

# NOTICES OF FINAL RULEMAKING

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

## NOTICE OF FINAL RULEMAKING

### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

[R07-85]

#### PREAMBLE

- 1. Sections Affected**  
R4-30-304
- Rulemaking Action**  
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statutes (general) and the implementing statutes (specific):**  
Authorizing statutes: A.R.S. § 32-106 (A)(1)  
Implementing statutes: A.R.S. § 32-125
- 3. The effective date of the rule:**  
May 5, 2007
- 4. A list of all previous notices appearing in the Register addressing the final rule:**  
Notice of Rulemaking Docket Opening: 12 A.A.R. 3904, October 20, 2006  
Notice of Proposed Rulemaking: 12 A.A.R. 3870, October 20, 2006
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Julie Ruff  
Address: Arizona State Board of Technical Registration  
1110 W. Washington St., Ste. 240  
Phoenix, AZ 85007  
Telephone: (602) 364-4940  
Fax: (602) 364-4931  
E-mail: julie.ruff@azbtr.gov
- 6. An explanation of the rule, including the agency's reasons for initiating the rulemaking:**  
The Board has determined that clarification of this rule is necessary to assist registrants with determining what is or is not a professional document, recognizing where, when, and how professional documents must be sealed, and the requirements for sealing electronically stored professional documents.
- 7. A reference to any study relevant to the rule that the agency reviewed and relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
None
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable
- 9. A summary of the economic, small business, and consumer impact:**

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The Board has determined that clarification of this rule is necessary to assist registrants with determining what is or is not a professional document, recognizing where, when, and how copies of professional documents must be sealed, and the requirements for sealing electronically stored professional documents.

The addition of the term “design team,” included in the definitions of A.A.C. R4-30-101, may have a negative impact with regards to documents that may be submitted to a regulatory or licensing agency while in the design phase.

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

The Board made minor clarifications throughout the rules for consistency. Minor format and grammatical changes were also made at the request of the Governor’s Regulatory Review Council staff.

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

There was one response to the rule asking for clarification of whether subsection (C) referred to original professional documents, or copies of professional documents. For consistency, the word “copy” was added in two places in subsection (C) to match later use in the same subsection.

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

None

**13. Any material incorporated by reference and its location in the text:**

None

**14. Was the rule previously made as an emergency rule?**

No

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 30. BOARD OF TECHNICAL REGISTRATION**

**ARTICLE 3. REGULATORY PROVISIONS**

Section

R4-30-304. Use of Seals

**ARTICLE 3. REGULATORY PROVISIONS**

**R4-30-304. Use of Seals**

- A.** A registrant shall place a permanently legible imprint of the registrant’s seal and signature ~~shall appear~~ on the following:
1. Each sheet of drawings or maps;
  2. Each of the master sheets when reproduced into a single set of finished drawings or maps;
  3. Either the cover, title, index page, or table of contents page, or first sheet of each set of project specifications;
  4. ~~The~~ Either the cover, index page, or first sheet of each addenda or change orders order to specifications;
  5. ~~The~~ Either the cover, index page, or first sheet of bound details when prepared to supplement project drawings or maps;
  6. ~~The~~ Either the cover, title, index, or table of contents page, or first sheet of reports, specifications, and any report, specification, or other professional documents document prepared by a registrant or the registrant’s bona fide employee; ~~and~~
  7. ~~The~~ signature line of any letter or other professional document prepared by a registrant, or the registrant’s bona fide employee; ~~and~~
  - 7-8. Shop drawings requiring that require professional services or work as described in the Act. Examples of shop drawings not requiring seals are those showing only: that do not require a seal include drawings that show only:
    - a. Sizing and dimensioning information for fabrication purposes;
    - b. Construction techniques or sequences;
    - c. Components with previous approvals or designed by the registrant of record; or
    - d. Modifications to existing installations not affecting that do not affect the original design parameters and which do not require additional computations.
- B.** A registrant shall apply a label describing that describes the name of the project and an original imprint of the registrant’s seal and signature shall be applied to on all video cassettes containing that contain copies of professional documents.
- C.** If a professional document is stored, filed, or provided to a client, regulatory body or any other person for any reason by computer disk, tape, cd, or any other electronic form, the registrant shall mark each professional document “electronic copy of final document, original sealed document with” and identify the registrant’s name and registration number.
- C.** In the event that a copy of a professional document is provided to a client, regulatory body, or any other person for any

