensed under A.R.S. Title 32, Chapter 11, Article 4.
10. "Dental sealant" means a thin plastic coating applied to the chewing surfaces of premolar or molar teeth which fills the pits and grooves of a tooth and prevents the trapping of food debris.
4. "Dental sealant" means a coating of plastic applied to a tooth.

11. "~~Dentate~~" means with teeth.
12. "~~Dentist~~" means a person who is licensed to practice dentistry under the provisions of A.R.S. § 32-1201 et seq.
5. "Dentist" means an individual licensed under A.R.S. Title 32, Chapter 11, Article 2.
13. "~~Dentition~~" means the type, number, and arrangement of teeth.
14. "~~Dentures~~" means a partial or complete set of false teeth designed to simulate the patient's natural dentition.
15. 6. "Department" means the Arizona Department of Health Services.
16. "~~Diagnostic services~~" means those dental services necessary to identify dental abnormalities, including radiographs and clinical examinations.
17. "~~Director of an organized educational setting~~" means the person responsible for the overall management of the facility.
18. "~~Emergency services~~" means those dental services necessary to control bleeding, relieve pain, including local anesthesia, or eliminate acute infection. Medications that may be prescribed by the dentist, but must be obtained through a pharmacy, are excluded.
19. "~~Endodontics~~" means dental services related to the pulp of a tooth.
20. "~~Extraoral~~" means outside of the mouth.
21. "~~Fluoride~~" means a chemical compound, usually sodium fluoride or acidulated phosphate fluoride, applied topically or as a mouth rinse.
22. "~~General dentist~~" means a dentist licensed under the provisions of A.R.S. § 32-1201 et seq. whose practice is not limited to a specific area and who is not certified by a specialty board recognized by the American Dental Association.
23. "~~Gingival tissue~~" means intraoral soft tissue commonly referred to as the gums.
24. "~~Governing authority~~" means the person or body, including a board of trustees or board of directors, in whom the ultimate authority and responsibility for the direction of a prepaid dental plan organization is vested.
25. "~~Hamular notch~~" means the area behind the upper back molar.
26. "~~Hygienist~~" means a person who is licensed to practice dental hygiene under the provisions of A.R.S. § 32-1281 et seq.
27. "~~Intraoral~~" means inside the mouth.
28. "~~Mandibular~~" means associated with the lower jaw.
29. "~~Maxillary~~" means associated with the upper jaw.
30. "~~Mobile Dental Unit~~" or "~~MDU~~" means a self-contained dental operatory housed in a movable trailer owned by the Department.
31. "~~Mucobuccal fold~~" means the space between the cheek and teeth.
7. "National School Lunch Program" means the federally funded assisted meal program as established in 7 CFR 210.1 (2004), which is incorporated by reference, and on file with the Department and includes no future additions or amendments, available at <http://www.gpoaccess.gov/cfr/index.html> and from U.S. Government Printing Office, 732 N. Capitol Street, NW Washington, DC 20401.
32. "~~Occlusion~~" means the manner in which the upper and lower teeth fit together when the mouth is completely closed.
33. "~~Office of Oral Health~~" or "~~OOH~~" means the office within the Department responsible for oral health services.
34. "~~Operative dentistry~~" means the use of dental amalgam, dental permanent cement, composite and noncomposite resin materials, cast alloy restorations, stainless steel and aluminum crowns, and various temporary and intermediate materials usually classified as cements to maintain a functional dentition.
35. "~~Operatory~~" means the patient chair and attached or related equipment used to deliver dental services.
36. "~~Organization~~" means a prepaid dental plan organization as defined in A.R.S. § 20-1001.
37. "~~Organized educational setting~~" means any facility providing supervised instructional care or services for children less than 21 years of age.
38. "~~Panographic radiograph~~" means an x ray that shows all of the teeth and related structures on 1 film.
8. "Parent" has the same meaning as in A.R.S. § 15-101(14).
39. "~~Patient~~" means a person who is being attended by a dentist or dental hygienist to receive an examination, diagnosis, or dental treatment, or a combination of an examination, diagnosis, and dental treatment.
40. "~~Periapical~~" means a full view of an individual tooth, including the area under the gum line and around the root of the tooth.
41. "~~Portable dental equipment~~" means operatory equipment that can be transported by automobile and set up in a public area or private residence.
42. "~~Postdam~~" means a ridge built into a maxillary denture which touches the posterior soft tissue of the roof of the mouth.
43. "~~Posterior flange~~" means that part of a denture that extends into the space between the tongue and the mandibular jawbone or the cheek and maxillary jawbone.
44. "~~Preventive services~~" means dental care intended to maintain dental health and prevent dental disease, including any combination of oral hygiene education, professional prophylaxis, application of fluorides, and a viable system of recall or follow-up.

Notices of Proposed Rulemaking

- 45. "Professional prophylaxis" means cleaning the teeth with mild abrasives and dental equipment.
- 46. "Pulpal" means the soft living tissue that fills the central cavity of a tooth.
- 47. "Radiograph" means a picture produced on a sensitive surface by a form of radiation other than light, including x ray photographs.
- 48. "Representative sample" means a part of a population or subset from a set of units selected to investigate the properties of the population or the set.
- 49. "Restoration" means treatment that returns a patient to a functional level of dental health, including treatment of the pulpal tissues and gingival tissues, the use of metal and plastic fillings, and the use of removable partial and complete dentures.
- 50. "Saddle area" means that portion of a partial denture which covers the bone where posterior teeth from either the upper or lower jaw have been removed.
- 9. "School" means:
 - a. A school as defined in A.R.S. § 15-101(19), and
 - b. A charter school as defined in A.R.S. § 15-101(3).
- 10. "School year" means the period between July 1 and the following June 30.
- 51. "Specialist" means a dentist whose practice is limited to a specified area and who is recognized by the appropriate specialty board of the Commission on Accreditation of Dental Education of the American Dental Association as board eligible or board certified.
- 52. "Therapeutic services" means basic dental services provided by a general dentist including pulp therapy for permanent and primary teeth exclusive of root canal therapy, restoration of carious permanent and primary teeth with materials other than cast restorations, and routine extractions.
- 53. "Treatment plan" means a statement of the services to be performed for the patient.

ARTICLE 2. STANDARDS FOR THE PROVISION OF ORAL HEALTH SERVICES ARIZONA DENTAL SEALANT PROGRAM

R9-23-201. ~~Expired~~ Eligibility Requirements

A school is eligible to apply to participate in the Arizona Dental Sealant Program if:

- 1. At least 65% of the children attending the school participate in the National School Lunch Program, and
- 2. The school has at least 25 children in second and sixth grades combined.

R9-23-202. ~~Expired~~ Application Process

A. For an eligible school to participate in the Arizona Dental Sealant Program, a contact person shall submit a completed application form provided by the Department to the Department that contains:

- 1. The contact person's name, title, telephone number, fax number, and if applicable, e-mail address;
- 2. The school's name, street address, and telephone number;
- 3. The school's mailing address if different than the school's street address;
- 4. The name of the school district and county where the school is located;
- 5. The percentage of children attending the school that participated in the National School Lunch Program during the current school year, and
- 6. The number of children attending second and sixth grades.

B. The Department accepts applications beginning on April 1 for the next school year.

R9-23-203. ~~Expired~~ Approval Criteria

A. The Department uses the following criteria when determining whether to approve a school for participation in the Arizona Dental Sealant Program:

- 1. The amount of funding available to the Department for the Arizona Dental Sealant Program;
- 2. The percentage of children enrolled in the school participating in the National School Lunch Program; and
- 3. When the Department received the application.