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reason by computer disk, tape, CD, or any other electronic form, and the document does not meet the requirements of subsection (D), the registrant shall mark the copy of the professional document: "Electronic copy of final document; sealed original document is with (identify the registrant's name and registration number)."

- D. A registrant shall sign, date, and seal a professional document:
1. Before the document is submitted to a client, contractor, any regulatory or review body, or any other person, unless the document is marked "preliminary," "draft," or "not for construction" except when the document is work product intended for use by other members of a design team; and;
2. In all cases, if the document is prepared for the purpose of dispute resolution, litigation, arbitration, or mediation.
E. For purposes of subsection (A), all original documents shall include:
1. An original seal imprint or a computer-generated seal that matches the seal on file at the Board's office;
2. An original signature that does not obscure either the registrant's printed name or registration number; and
3. The date the document was sealed.
F. Methods of transferring a seal other than an original seal imprint or a computer-generated seal are not acceptable.
G. An electronic signature, as an option to a permanently legible signature, in accordance with A.R.S. Title 41 and Title 44, is acceptable for all professional documents. The registrant shall provide adequate security regarding the use of the seal and signature.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 5. DEPARTMENT OF HEALTH SERVICES
CHILD CARE FACILITITES

[R07-84]

PREAMBLE

- 1. Sections Affected: R9-5-404, R9-5-517; Rulemaking Action: Amend, 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. §§ 36-104(3) and 36-136(F); Implementing statutes: A.R.S. § 36-883
3. The effective date of the rules: May 5, 2007
4. A list of all previous notices appearing in the Register addressing the final rules: Notice of Rulemaking Docket Opening: 12 A.A.R. 2574, July 21, 2006; Notice of Proposed Rulemaking: 12 A.A.R. 4052, November 3, 2006
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking: Name: Lourdes B. Ochoa, State Licensing Manager; Address: Arizona Department of Health Services, Division of Licensing Services, Office of Child Care Licensing, 150 N. 18th Ave., Ste. 400, Phoenix, AZ 85007; Telephone: (602) 364-2539; Fax: (602) 364-4768; E-mail: ochoal@azdhs.gov; or Name: Kathleen Phillips, Rules Administrator

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Address: Arizona Department of Health Services  
Office of Administrative Rules  
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**6. An explanation of the rules, including the agency's reasons for initiating the rules:**

The Arizona Department of Health Services (Department) is amending the child care licensing rules for the transportation of children in R9-5-517. The rule revision will allow a staff member who is not a teacher-caregiver to transport a child in a motor vehicle. The Department is also reorganizing the subsections by moving some provisions from R9-5-404 to R9-5-517. The revised rules are consistent with current statutes and conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

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

The Department did not review or rely on any study related to this rulemaking.

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

Not applicable

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

The rules for Child Care Facilities apply to the approximately 2,192 child care facilities currently licensed by the Department.

In this summary, "minimal" means less than \$1,000; "moderate" means \$1,000 to \$10,000; "substantial" means greater than \$10,000; and "significant" means meaningful or important, but not readily subject to quantification.

**Cost Bearers**

- The Department will incur a minimal cost from the rulemaking process and a minimal-to-moderate cost in notifying licensees of the changes to the rules.

**Beneficiaries**

- A licensee that uses a staff member, who is not teacher-caregiver qualified, to transport a child, will receive a significant benefit from having the rule become consistent with the licensee's current practice.

The Department does not believe that any other persons will be impacted by the changes in this rulemaking.

The Department has determined that the benefits outweigh the costs associated with this rulemaking.

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

The Department has not made any changes to the rules since the Notice of Proposed Rulemaking.

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

Although the Department held two Oral Proceedings, the Department did not receive any oral or written comments on the proposed rules.

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

Not applicable

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

Not applicable

**14. Were these rules previously made as emergency rules?**

No

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

**TITLE 9. HEALTH SERVICES**

**CHAPTER 5. DEPARTMENT OF HEALTH SERVICES  
CHILD CARE FACILITIES**

ARTICLE 4. FACILITY STAFF

Section

R9-5-404. Staff-to-children ~~Children~~ Ratios

ARTICLE 5. FACILITY PROGRAM AND EQUIPMENT

Section

R9-5-517. Transportation

ARTICLE 4. FACILITY STAFF

R9-5-404. Staff-to-Children Ratios

A. A licensee shall ensure that at least the following staff-to-children ratios are maintained at all times when providing child care services to enrolled children:

<i>Age Group</i>	<i>Staff: Children</i>
Infants	1:5 or 2:11
1-year-old children	1:6 or 2:13
2-year-old children	1:8
3-year-old children	1:13
4-year-old children	1:15
5-year-old children not school-age	1:20
School-age children	1:20

B. A licensee shall ensure that child care personnel:

1. ~~Place~~ Ensure that an enrolled children child is placed in an age-appropriate or developmentally appropriate groups group;
2. Determine and maintain the required staff-to-children ratio for a each group of enrolled children based on the age of the youngest child in the group;
3. Allow a volunteer to be counted as staff in staff-to-children ratios; and
4. Not allow a student-aide to be counted as staff in staff-to-children ratios; and
5. ~~When six or more children are present in a facility, not place an infant for supervision with children who are not infants.~~

C. A licensee shall ensure that:

1. ~~At~~ at least two staff members are on facility premises when six or more children of any age group are present in a facility;
2. ~~At least one staff member shall be a~~ who meets the qualifications of a teacher-caregiver is present when an enrolled child is in a facility;
3. ~~When five or fewer enrolled children are present in a facility, one teacher caregiver shall be on facility premises and another and one staff member is present in a facility, an additional staff member shall be~~ is available by telephone or other equally expeditious means and able to reach the facility within 15 minutes of after notification; and
4. ~~When six or more enrolled children are present in a facility, an infant is not placed for supervision with children who are not infants.~~

D. A licensee may allow a staff member to perform duties other than child care if the duties are not undertaken simultaneously with the supervision of children in the staff member's charge.

E. In addition to maintaining the required staff-to-children ratios, a licensee shall ensure that staff members are present on facility premises to perform facility administration, food preparation, food service, and maintenance responsibilities. Facility maintenance shall not be dependent on the work of enrolled children.

F. When six or more enrolled children are participating in a field trip, a licensee shall ensure that a teacher-caregiver and at least one additional staff member are present on the field trip.

~~G. When transporting enrolled children who are not school age in a motor vehicle, a licensee shall maintain the staff to children ratios required by subsection (A) in addition to the motor vehicle driver unless four or fewer children are being transported.~~

~~H. When transporting children of school age in a motor vehicle, a licensee shall maintain the staff to children ratio required by subsection (A). A licensee may include the motor vehicle driver as staff in the staff to children ratio.~~

~~I.G. If a licensee conducts swimming activities at a swimming pool that has a lifeguard on the premises who has current life-saving certification from the American Red Cross, a the licensee shall maintain staff-to-children ratios required by subsection~~

tion (A).

~~J.H.~~ If a licensee conducts swimming activities at a swimming pool that does not have a lifeguard on the premises who has current lifesaving certification from the American Red Cross, the licensee shall maintain staff-to-children ratios stated in subsection (A) and have at least one additional staff member present who:

1. Has a current lifesaving ~~certificate~~ certification from the American Red Cross; and
2. Is ~~present~~ in the pool or observing pool side while enrolled children are at the pool.