B. If additional funding becomes available, the Department shall continue to approve participation in the Arizona Dental Sealant Program based on the criteria in subsection (A).

R9-23-204. Participation Requirements

The contact person for a participating school shall ensure that each child participating in the Arizona Dental Sealant Program has a parental consent form provided by the Department that includes:

- 1. The child's name, and
- 2. A parent's signature indicating permission to participate in the Arizona Dental Sealant Program.

ARTICLE 3. ~~ORAL HEALTH SERVICES~~ ARIZONA FLUORIDE MOUTHRINSE PROGRAM

R9-23-301. ~~Expired Eligibility Requirements~~

A school is eligible to apply to participate in the Arizona Fluoride Mouthrinse Program if:

1. At least 50% of the children attending the school participate in the National School Lunch Program, and
2. The children attending the school live in a community whose water does not contain 0.7 to 1.2 parts of fluoride per million of water.

R9-23-302. ~~Eligibility Application Process~~

The following individuals shall be eligible for dental health services:-

1. Children who are eligible for the federal free or reduced school lunch program;-
2. Persons who are eligible for federal, state, or a combination of federal and state nutrition programs;- or
3. Persons whose income is at or below 133% of the federal poverty guideline or who are eligible Medicaid recipients but:-
 - a. Do not have access to dental care, or-
 - b. Whose physical or mental impairment precludes them from receiving dental services through the private dental sector.

A. For an eligible school to participate in the Arizona Fluoride Mouthrinse Program for three years, a contact person shall submit a completed application form provided by the Department to the Department that contains:

1. The contact person's name, title, telephone number, fax number, and if applicable, e-mail address;
2. The school's name, street address, mailing address, and telephone number;
3. The name of the school district and county where the school is located;
4. The grades in the school that will participate in the Arizona Fluoride Mouthrinse Program during the next school year;
5. The anticipated number of children that will participate in the Arizona Fluoride Mouthrinse Program during the next school year;
6. The percentage of children attending the school that participate in the National School Lunch Program during the current school year; and
7. The flavor and amount of fluoride mouthrinse needed.

B. The Department accepts applications beginning on February 15 and ending on March 15 for the next school year.

R9-23-303. ~~Expired Approval Criteria~~

The Department uses the following criteria when determining whether to approve a school for participation in the Arizona Fluoride Mouthrinse Program:

1. The amount of funding available to the Department for the Arizona Fluoride Mouthrinse Program;
2. The percentage of children enrolled at the school participating in the National School Lunch Program;
3. Whether the school participated in the Arizona Fluoride Mouthrinse Program during the previous school year; and
4. If the school did participate, whether the school complied with R9-23-305.

R9-23-304. ~~Expired Participation Requirements~~

The contact person for a participating school shall:

1. Ensure that each child participating in the Arizona Fluoride Mouthrinse Program has a parental consent form provided by the Department that includes:
 - a. The child's name, age, and grade;
 - b. The school's name;
 - c. The name of the child's teacher;
 - d. A parent's signature indicating permission to participate in the Arizona Fluoride Mouthrinse Program; and
 - e. The date the parent signed;
2. Order fluoride mouthrinse; and
3. Maintain the school's records of a child's participation in the Arizona Fluoride Mouthrinse Program for a child as long as the child is attending the school.

R9-23-305. ~~Expired Continuing Participation~~

A. By March 15 in each year of participation, the contact person for a participating school shall submit a written program evaluation on a form provided by the Department to the Department that includes:

1. The contact person's name, title, address, telephone number, fax number, and if applicable, e-mail address;
2. The school's name, street address, mailing address, and telephone number;
3. The name of the school district and county where the school is located;
4. The number of the years the school has participated in the Arizona Fluoride Mouthrinse Program;
5. The percentage of children attending the school that participate in the National School Lunch Program during the current school year;

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6. The grades in the school that participated in the Arizona Fluoride Mouthrinse Program;
 7. The grades in the school that will participate in the Arizona Fluoride Mouthrinse Program during the next school year;
 8. The number of children that participate in the Arizona Fluoride Mouthrinse Program during the current school year;
 9. The estimated number of children that will participate in the Arizona Fluoride Mouthrinse Program during the next school year;
 10. The number of packets or boxes of fluoride mouthrinse unused at the end of the current school year, if applicable;
 11. The number of packets or boxes of fluoride mouthrinse needed for the next school year; and
 12. The flavor of fluoride mouthrinse.
- B.** In addition to the requirements in R9-23-304, if a participating school does not submit a program evaluation, the school cannot continue to participate in the Arizona Fluoride Mouthrinse Program.
- C.** The Department may not allow a school to continue to participate in the Arizona Fluoride Mouthrinse Program if:
1. Less than 70% of the children attending the school participated in the Arizona Fluoride Mouthrinse Program, or
 2. The Arizona Fluoride Mouthrinse Program was administered at the school for less than eight months.
- D.** At the end of the third year of participation, if a school wants to participate in the Arizona Fluoride Mouthrinse Program for another three years, the school shall apply to participate according to the requirements in R9-23-302.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 24. DEPARTMENT OF HEALTH SERVICES
ARIZONA MEDICALLY UNDERSERVED AREA HEALTH SERVICES**

[R06-94]

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|------------------------------------|---------------------------------|
| Article 1 | Repeal |
| R9-24-101 | Repeal |
| R9-24-102 | Repeal |
| R9-24-201 | Amend |
| R9-24-202 | Amend |
| R9-24-203 | Amend |
| Table 1 | Amend |
| R9-24-204 | Amend |
| R9-24-205 | New Section |
| R9-24-301 | Amend |
| R9-24-302 | 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. §§ 36-136(A)(7) and 36-136(F)
Implementing statutes: A.R.S. §§ 36-2352 and 36-2354
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 12 A.A.R. 489, February 17, 2006
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Myriam Vega, Office Chief
Address: Office of Health Systems Development
Arizona Department of Health Services
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: Office of Administrative Rules
Department of Health Services
1740 W. Adams, Suite 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:

A.R.S. § 36-2352 requires the Department to designate Arizona medically underserved areas (AzMUAs). A.R.S. § 36-2354 authorizes the Department to establish the functions of coordinating underserved medical providers who supervise the medical care offered at a medical clinic in an AzMUA. The Department originally made AzMUA and coordinating medical provider rules in 1978. In 1994, the legislature changed the statutory scheme for AzMUA designation. The Department's AzMUA designation program has been consistent with the statutory scheme since 1994, although the rules were not changed until 2001.

In this rulemaking, the Department is revising the AzMUA and coordinating medical provider rules in 9 A.A.C. 24 that became effective in January 2001. The Department is making revisions in accordance with the five-year-review report approved by the Governor's Regulatory Review Council on December 7, 2004. Additionally, the Department is consolidating 9 A.A.C. 24, Articles 1 and 2 to simplify the structure and improve the accessibility of the AzMUA rules.

The Department is repealing 9 A.A.C. 24, Article 1, General, including R9-24-101, Definitions, and R9-24-102, Time-frames. Definitions of non-statutorily defined terms and the boundary change request time-frames are being remade in Article 2. The new AzMUA rules structure will benefit the public by making the rules easier to use.