#### ARTICLE 5. FACILITY PROGRAM AND EQUIPMENT

##### R9-5-517. Transportation

A. A licensee who transports an ~~providing transportation to~~ enrolled child ~~children~~ in a motor vehicle that the licensee owns, or acquires for use by contract, shall:

1. Ensure that the motor vehicle is registered by the Arizona Department of Transportation as required by A.R.S. § 28-2051 et seq.;
  2. Ensure that the ~~facility possesses current insurance coverage for the~~ motor vehicle has current insurance coverage, as required by A.R.S. § 28-4131 et seq. ~~The licensee shall~~ and maintain documentation proof of the current motor vehicle insurance coverage on the facility premises and inside the ~~each~~ motor vehicle ~~used for transporting enrolled children;~~
  3. ~~Contact~~ Notify the Department by telephone or other equally expeditious means within no later than 24 hours after ~~of~~ a motor vehicle accident that occurs while transporting ~~children~~ an enrolled child;
  4. Submit a written report to the Department within seven days ~~of~~ after a motor vehicle accident that occurs while transporting ~~children~~ an enrolled child;
  5. Not permit an enrolled child to be transported in a truck bed, camper, or trailer attached to a motor vehicle;
  6. ~~When transporting enrolled children use~~ Use a child passenger restraint system, as required by A.R.S. § 28-907, for each child who is 4 years of age or younger, or who weighs 40 pounds or less younger than 5 years old;
  7. ~~When transporting enrolled children, use~~ Use an adjustable lap belt or an integrated lap and shoulder belt for each child who is over 4 years of age or who weighs over 40 pounds 5 years old or older. ~~A public or private school transporting an enrolled child in a commercial motor vehicle, defined in A.R.S. § 28-1301(1), is exempt from this provision;~~
  8. ~~Ensure that~~ Equip a motor vehicle has used to transport enrolled children with:
    - a. A working mechanical heating system capable of maintaining a temperature throughout the motor vehicle of at least 60° F when outside air temperatures are below 60° F;
    - b. A working air-conditioning system capable of maintaining a temperature throughout the motor vehicle at or below 86° F when outside air temperatures are above 86° F. ~~A public or private school transporting an enrolled child in a commercial motor vehicle, as defined in A.R.S. § 28-1301(1), is exempt from this provision;~~
    - c. A first aid kit that meets the requirements of R9-5-514(A), and two towels or blankets;
    - ~~d. Two towels or blankets, and~~
    - ~~d.e. Water sufficient for the needs of each enrolled child in the motor vehicle~~ Sufficient drinking water to meet the needs of each enrolled child in the motor vehicle and sufficient cups or other drinking receptacles so that each individual in the motor vehicle can drink from a different cup or receptacle;
  9. ~~Ensure that the~~ Maintain a motor vehicle being used to transport enrolled children is maintained in a clean condition;
  10. ~~Ensure that the~~ Maintain a motor vehicle being used to transport enrolled children is maintained in a mechanically safe condition; and
  11. Maintain the service and repair records of the motor vehicle ~~all motor vehicles that are owned or leased by a licensee for the transportation of enrolled children~~ as follows:
    - a. A person operating a single child care facility shall maintain the service and repair records for at least 12 months ~~from~~ after the date of an inspection or repair in a single location on facility premises;
    - b. A public or private school that uses a school bus, as defined in A.R.S. § 28-101(41), shall maintain the service and repair records for the school bus as provided in A.A.C. R17-9-108(F); and
    - c. A school governing board, a charter school, or a person operating multiple child care facilities shall maintain the service and repair records for any motor vehicle other than a school bus for at least 12 months ~~from~~ after the date of an inspection or repair in a single administrative office located in the same city, town, or school attendance area as the facility.
- B. A licensee shall ensure that an individual who drives a motor vehicle used to transport an enrolled children child:
1. Is 18 years of age or older. ~~If the motor vehicle driver is a staff member, the staff member shall be a teacher-caregiver;~~
  2. Holds a valid driver's license issued by the Arizona Department of Motor Vehicles as prescribed by A.R.S. § 28-3151 et seq.;
  3. Carries in the motor vehicle a list stating the name of each enrolled child being transported and a copy of each child's Emergency, Information, and Immunization Record card;
  4. Requires that each door be locked before the ~~a~~ motor vehicle is set in motion and keeps the doors remain locked while

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the motor vehicle is in motion;

- 5. Requires that each enrolled child ~~remains~~ remain seated and entirely inside ~~the~~ a motor vehicle while the motor vehicle is in motion;
- 6. Requires that each enrolled child ~~is~~ be secured in a seat belt before ~~the motor vehicle is set in motion~~ and while ~~the~~ a motor vehicle is in motion. ~~A public or private school transporting an enrolled child in a commercial motor vehicle, defined in A.R.S. § 28-1301(1), is exempt from this provision;~~
- 7. Does not permit an enrolled child in ~~the~~ a motor vehicle to open or close a ~~motor vehicle~~ door or window;
- 8. Sets the emergency parking brake and removes the ignition keys from the motor vehicle before exiting the motor vehicle;
- 9. Ensures that ~~each~~ enrolled ~~children are~~ child is loaded ~~into~~ on to or unloaded from ~~the~~ a motor vehicle away from moving traffic at curbside; or in a driveway, parking lot, or other location designated for this purpose; and
- 10. Does not use audio headphones or a ~~ear~~ telephone while ~~the~~ a motor vehicle is in motion.

- C.** When transporting an enrolled school-age child in a motor vehicle, a licensee shall ensure that the staff-to-children ratios required in R9-5-404(A) are met. A motor vehicle driver may be counted in the staff-to-children ratio, when transporting an enrolled school-age child in a motor vehicle, if the motor vehicle driver meets the qualifications of a teacher-caregiver.
- D.** When transporting an enrolled child who is not school-age in a motor vehicle, a licensee shall ensure that the staff-to-children ratios required in R9-5-404(A) are met. A motor vehicle driver may be counted in the staff-to-children ratio, when transporting an enrolled child who is not school-age in a motor vehicle, only if four or fewer children are being transported and the motor vehicle driver meets the qualifications of a teacher-caregiver.
- E.** A licensee who is transporting an enrolled child in a commercial vehicle, as defined in A.R.S. § 28-1301, is exempt from the provisions in subsections (A)(7), (A)(8)(b), and (B)(6).
- F.** A licensee who is transporting an enrolled child in a school bus, as defined in A.R.S. § 28-101, is exempt from the provision in subsection (A)(8)(c) and shall comply with A.A.C. R17-9-110.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

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

[R07-80]

PREAMBLE

**1. Sections Affected**

R9-28-101  
 R9-28-1101  
 R9-28-1102  
 R9-28-1103  
 R9-28-1104  
 R9-28-1105  
 R9-28-1106  
 R9-28-1107  
 R9-28-1108

**Rulemaking Action**

Amend  
 Amend  
 Amend  
 Amend  
 Amend  
 Amend  
 Amend  
 Amend  
 Repeal

**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. § 36-2932(M)  
 Implementing statute: A.R.S. § 36-2939(A)(2)

**3. The effective date of the rules:**

May 5, 2007

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

Notice of Rulemaking Docket Opening: 11 A.A.R. 5546, December 30, 2005  
 Notice of Proposed Rulemaking: 12 A.A.R. 3949, October 27, 2006

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

Name: Jane McVay

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Address: AHCCCS  
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Telephone: (602) 417-4135

Fax: (602) 253-9115

E-mail: Jane.McVay@azahcccs.gov

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

The primary reason for initiating these rules is to revise the behavioral health rules because of the Five-Year Review Report for Title 9, Chapter 28, Article 11. This rulemaking revises the behavioral health rules in the Arizona Long-term Care System (ALTCS) to make them clear, concise, and understandable. The rule changes conform the rules to the current program operation and existing contract provisions.

Native Americans who are living on a reservation or who are living on the reservation prior to placement in either a nursing facility or an alternative HCBS (Home and community based services) setting are enrolled with a tribal contractor. Tribal contractors are responsible for providing case management services specified in the intergovernmental agreement. Case management services include an assessment of the Native American member to determine the medical necessity for services and, if appropriate, authorization of specific ALTCS services in the intergovernmental agreement. For Fee-For-Service (FFS) Native Americans, the AHCCCS Administration is responsible for reimbursement for behavioral health services authorized by a tribal contractor or the Administration under an intergovernmental agreement.