For 9 A.A.C. 24, Article 2, the Department is remaking in R9-24-201 definitions of terms defined in current R9-24-101 that are not included in A.R.S. § 36-2351, improving R9-24-201 definitions, and adding to R9-24-201 definitions of previously undefined terms. These changes will make the rules more understandable to the public.

In addition to technical changes to the AzMUA designation process in R9-24-202, R9-24-203, and Table 1, the Department is also making some changes to the content of R9-24-203. In R9-24-203(B)(13), "or registered nurses .8" is changed to "or a full-time registered nurse practitioner as 0.8." The Department intended existing R9-24-203(B)(13) to conclude with the text "or registered nurse practitioner as .8." However, as published in the *Arizona Administrative Register* for February 9, 2001, and in the *Arizona Administrative Code* for June 30, 2001, R9-24-203(B)(13) contained the term "registered nurses" instead of "registered nurse practitioner." This rulemaking corrects the rule's text.

The Department is adding R9-24-203(B)(1)(c) and R9-24-203(B)(13)(c) to allow for downward adjustment of the number of physicians, physician assistants, registered nurse practitioners in a primary care area if the Department determines that a provider renders less than full-time health care to the primary care area's population. The Department is also adding: for the census data publication year, data from the most recent decennial census to R9-24-203(B)(2)(a) for the determination of travel distance to the nearest primary care provider; and data from the Population Estimates for Arizona's Counties, Incorporated Places and Balance of County to R9-24-203(B)(12)(a) for the supplementary criteria score determination. The Department is modifying the R9-24-203(B)(7)(b) determination of ambulatory care sensitive condition hospital admissions by changing "hospital discharge record data" to "hospital inpatient and emergency department services data." This hospital services data is obtained by the Department under current A.R.S. § 36-125.05 as amended by Laws 2005, Ch. 92, § 1, effective August 12, 2005. With these changes, R9-24-203 fully reflects the AzMUA designation process.

In addition to technical changes to the primary care area boundary determination process in R9-24-204, the Department is clarifying that process. The Department is adding a new subsection (C) that specifically authorizes the Department's redetermination of primary care area boundaries without a boundary change request from a member of the public. Existing subsection (C), which provides for boundary change requests from members of the public, is re-lettered as subsection (D). The empirical data related to the requirements and considerations for determining primary care area boundaries in R9-24-204(A) and (B) are subject to change over time. Over time, changes to primary care area boundaries may become necessary to comply with the rule. For clarity, the rule needs to contain an explicit statement that the Department can make complying boundary changes without waiting for a member of the public to submit a boundary change request.

The Department is making new R9-24-205, containing the R9-24-102 time-frames with technical changes, to establish the time-frames for the Department's decision on a boundary change request from a member of the public. The Department has not received any primary care area boundary change request according to existing R9-24-204(C).

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For 9 A.A.C. 24, Article 3, the Department is adding definitions of previously undefined terms to increase understandability. Additionally, the Department is making changes to the content of R9-24-302, dealing with the coordinating medical provider functions. Some of these changes result from the different scopes of practice of registered nurse practitioners and physician assistants. No AzMUA has ever had a coordinating medical provider.

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 and does not propose to 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:

To clarify the structure and improve the accessibility of the AzMUA rules, the Department is repealing 9 A.A.C. 24, Article 1, General, including R9-24-101, Definitions, and R9-24-102, Time-frames. Definitions of non-statutorily defined terms and the boundary change request time-frames are being remade in Article 2. The Department believes that this structural change will benefit the public.

For 9 A.A.C. 24, Article 2, the Department is remaking in R9-24-201 definitions of terms defined in current R9-24-101 that are not included in A.R.S. § 36-2351, improving R9-24-201 definitions, and adding to R9-24-201 definitions of previously undefined terms. The Department is making new R9-24-205, containing the R9-24-102 time-frames with technical changes. The Department is making content changes to R9-24-203 and R9-24-204.

The content changes to R9-24-203 fully reflect the current AzMUA designation process. These changes generally will not result in AzMUA designations different from the AzMUA designations that would be obtained under existing R9-24-203. The data source additions in the R9-24-203(B)(2) and (B)(12) criteria contribute to the accuracy of the Department's determinations. The data source modification in the R9-24-203(B)(7) criterion conforms the rule provision to current statutory language. Correcting the R9-24-203(B)(13) text to "registered nurse practitioner," will not affect AzMUA designation. Along with physicians and physician assistants, the Department has always counted as primary care providers only registered nurses with registered nurse practitioner certification from the Arizona State Board of Nursing according to 4 A.A.C. 19, Article 5. Therefore, the R9-24-203(B)(13) textual correction is not outcome determinative for AzMUA designation. The effect, if any, on AzMUA designation from the possible downward adjustment of the number of primary care providers in a primary care area in R9-24-203(B)(1) and (B)(13), would be an increase in the number of primary care areas designated as AzMUAs. Such an increase would indirectly benefit medical facilities and individuals as discussed in this preliminary summary of economic, small business and consumer impact.

The content change to R9-24-204 addresses the Department's ability to redetermine primary care area boundaries without a request from a member of the public. The Department has not received any primary care area boundary change request from a member of the public according to existing R9-24-204(C). The Department believes that the technical changes and the changes to the content of the Article 2 rules will not have any additional economic impact on the Department and will not impose any direct costs on any other individual or entity.

For 9 A.A.C. 24, Article 3, the Department is adding definitions of previously undefined terms in R9-24-301 and making some changes to the content of R9-24-302. No AzMUA has ever had a coordinating medical provider. The Department believes that the technical changes and changes to the content of the Article 3 rules will not have any additional economic impact on the Department and will not impose any direct costs on any other individual or entity.

Under the existing rules, the Department incurs substantial costs (\$10,000 or more) to operate the AzMUA designation program, including preparation of the primary care index. The Department's AzMUA program and its rules indirectly result in substantial benefits or losses to a primary care area and to medical facilities or individuals in the primary care area. A.R.S. § 36-2371(E) gives primary care provider loan repayment program priority to rural areas with an AzMUA designation or assigned to a high-degree-of-shortage group according to federal regulations. These regulations are currently located at 42 CFR Part 5, Appendix A to Part 5, Criteria for Designation of Areas Having Shortages of Primary Medical Care Professional(s). A primary care area with an AzMUA designation also is eligible for health crisis fund monies for "basic health services delivery disruptions, caused by unforeseen circumstances" under A.R.S. § 36-797. A primary care area with an AzMUA designation may receive the Department's assistance to recruit a coordinating medical provider under A.R.S. § 36-2353. To the Department's knowledge, this assistance has not occurred, and no AzMUA has used the rules in 9 A.A.C. 24, Article 3.

Non-Department programs that require AzMUA designation include the Arizona medical student loan program under A.R.S. Title 15, Chapter 13, Article 7; and priority consideration by the University of Arizona College of Medicine for applicants who indicate their willingness to practice in AzMUAs under A.R.S. § 15-1751. Additionally, under A.R.S. § 48-2201 a health service district may be established only in an area with an AzMUA designation. The Department is aware of only one health service district in the state, the Ajo-Lukeville Health Service District.

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Under the revised rules, the Department's methodology for AzMUA designation under 9 A.A.C. 24, Article 2 will continue to result in some annual variation because the indicators established in A.R.S. § 36-2352(A) measure variable demographics.

Under the revised rules, benefits and losses to primary care areas and to medical facilities or individuals in primary care areas will remain indirect, resulting from the need for AzMUA designation for participation in programs under statutes other than A.R.S. § 36-2352. Direct costs related to designating AzMUAs will continue to arise from the Department's performance of its statutory functions under A.R.S. Title 36, Chapter 24.

The Department, external stakeholders, and members of the public may experience minimal costs and benefits (less than \$1000) from the time-frame rule if the Department receives a primary care area boundary change request according to R9-24-204(D), formerly R9-24-204(C). The Department, external stakeholders, and members of the public may experience undetermined costs and benefits from the coordinating medical provider rules if these rules are ever used. The benefits from 9 A.A.C. 24 as revised will continue to outweigh the costs.

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:

The Department has not scheduled an oral proceeding. Until the close of record, a person may submit a written request for an oral proceeding to the individuals listed in items #4 and #9.

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.

CLOSE OF RECORD
5:00 p.m., May 12, 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:

The Department incorporates by reference the following document: the first table in Appendix B. Ambulatory Care Sensitive Conditions to "Using Administrative Data to Monitor Access, Identify Disparities, and Assess Performance of the Safety Net," in *Tools for Monitoring the Health Care Safety Net*, AHRQ Publication No. 03-0027, September 2003, Agency for Healthcare Research and Quality, Rockville, MD. This incorporation by reference is located at R9-24-201(7).

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 24. DEPARTMENT OF HEALTH SERVICES
ARIZONA MEDICALLY UNDERSERVED AREA HEALTH SERVICES**

ARTICLE 1. ~~GENERAL~~ REPEALED

Section

- R9-24-101. ~~Definitions~~ Repealed
R9-24-102. ~~Time frames~~ Repealed

ARTICLE 2. ARIZONA MEDICALLY UNDERSERVED AREAS

Section

- R9-24-201. Definitions
R9-24-202. Arizona Medically Underserved Area Designation
R9-24-203. Primary Care Index
Table 1. Primary Care Index Scoring
R9-24-204. Primary Care Area ~~Designation~~ Boundaries Determination
R9-24-205. ~~Repealed~~ Time-frames

ARTICLE 3. COORDINATING MEDICAL PROVIDERS

Section

- R9-24-301. Definitions
R9-24-302. CMP Functions

ARTICLE 1. ~~GENERAL~~ REPEALED

R9-24-101. ~~Definitions~~ Repealed

In this Chapter, unless otherwise specified:

1. ~~“Arizona medically underserved area” means a primary care area that is designated by the Secretary of the United States Department of Health and Human Services as a health professional shortage area or that is designated by the Department using the methodology described in A.A.C. R9-24-203.~~
2. ~~“Days” means calendar days, excluding the day of the act, event, or default from which a designated period of time begins to run and excluding the last day of the period if it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.~~
3. ~~“Department” means the Arizona Department of Health Services.~~
4. ~~“Health professional shortage area” means a geographic region designated by the Secretary of the United States Department of Health and Human Services under 42 U.S.C. § 254e as a primary medical care health professional shortage area.~~
5. ~~“Physician” has the same meaning as in A.R.S. § 36-2351.~~
6. ~~“Physician assistant” has the same meaning as in A.R.S. § 32-2501.~~
7. ~~“Primary care area” means a geographic region designated as a primary care area by the Department under A.A.C. R9-24-204.~~
8. ~~“Registered nurse practitioner” has the same meaning as in A.R.S. § 32-1601.~~

R9-24-102. ~~Time frames~~ Repealed

- A.** ~~The overall time frame described in A.R.S. § 41-1072 for a request for boundary change under A.A.C. R9-24-204 is 90 days. The person requesting a boundary change and the Department may agree in writing to extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed 25% of the overall time frame.~~
- B.** ~~The administrative completeness review time frame described in A.R.S. § 41-1072 for a request for boundary change under A.A.C. R9-24-204 is 30 days and begins on the date that the Department receives a request for boundary change.~~
1. ~~The Department shall mail a notice of administrative completeness or deficiencies to the person requesting a boundary change within the administrative completeness review time frame.~~

- a. A notice of deficiencies shall list each deficiency and the information and documentation needed to complete the request for boundary change.
- b. If the Department issues a notice of deficiencies within the administrative completeness review time frame, the administrative completeness review time frame and the overall time frame are suspended from the date that the notice is issued until the date that the Department receives the missing information from the person requesting a boundary change.
- c. If the person requesting a boundary change fails to submit to the Department all of the information and documents listed in the notice of deficiencies within 30 days from the date that the Department mails the notice of deficiencies, the Department shall consider the request for boundary change withdrawn.
2. If the Department issues an approval to the person requesting a boundary change during the administrative completeness review time frame, the Department shall not issue a separate written notice of administrative completeness.
- C. The substantive review time frame described in A.R.S. § 41-1072 is 60 days and begins on the date of the notice of administrative completeness:
 1. The Department shall mail written notification of approval or denial of the request for boundary change to the person requesting a boundary change within the substantive review time frame.
 2. During the substantive review time frame, the Department may make 1 comprehensive written request for additional information, unless the Department and the person requesting a boundary change agree in writing to allow the Department to submit supplemental requests for information.
 3. If the Department issues a comprehensive written request or a supplemental request for information, the substantive review time frame and the overall time frame shall be suspended from the date that the Department issues the request until the date that the Department receives all of the information requested. If the person requesting a boundary change fails to submit to the Department all of the information and documents listed in the comprehensive written request or supplemental request for information within 30 days from the date that the Department mails the comprehensive written request or supplemental request for information, the Department shall consider the request for boundary change withdrawn.
 4. The Department shall approve a request for boundary change under A.A.C. R9-24-204 unless the Department determines that the resulting primary care area does not comply with A.A.C. R9-24-204(A).

ARTICLE 2. ARIZONA MEDICALLY UNDERSERVED AREAS

R9-24-201. Definitions

In addition to the definitions in A.R.S. § 36-2351, the following definitions apply in this Article, unless otherwise specified:

1. "Act, event, or default" means an occurrence or the failure of something to occur.
2. "Agency" has the same meaning as in A.R.S. § 41-1001.
3. "Ambulatory care sensitive conditions" means the illnesses listed as ambulatory care sensitive conditions in Ambulatory Care Access Project, United Hospital Fund of New York, Final Code Specifications for "Ambulatory Care Sensitive" Conditions, "Referral Sensitive" Surgical and Medical Conditions, "Marker" Conditions (July 30, 1991, which is in the first table of Appendix B, Ambulatory Care Sensitive Conditions to "Using Administrative Data to Monitor Access, Identify Disparities, and Assess Performance of the Safety Net," in *Tools for Monitoring the Health Care Safety Net*, AHRQ Publication No. 03-0027, September 2003, Agency for Healthcare Research and Quality, Rockville, MD, incorporated by reference, on file with the Department and the Office of the Secretary of State, including no future editions or amendments, and available from United Hospital Fund, 350 5th Avenue, 23rd Floor, New York, NY 10118-2399. This incorporation by reference contains no future editions or amendments. the Agency for Healthcare Research and Quality, U.S. Department of Health and Human Services at:
 - a. AHRQ Publications Clearinghouse, PO Box 8547, Silver Spring, MD 20907;
 - b. (800) 358-9295; or
 - c. <http://www.ahrq.gov/data/safetynet/billappb.htm>.
4. "Arizona Medical Board" means the agency established by A.R.S. § 32-1402 to regulate physicians licensed under A.R.S. Title 32, Chapter 13.
5. "Arizona medically underserved area" means:
 - a. A primary care area or part of a primary care area with the designation described in R9-24-202(1), or
 - b. A primary care area with the designation described in R9-24-202(2).
6. "Arizona Regulatory Board of Physician Assistants" means the agency established by A.R.S. § 32-2502 to regulate physician assistants.
7. "Arizona State Board of Nursing" means the agency established by A.R.S. § 32-1602 to regulate nurses and nursing assistants.
8. "Birth life expectancy" means the average life span at the time of birth as published in according to the most recent United States Life Tables by U.S. life expectancy data in the National Vital Statistics Reports of the National Vital