With regard to FFS Native Americans, the AHCCCS Administration has exclusive authority to provide authorization for certain ALTCS services, such as incontinence supplies, home modifications, and durable medical equipment that costs more than \$500. The remaining ALTCS services are authorized by tribal contractors. If a service is determined to be medically necessary, a tribal contractor or alternatively, the AHCCCS Administration issues prior authorization for those services it evaluates. Once services are authorized, ALTCS services, including behavioral health services, may be provided by any AHCCCS FFS registered provider. In addition, Native Americans may obtain acute behavioral health services at any Indian Health Service (IHS) facility.

A Native American who is developmentally disabled is enrolled with the Department of Economic Security's Division of Developmental Disabilities (DES/DDD) irrespective of whether the Native American is residing on or off reservation. DES/DDD subcontracts with ADHS for the provision of behavioral health services.

Native Americans who are living off reservation are enrolled with a program contractor for the provision of all ALTCS services, including all covered behavioral health services. If there is more than one program contractor available in the Geographical Service Area (GSA), a Native American may choose the program contractor. Irrespective of enrollment with a program contractor, Native Americans may always receive services at an IHS facility notwithstanding capitation payments to the program contractor. Program contractors provide behavioral health services to ALTCS members who are not Native Americans. Native Americans who are developmentally disabled and living off reservation are enrolled with DES/DDD for the provision of all ALTCS services, including behavioral health services. DES/DDD, through an intergovernmental agreement with ADHS, is responsible for the provision of behavioral health services to this population. Irrespective of enrollment with DES/DDD, Native Americans may receive services at IHS, notwithstanding capitation payments to DES/DDD for services which may be provided by IHS.

The rules:

1. Provide that the Administration shall enroll an elderly and physically disabled (EPD) Native American who lives on-reservation with an ALTCS tribal contractor on a Fee-For-Service basis.
2. Provide that an EPD Native American who lives off-reservation shall be enrolled with an ALTCS program contractor, except if the member lived on-reservation immediately before placement in an off-reservation Nursing Facility or an alternative HCBS setting.
3. Provide that a developmentally disabled Native American who lives on or off-reservation shall be enrolled with DES/DDD and receive behavioral health services from a program contractor.
4. Provide that the Administration is responsible for reimbursement for behavioral health services authorized by a tribal contractor or the Administration for Fee-For-Service Native Americans.
5. Establish provider prior authorization requirements for emergency behavioral health services.
6. Clarify notification, payment provisions, and post-stabilization requirements from the Balanced Budget Act of 1997 for ALTCS members receiving emergency behavioral health services.
7. Require the Administration or a program contractor responsible for covering behavioral health services to cost avoid any behavioral health service claim if it establishes the probable existence of first-party liability or third-party liability.

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

The agency did not review any study related to the rulemaking.

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

Not applicable

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

AHCCCS anticipates that the economic impact of the rules on members receiving behavioral health services and small businesses will be minimal. The rules are consistent with the current contracts for behavioral health services in the ALTCS program, which have been in effect for the past two years. The rule changes reflect the current program operation, so only minimal cost impacts, if any, are anticipated.

These rules make the behavioral health service provisions clear, concise, and understandable for members. The Administration provides payment for emergency behavioral health services provided to Native American members enrolled with a tribal contractor. The rules are expected to have a minimal fiscal impact on the Administration, program, and tribal contractors and members. The Administration has incurred minimal costs to prepare this rulemaking. Although the economic impact on members is expected to be minimal, the availability of behavioral health services is important to members. In October 2006, the approximate total enrollment of children and adults in behavioral health services funded through Title XIX and Title XXI was 97,000.