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- Statistics System, available on the web site of the National Center for Health Statistics, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, at <http://www.cdc.gov/nchs/fastats/lifexpec.htm>.
9. “Board of Osteopathic Examiners in Medicine and Surgery” means the agency established by A.R.S. § 32-1801 to regulate physicians licensed under A.R.S. Title 32, Chapter 17.
10. “Boundary change” means a re-determination of the geographic limits of a primary care area.
11. “Census block” means the smallest unit of census geography that may:
- a. In a city, correspond to an area that is bounded by streets, or
 - b. In a rural area, include many square miles and have some boundaries that are not streets.
12. “Day” means calendar day:
- a. Excluding the day of the act, event, or default that triggers a time-frame;
 - b. Excluding the last day of a time-frame if it is a Saturday, a Sunday, or a legal holiday; and
 - c. If the last day of a time-frame is excluded under subsection (12)(b), including the next day that is not a Saturday, a Sunday, or a legal holiday.
- 3-13. “Family unit” means:
- a. A group of Two or more individuals residing together related by birth, marriage, or adoption who are related by birth, marriage, or adoption live at the same residence; or
 - b. An One individual who does not reside live at the same residence with any individual to whom the individual is anyone related by birth, marriage, or adoption.
14. “First health care contact” means the initial telephone call or visit to a health care provider as defined in 45 CFR 160.103 for an individual's health issue.
- 4-15. “Full-time” means providing primary care services for at least 40 hours during the 7 day period between a Sunday at 12:00 a.m. midnight and the next Saturday at 11:59 p.m. Sunday at 12:00 midnight.
16. “Health organization” means:
- a. A person or entity that provides medical services;
 - b. A third party payor defined in A.R.S. § 36-125.07(C); or
 - c. A trade or professional association described in paragraph (3), (4), (5), or (6) of Section 501(c) of the Internal Revenue Code, 26 USC 501(c), that is exempt from federal income taxes.
- 5- ~~“Hospital” has the same meaning as in A.R.S. § 36-2351.~~
- 6- ~~“HPSA” means health professional shortage area.~~
17. “Indian reservation” has the same meaning as in A.R.S. § 11-801.
18. “Legal holiday” means a state service holiday listed in A.A.C. R2-5-402.
19. “Local planning personnel” means individuals who develop programs related to the delivery of and access to medical services for places:
- a. Under the jurisdiction of an Arizona city or county, or
 - b. In or near an Arizona Indian reservation.
- 7-20. “Low-weight birth” means the live birth of an infant weighing less than 2500 grams or \leq five pounds, \geq eight ounces.
21. “Medical services” has the same meaning as in A.R.S. § 36-401.
- 8-22. “Mobility limitation” means a an individual’s physical or mental condition that:
- a. Has lasted for 6 or more at least six months,
 - b. ~~Makes it difficult~~ Impairs the individual’s ability to go outside the home individual’s residence alone, and
 - c. Is not a temporary health problem such as a broken bone that is expected to heal normally.
23. “Motor vehicle” has the same meaning as in A.R.S. § 28-101.
- 9- ~~“Office of Vital Records” means the office of the Department that prepares, publishes, and disseminates vital records.~~
24. “Nonresidential” means not primarily used for living and sleeping.
25. “Person” has the same meaning as in A.R.S. § 41-1001.
26. “Physician assistant” has the same meaning as in A.R.S. § 32-2501.
27. “Political subdivision” means a county, city, town, district, association, or authority created by state law.
- 10-28. “Population” means the total of permanent residents number of residents of a place or an area, according to:
- a. ~~the~~ The most recent decennial census published prepared by the United States U.S. Census Bureau and available at <http://www.census.gov>; or
 - b. ~~according to the~~ The most recent Population Estimates for Arizona’s Counties and Incorporated Places and Balance of County published prepared by the Arizona Department of Economic Security and available at <http://www.workforce.az.gov/?PAGED=67&SUBID=137>.
- 11-29. “Poverty level threshold” means the annual income for a family unit of a particular size in the poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services calendar year income relative to family unit size that:
- a. Determines an individual’s poverty status,
 - b. Is defined annually by the U.S. Census Bureau, and

- c. Is available for the most recently completed calendar year at <http://www.census.gov/hhes/poverty/threshld.html>.
30. "Primary care area" means a geographic region determined by the Department under R9-24-204.
31. "Primary care HPSA" means primary care health professional shortage area designated by the U.S. Department of Health and Human Services under 42 USC 254e, 42 CFR 5.1 through 5.4, and 42 CFR Part 5, Appendix A.
- 12-32. "Primary care index" means the document in which the Department designates primary care areas as medically underserved by using the methodology described in A.A.C. according to R9-24-203 and Table 1.
- 13-33. "Primary care provider" means a physician, a physician assistant, or a registered nurse practitioner providing direct patient care who:
- a. Except for emergencies, is an individual's first health care contact; and
 - b. Provides primary care services in general or family practice, general internal medicine, pediatrics, or obstetrics and gynecology.
- 14-34. "Primary care services" means health care provided by a primary care provider, including:
- a. Illness and injury prevention,
 - b. Health promotion and education,
 - c. Identification of individuals at special risk for illness,
 - d. Early detection of illness,
 - e. Treatment of illness and injury, and
 - f. Referral to specialists.
35. "Primary care services utilization pattern" means a distribution of primary care services resulting from the factors listed in R9-24-204(A)(2)(a).
36. "Registered nurse practitioner" has the same meaning as in A.R.S. § 32-1601.
37. "Residence" means a structure or part of a structure where an individual lives and sleeps.
38. "Resident" means an individual who lives and sleeps in a place or an area more than one-half of the time.
39. "Residential" means primarily used for living and sleeping.
- 15-40. "Self-care limitation" means an individual's physical or mental condition that:
- a. Has lasted for 6 or more at least six months;
 - b. Makes it difficult to take care of personal needs Impairs the individual's ability to perform activities such as dressing, bathing, or moving around inside the home individual's residence; and
 - c. Is not a temporary health problem such as a broken bone that is expected to heal normally.
41. "Specialist" means an individual who:
- a. Is regulated under:
 - i. A.R.S. Title 32, Chapters 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 25, 28, 29, 33, 34, 35, 39, or 41;
 - ii. A.R.S. Title 36, Chapter 6, Article 7; or
 - iii. A.R.S. Title 36, Chapter 17; and
 - b. Meets the education, knowledge, and skill requirements related to a specific service or procedure, patient category, body part or system, or type of disease.
42. "Street route" means a course of travel by road.
43. "Temporary" means lasting for a limited time.
44. "Topography" means the surface configuration of a place or region, including elevations and positions of the physical features.
45. "Travel pattern" means a prevalent flow of motor vehicles resulting from:
- a. The configuration of streets, and
 - b. The location of residential and nonresidential areas.
46. "Value" means a number within a value range.
47. "Value range" means, for a criterion listed in R9-24-203(B) and Table 1, a measurement:
- a. Consisting of a scale between upper and lower limits, except for the supplementary criteria score under R9-24-203(B)(12); and
 - b. To which Table 1 assigns points or 0 points.
- 16-48. "Vital records" has the same meaning as in A.R.S. § 36-301.
- 17-48. "Work disability" means an individual's physical or mental condition that:
- a. Has lasted for 6 or more at least six months,
 - b. Limits an the individual's choice of jobs or makes an prevents the individual unable to work for 35 or more from working for more than 34 hours per week, and
 - c. Is not a temporary health problem such as a broken bone that is expected to heal normally.

R9-24-202. Arizona Medically Underserved Area Designation

The Department shall designate as Arizona medically underserved areas:

1. ~~those~~ The primary care areas or parts of primary care areas designated as HPSAs primary care HPSAs by the Secretary of the United States U.S. Department of Health and Human Services, and

2. ~~those~~ The primary care areas identified ~~designated~~ as medically underserved by the ~~primary care index described in A.A.C. the Department under R9-24-203 and Table 1.~~

R9-24-203. Primary Care Index

- A. ~~Using the criteria in subsection (B), the~~ Every 12 months, the Department shall ~~generate~~ prepare, according to this Section, a primary care index ~~to designate for designating~~ primary care areas determined under R9-24-204 as Arizona medically underserved areas.
1. ~~The~~ For each primary care area determined under R9-24-204, the Department shall calculate the value for each criterion ~~as described in subsection (B).~~
 - a. After calculating the value for each criterion in subsection (B), the Department shall ~~determine the points to be assigned~~ assign points to each value using according to Table 1.
 - b. ~~The total score for each~~ A primary care area's score is the sum of:
 - i. ~~The~~ the points that the primary care area received by the primary care area for each criterion under subsections (B)(1) through (B)(11), in subsection (B).
 - ii. The supplementary criteria score under subsection (B)(12), and
 - iii. The sole provider or no provider score under subsection (B)(13).
 2. The Department shall designate as Arizona medically underserved ~~those~~:
 - a. The primary care areas that, according to subsection (B) and Table 1, score within the top 25% 25 percent on the primary care index or that have point totals greater than or equal to 55 obtain more than 55 points, whichever results in the designation of more Arizona medically underserved areas; and
 - b. The primary care areas or parts of primary care areas with the designation described in R9-24-202(1).
- B. ~~The~~ For each primary care area determined by the Department under R9-24-204, the primary care index shall include a score for each of the following ~~criteria for each primary care area~~:
1. Population-to-primary-care-provider ratio, determined by dividing the population of the primary care area by the number of primary care providers in the primary care area;
 - a. ~~using~~ Using primary care provider data from the ~~Board of Arizona Medical Examiners Board, the Board of Osteopathic Examiners in Medicine and Surgery, the Arizona State Board of Nursing, and the Joint Arizona Regulatory Board on the Regulation of Physician Assistants; and~~
 - b. ~~counting 1~~ Counting a full-time physician as 1.0 ~~and 1,~~ a full-time physician assistant ~~or as 0.8, and a full-time registered nurse practitioner as .8 0.8; and~~
 - c. If the Department determines that a physician, physician assistant, or registered nurse practitioner practices less than full-time in the primary care area, proportionately lowering the number obtained under subsection (B)(1)(b);
 2. Travel distance to the nearest primary care provider, determined by:
 - a. ~~estimating~~ Estimating the distance in miles:
 - i. ~~from~~ From the center of the most densely populated area in the primary care area determined from the most recent Population Estimates for Arizona's Counties, Incorporated Places and Balance of County identified in R9-24-201(28)(b); or, for the year in which the most recent decennial census is published, from the most recent decennial census; and
 - ii. ~~to~~ To the nearest primary care provider determined from the data described in subsection (B)(1)(a); and
 - b. ~~by~~ Using the most direct street route;
 3. Composite transportation score, determined by:
 - a. Compiling data on the following ~~6 six~~ indicators ~~using from~~ the most recent decennial census ~~published by the United States Census Bureau~~:
 - i. Percentage of population with ~~annual~~ calendar year income less than ~~100% 100 percent~~ of the poverty level threshold;
 - ii. Percentage of population older than age 65 years of age;
 - iii. Percentage of population younger than age 14 years of age;
 - iv. Percentage of population ~~that has with~~ a work disability, mobility limitation, or self-care limitation;
 - v. Percentage of population without a motor vehicle; and
 - vi. ~~The noncommercial vehicle to population~~ motor-vehicle-to-population ratio;
 - b. Calculating the statewide average value for each of the ~~6 six~~ indicators in subsection (B)(3)(a);
 - c. Dividing the value of each indicator for each primary care area by the statewide average value for that indicator;
 - d. Multiplying the figure calculated under subsection (B)(3)(c) for each indicator by 100; and
 - e. Averaging the ~~6 six~~ indicator values obtained under subsection (B)(3)(d) for each primary care area;
 4. Percentage of population with ~~annual~~ calendar year income less than 200% of the poverty level, ~~as reported in threshold, from data in~~ the most recent decennial census published by the United States Census Bureau;
 5. Percentage of population with annual income between 100% and 200% of the poverty level, ~~as reported in threshold, from data in~~ the most recent decennial census published by the United States Census Bureau;
 6. Percentage of uninsured births, ~~determined from Office of Vital Records~~ Department birth records reporting payment