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

Grammatical and other changes were made to the rules as requested by the Governor's Regulatory Review Council staff. Other changes were made to make the rules clear, concise, and understandable and to conform to the *Arizona Administrative Code*. Rule provisions that are duplicated in other portions of the agency's rules were deleted. Rule changes were also made regarding the terminology used for behavioral health adult therapeutic homes and behavioral health therapeutic home care services to comply with the requirements of the Centers for Medicaid and Medicare Services. Provisions in R9-22-1101 and R9-22-1102 were modified to clarify language regarding delivery of behavioral health services provided to Native American members from a tribal contractor or program contractor. Definitions for intergovernmental agreement and TRBHA were also added to the rules.

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

The agency did not receive any comments on the rules.

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

Not applicable

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

None

14. **Were these rules previously made as emergency rules?**

No

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

TITLE 9. HEALTH SERVICES

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

ARTICLE 1. DEFINITIONS

Section  
R9-28-101. General Definitions

ARTICLE 11. BEHAVIORAL HEALTH SERVICES

Section  
R9-28-1101. General Requirements  
R9-28-1102. ~~Contractor Responsibilities~~ Program or Tribal Contractor Responsibilities  
R9-28-1103. Eligibility for Covered Services  
R9-28-1104. General Service Requirements  
R9-28-1105. Scope of Behavioral Health Services

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- R9-28-1106. General Provisions and Standards for Service Providers
- R9-28-1107. ~~Standards for Payments~~ General Provisions for Payment
- R9-28-1108. ~~Grievance and Request for Hearing Process~~ Repealed

ARTICLE 1. DEFINITIONS

**R9-28-101. General Definitions**

A. Location of definitions. Definitions applicable to Chapter 28 are found in the following:

Definition	Section or Citation
<u>“Acute”</u>	<u>R9-28-301</u>
<u>“ADHS”</u>	<del>R9-22-112</del> <u>R9-22-102</u>
“Administration”	A.R.S. § 36-2931
<del>“ADHS”</del>	<del>R9-22-112</del>
“Aggregate”	R9-22-701
“AHCCCS”	R9-22-101
“AHCCCS registered provider”	R9-22-101
“Algorithm”	R9-28-104
“ALTCS”	R9-28-101
“ALTCS acute care services”	R9-28-104
“Alternative HCBS setting”	R9-28-101
“Ambulance”	A.R.S. § 36-2201
“Applicant”	R9-22-101
“Bed hold”	R9-28-102
“Behavior intervention”	R9-28-102
“Behavior management services”	<del>R9-22-112</del> <u>R9-22-1201</u>
“Behavioral health evaluation”	<del>R9-22-112</del> <u>R9-22-1201</u>
“Behavioral health medical practitioner”	<del>R9-22-112</del> <u>R9-22-1201</u>
“Behavioral health professional”	<del>R9-20-101</del> <u>R9-22-1201</u>
“Behavioral health service”	<del>R9-20-101</del> <u>R9-22-1201</u>
“Behavioral health technician”	<del>R9-20-101</del> <u>R9-22-1201</u>
“Billed charges”	R9-22-701
<del>“Board eligible for psychiatry”</del>	<del>R9-22-112</del>
“Capped fee-for-service”	R9-22-101
“Case management plan”	R9-28-101
<u>“Case management”</u>	<u>R9-28-1101</u>
“Case manager”	R9-28-101
“Case record”	R9-22-101
“Categorically-eligible”	R9-22-101
“Certification”	R9-28-501
“Certified psychiatric nurse practitioner”	<del>R9-22-112</del> <u>R9-22-1201</u>
“CFR”	R9-28-101
“Clean claim”	A.R.S. § 36-2904
“Clinical supervision”	<del>R9-22-112</del> <u>R9-22-102</u>
“CMS”	R9-22-101
“Community Spouse”	R9-28-104
“Contract”	R9-22-101
“Contract year”	R9-28-101
“Contractor”	A.R.S. § 36-2901
“County of fiscal responsibility”	R9-28-701