- source as “self-pay” or “unknown;”
7. Ambulatory care sensitive condition hospital admissions;
 - a. ~~based~~ Based on the number of hospital admissions for ambulatory care sensitive conditions per 1000 ~~resident~~ individuals living in the primary care area aged who are under age 65 years or younger, and
 - b. ~~determined~~ Determined from ~~hospital discharge record~~ hospital inpatient and emergency department services data provided by the Bureau of Public Health Statistics Department;
 8. Percentage of low-weight births, ~~determined~~ from data provided by the Office of Vital Records Department;
 9. ~~Sum~~ From data provided by the Department, the sum of the following, ~~determined from data provided by the Office of Vital Records~~ percentage of births for which the mothers reported:
 - a. ~~Percentage of births for which the mothers reported having no~~ No prenatal care,
 - b. ~~Percentage of births for which the mothers reported commencing prenatal~~ Prenatal care that began in the ~~2nd~~ second or ~~3rd~~ third trimester, and
 - c. ~~Percentage of births for which the mothers reported having 4~~ Four or fewer prenatal care visits;
 10. Percentage of deaths at ages younger than the birth life expectancy, ~~determined from the birth life expectancy~~ most recent U.S. life expectancy data and data provided by the Office of Vital Records Department;
 11. Number of infant mortalities per 1000 live births, ~~determined from data provided by the Office of Vital Records~~ Department;
 12. Supplementary criteria score, ~~determined by assigning 2 points for each~~ based on the presence or absence in a primary care area of the following indicators that exists in the primary care area:
 - a. Percentage of minority population greater than the statewide average for all counties, ~~determined from data in the most recent Population Estimates for Arizona’s Counties, Incorporated Places and Balance of County identified in R9-24-201(28)(b) and~~ from data in the most recent decennial census published by the United States Census Bureau;
 - b. Percentage of elderly population greater than the statewide average for all counties, ~~determined from data in the most recent Population Estimates for Arizona’s Counties, and Incorporated Places and Balance of County published by the Arizona Department of Economic Security identified in R9-24-201(28)(b) and~~ from data in the most recent decennial census published by the United States Census Bureau; and
 - c. Average annual unemployment rate greater than the average annual statewide rate, ~~determined from data in the most recent annual report issued~~ Arizona Unemployment Statistics Program Special Unemployment Report, prepared by the Arizona Department of Economic Security; Research Administration, in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics, and available at <http://www.workforce.az.gov>; and
 13. Sole provider or no provider score;
 - a. ~~determined by assigning 5 points if the~~ Based on whether a primary care area has only 1.0 or less than 1.0 primary care provider;
 - b. ~~counting 1~~ Counting a full-time physician as 1.0 ~~and 1~~, a full-time physician assistant ~~or~~ as 0.8, and a full-time registered nurses ~~or~~ nurse practitioner as 0.8; and
 - c. If the Department determines that a physician, physician assistant, or registered nurse practitioner practices less than full-time in the primary care area, proportionately lowering the number obtained under subsection (B)(13)(b).
- C. ~~The Department shall generate a primary care index every 12 months to determine Arizona medically underserved area designations. The~~ Every 12 months, according to subsections (A) and (B) and Table 1, the Department shall:
1. ~~withdraw~~ Withdraw an Arizona medically underserved area designation,
 2. ~~continue~~ Continue an Arizona medically underserved area designation, or
 3. ~~designate~~ Designate a new Arizona medically underserved area ~~based on the criteria in subsections (A) and (B).~~
- D. ~~The Department shall publish and keep on file a~~ A list of current Arizona medically underserved areas is available in the Department’s annual Arizona Medically Underserved Areas (AzMUA) Report at <http://www.azdhs.gov/hsd/>.

Table 1. Primary Care Index Scoring

CRITERIA	VALUE RANGE	POINTS
Population-to-primary-care-provider ratio	≤ 2000:1	0
	2001:1 to 2500:1	2
	2501:1 to 3000:1	4
	3001:1 to 3500:1	6
	3501:1 to 4000:1	8
	> 4000:1 or no provider	10

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Travel distance to nearest primary care provider	≤ 15.0 miles 15.1-25.0 miles 25.1-35.0 miles 35.1-45.0 miles 45.1-55.0 miles > 55.0 miles	0 2 4 6 8 10
Composite transportation score	50th 51st highest score and below 41st-50th highest scores 31st-40th highest scores 21st-30th highest scores 11th-20th highest scores 10 highest scores	0 2 4 6 8 10
Percentage of population with annual income less than 200% of poverty level <u>threshold</u>	≤ 15.0% 15.1-25.0% 25.1-35.0% 35.1-45.0% 45.1-55.0% > 55.0%	0 2 4 6 8 10
Percentage of population with annual income between 100% and 200% of poverty level <u>threshold</u>	≤ 10.0% 10.1-15.0% 15.1-20.0% 20.1-25.0% 25.1-30.0% > 30.0%	0 2 4 6 8 10
Percentage of uninsured births	≤ 6.0% 6.1-10.0% 10.1-14.0% 14.1-18.0% 18.1-22.0% > 22.0%	0 2 4 6 8 10
Ambulatory care sensitive condition hospital admissions	≤ 8.0 8.1-12.0 12.1-16.0 16.1-20.0 20.1-24.0 > 24.0	0 2 4 6 8 10
Percentage of low-weight births	≤ 6.0% 6.1-8.0% 8.1-10.0% 10.1-12.0% 12.1-14.0% > 14.0%	0 2 4 6 8 10
Sum of the following percentage of births with: a. Percentage of births with no <u>No</u> prenatal care, b. Percentage of births with prenatal <u>Pre-natal</u> care begun in 2nd <u>second</u> or 3rd <u>third</u> trimester, and c. Percentage of births with prenatal <u>Pre-natal</u> care visits ≤ 4	≤ 15.0% 15.1-25.0% 25.1-35.0% 35.1-45.0% 45.1-55.0% > 55.0%	0 2 4 6 8 10

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Percentage of deaths at ages younger than birth life expectancy	≤ 40.0% 40.1-50.0% 50.1-60.0% 60.1-70.0% 70.1-80.0% > 80.0%	0 2 4 6 8 10
Number of infant mortalities per 1000 live births	≤ 4.0 4.1-6.0 6.1-8.0 8.1-10.0 10.1-12.0 > 12.0	0 2 4 6 8 10
Supplementary criteria score	1 Criterion 2 Criteria 3 Criteria	2 4 6
Sole provider or no provider score	primary Primary care provider ≤ 1.0 primary Primary care provider provid- ers > 1.0	5 0
<u>Key to Symbols</u> ≤ represents “less than or equal to” > represents “more than”		

R9-24-204. Primary Care Area ~~Designation~~ Boundaries Determination

- A. The Department shall ~~designate~~ determine the boundaries of primary care areas ~~within the~~ for the entire state. A primary care area’s boundaries shall ~~that~~ meet the following ~~criteria~~ requirements:
1. ~~Each primary care~~ The geographic area within the boundaries is not smaller than the smallest unit of census geography used or corresponds to or is larger than a census block identified for the geographic area in the most recent decennial census published by the United States Census Bureau; and
 2. The boundaries of each primary care area are consistent with the population’s primary care services utilization patterns of its population for primary care services, determined by considering:
 - a. The geographic area’s:
 - ~~a. i.~~ Topography;
 - ~~b. ii.~~ Social; and cultural relationships,
 - ~~iii. and geopolitical~~ Political subdivision boundaries; and
 - ~~e. iv.~~ Travel patterns for the geographic area; and
 - ~~d. b.~~ Data about the type, amount, and location of primary care services used by the geographic area’s population, from local planning personnel, government officials, health organizations, primary care providers, and residents of the geographic area about the type, amount, and location of primary care services used by the population.
- B. ~~The~~ In addition to the requirements for primary care area boundaries in subsection (A), the Department shall consider ~~the following additional factors in determining the boundaries of each primary care area:~~
1. Boundaries of Indian reservations reservation boundaries, and
 2. Boundaries of HPSAs Primary care HPSA boundaries.
- C. Without receiving a primary care area boundary change request under subsection (D), the Department may redetermine the boundaries of one or more primary care areas according to the requirements and considerations in subsections (A) and (B).
- ~~C. D. Local~~ A primary care area’s local planning personnel, government officials, health organizations, primary care providers, or residents of a primary care area may submit to the Department a ~~request to change the boundaries of a primary care area boundary change request.~~
1. ~~The request~~ A person requesting a boundary change shall:
 - ~~a. be made~~ Make the request in writing and,
 - ~~b. shall include~~ Include documentation to support supporting the boundary change-, and
 - ~~c. The request shall be submitted~~ Submit the request by October 1 to be considered for inclusion in the next calendar year’s Arizona medically underserved area designation process for the following calendar year.
 2. ~~The time frames for the request for change of boundaries are in A.A.C. R9-24-102.~~ Department shall review a pri-

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mary care area boundary change request according to the time-frames in R9-24-205.

R9-24-205. ~~Repealed~~ Time-frames

- A.** The overall time-frame described in A.R.S. § 41-1072 for a primary care area boundary change request under R9-24-204(C) is 90 days.
1. A person requesting a boundary change 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 may not exceed 25 percent of the overall time-frame.
- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072 for a primary care area boundary change request under R9-24-204(C) is 30 days and begins on the date the Department receives a boundary change request.
1. Within the administrative completeness review time-frame, the Department shall mail a notice of administrative completeness or a notice of deficiencies to the person requesting a boundary change.
 - a. A notice of deficiencies shall list each deficiency and the information or documents needed to complete the boundary change request.
 - b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date the Department mails the notice until the date the Department receives the missing information or documents.
 - c. If the person requesting a boundary change does not submit to the Department all the information and documents listed in the notice of deficiencies within 60 days after the date the Department mails the notice of deficiencies, the Department considers the boundary change request withdrawn.
 2. If the Department approves a boundary change request 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 for a primary care area boundary change request under R9-24-204(C) is 60 days and begins on the date the Department mails the notice of administrative completeness.
1. Within the substantive review time-frame, the Department shall mail written notification of approval or denial of the boundary change request to the person requesting a boundary change.
 2. During the substantive review time-frame:
 - a. The Department may make one comprehensive written request for additional information; and
 - b. If the Department and the person requesting a boundary change agree in writing to allow one or more supplemental requests for information, the Department may make the number of supplemental requests for information agreed to.
 3. A comprehensive written request for additional information or a supplemental request for information suspends the substantive review time-frame and the overall time-frame from the date the Department mails the request until the date the Department receives all the information and documents requested.
 4. If the person requesting a boundary change does not submit to the Department all the information and documents listed in a comprehensive written request for additional information or a supplemental request for information within 60 days after the date the Department mails the request, the Department shall deny the boundary change request.
- D.** The Department shall approve a primary care area boundary change request under R9-24-204(C) unless:
1. The requested boundaries do not meet the requirements in R9-24-204(A).
 2. The considerations required in R9-24-204(B) outweigh the information and documents submitted with the boundary change request, or
 3. The person requesting the boundary change does not submit information and documents as stated in subsection (B)(1)(c) or subsection (C)(4).

ARTICLE 3. COORDINATING MEDICAL PROVIDERS

R9-24-301. Definitions

In addition to the definitions in A.R.S. § 36-2351 and 9 A.A.C. 24, Article 2, the following definitions apply in this Article, unless otherwise specified:

1. "CMP" means coordinating medical provider; as defined in A.R.S. § 36-2351.
2. "Continuing medical education" means instruction that meets the requirements in:
 - a. A.A.C. R4-16-101 for a physician licensed under A.R.S. Title 32, Chapter 13;
 - b. A.A.C. R4-17-205 for a physician assistant licensed under A.R.S. Title 32, Chapter 25; and
 - c. A.R.S. § 32-1824, A.A.C. R4-22-109, and A.A.C. R4-22-110 for a physician licensed under A.R.S. Title 32, Chapter 17.
3. "Continuing nursing education" means instruction that:
 - a. Is required by A.A.C. R4-19-507 for authorization from the Arizona State Board of Nursing for a registered nurse practitioner to prescribe and dispense medication;

- b. Meets requirements established by a nurse credentialing organization, such as the American Nurses Credentialing Center; or
- c. Provides training related to the performance of a nurse's job duties.
- 4. "Drug prescription services" means the provision of medication that requires an order by medical personnel authorized by law to order the medication.
- 5. "Durable medical equipment" means an item that:
 - a. Can withstand repeated use.
 - b. Is designed to serve a medical purpose, and
 - c. Generally is not useful to an individual in the absence of a medical condition, illness, or injury.
- 6. "Governing authority" has the same meaning as in A.R.S. § 36-401.
- 7. "Independent decision" means a registered nurse practitioner's action without a physician's order according to A.A.C. R4-19-505 and A.A.C. R4-19-507.
- 2. "Medical clinic" has the same meaning as in A.R.S. § 36-2351.
- 8. "Medical direction" means guidance, advice, or consultation provided by a CMP to a registered nurse practitioner.
- 3-9. "Medical personnel" means a medical clinic's physicians, physician assistants, registered nurse practitioners, and nurses of a medical clinic.
- 4-10. "Nurse" means an individual licensed as a graduate, professional, or registered nurse or as a practical nurse under A.R.S. Title 32, Chapter 15.
- 11. "Order" means a written directive.
- 12. "Practice requirements" means the standards for physicians established in:
 - a. A.R.S. Title 32, Chapter 13 and 4 A.A.C. 16; or
 - b. A.R.S. Title 32, Chapter 17 and 4 A.A.C. 22.
- 13. "Referral source" means a person who sends an individual to a third person for medical services.
- 14. "Social services" means assistance, other than medical services, provided to maintain or improve an individual's physical, mental, and social participation capabilities.
- 15. "Supervision" has the same meaning as in A.R.S. § 32-2501.
- 5-16. "Support services" means drug prescription services, social services, and provision of durable medical equipment.
- 17. "Work schedule coverage" means a medical clinic's system for filling gaps in the presence of medical personnel.
- 18. "Written protocol" means an agreement that identifies and is signed by a CMP and a registered nurse practitioner or a physician assistant.

R9-24-302. CMP Functions

A. A CMP shall:

- 1. Be involved Participate in planning for the delivery of medical services and support services within the Arizona medically underserved area that includes ways to increase access to medical services and support services for the Arizona medically underserved area's residents;
- 2. Ensure access to medical and support services, either directly or by referral, for the residents of the Arizona medically underserved area;
- 3-2. Develop written protocols that:
 - a. identify areas in which Describe the manner and frequency that a registered nurse practitioners and practitioner or a physician assistants under the CMP's supervision may use independent judgment assistant at a medical clinic will communicate with the CMP, in addition to the face-to-face meeting required in subsection (A)(5);
 - b. Specify the criteria used by a registered nurse practitioner at the medical clinic in making an independent decision to refer an individual to a physician; and
 - c. Specify procedures to be followed by a physician assistant at the medical clinic when the CMP's supervision of the physician assistant is by a means other than physical presence;
- 4-3. Have final approval in Approve or disapprove the selection of registered nurse practitioners and physician assistants working under the CMP's supervision who will work at the medical clinic;
- 5-4. Have authority over and responsibility for the Provide:
 - a. medical Medical direction of all to the registered nurse practitioners and physician assistants under the CMP's supervision; at the medical clinic, and
 - b. Supervision to the physician assistants at the medical clinic;
- 6-5. Evaluate At least weekly, conduct a face-to face meeting with each registered nurse practitioner and each physician assistant at the medical clinic to evaluate the medical care services provided by the registered nurse practitioners and practitioner or physician assistants assistant under the CMP's supervision through face to face contact at least once per week;
- 7-6. For continuing medical education or continuing nursing education of a medical clinic's medical personnel:
 - a. Recommend specific areas of medical education instruction, including instruction in referral sources; and
 - b. Develop a written plan for work schedule coverage to allow for the accommodate continuing medical education

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of medical personnel at the medical clinic or continuing nursing education; and
8. ~~7.~~ Meet at ~~At~~ least annually, ~~meet~~ with the ~~organization that owns and operates the medical clinic~~ clinic's governing authority to evaluate the ~~medical clinic's~~ program and the medical care provided by the ~~medical clinic's~~ medical personnel of the medical clinic.

B. ~~These~~ The requirements in subsection (A) do not replace other requirements of practice the practice requirements applicable to a CMP.