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“Covered services”	R9-28-101
“CPT”	R9-22-701
“CSRD”	R9-28-104
“Day”	R9-22-101
<u>“De novo hearing”</u>	<u>42 CFR 431.201</u>
“Department”	A.R.S. § 36-2901
<del>“De novo hearing”</del>	<del>42 CFR 431.201</del>
“Developmental disability”	A.R.S. § 36-551
“Diagnostic services”	R9-22-102
“Director”	R9-22-101
“Disenrollment”	R9-22-117
“DME”	R9-22-102
<del>“EPD”</del>	<del>R9-28-301</del>
“Emergency medical services” <u>for the non-FES member</u>	R9-22-102
“Encounter”	R9-22-701
“Enrollment”	R9-22-117
<u>“EPD”</u>	<u>R9-28-301</u>
<u>“E.P.S.D.T. services”</u>	<u>R9-22-101</u>
“Estate”	A.R.S. § 14-1201
<u>“Experimental services”</u>	<u>R9-22-101</u>
“Facility”	R9-22-101
“Factor”	42 CFR 447.10
“Fair consideration”	R9-28-104
“FBR”	R9-22-101
<u>“Federal financial participation” or “FFP”</u>	<u>42 CFR 400.203</u>
“Fee-For-Service” or “FFS”	<del>R9-28-101</del> <u>R9-22-102</u>
<u>“Frequency”</u>	<u>R9-28-301</u>
“Grievance”	R9-34-202
“GSA”	R9-22-101
“Guardian”	A.R.S. § 14-5311
“HCBS” or “Home and community based services”	A.R.S. §§ 36-2931 and 36-2939
“Health care practitioner”	<del>R9-22-112</del> <u>R9-22-1201</u>
“Home”	R9-28-101
“Home health services”	R9-22-102
“Hospital”	R9-22-101
“ICF-MR” or “Intermediate care facility for the mentally retarded”	<del>42 CFR 483-Subpart I</del> <u>42 U.S.C. 1396d(d)</u>
<u>“Intergovernmental agreement”</u>	<u>R9-28-1101</u>
“IHS”	R9-28-101
“IMD” or “Institution for mental diseases”	<del>42 CFR 435.1009</del> <u>42 CFR 435.1010</u>
“Institutionalized”	R9-28-104
“Interested Party”	R9-28-106
“JCAHO”	R9-28-101
“License” or “licensure”	R9-22-101
<u>“Limited or occasional”</u>	<u>R9-28-301</u>

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“Medical record”	R9-22-101
“Medical services”	A.R.S. § 36-401
“Medical supplies”	R9-22-102
“Medically eligible”	R9-28-104
“Medically necessary”	R9-22-101
“Member”	A.R.S. § 36-2931
“Mental disorder”	A.R.S. § 36-501
“MMMNA”	R9-28-104
<u>“Noncontracting provider”</u>	<u>A.R.S. § 36-2931</u>
“Nursing facility” or “NF”	42 U.S.C. 1396r(a)
<del>“Noncontracting provider”</del>	<del>A.R.S. § 36-2931</del>
“Occupational therapy”	R9-22-102
“Partial care”	<del>R9-22-112</del> <u>R9-22-1201</u>
“PAS”	R9-28-103
“Pharmaceutical service”	R9-22-102
“Physical therapy”	R9-22-102
“Physician”	R9-22-102
“Post-stabilization services”	42 CFR 438.114
“Practitioner”	R9-22-102
“Primary care provider (PCP)”	R9-22-102
“Primary care provider services”	R9-22-102
“Prior authorization”	R9-22-102
“Prior period coverage” or “PPC”	<del>R9-22-701</del> <u>R9-22-101</u>
<del>“Private duty nursing services”</del>	<del>R9-22-102</del>
“Program contractor”	A.R.S. § 36-2931
“Provider”	A.R.S. § 36-2931
“Psychiatrist”	<del>R9-22-112</del> <u>R9-22-1201</u>
“Psychologist”	<del>R9-22-112</del> <u>R9-22-1201</u>
“Psychosocial rehabilitation services”	<del>R9-22-112</del> <u>R9-22-102</u>
“Quality management”	R9-22-501
<del>“Regional behavioral health authority”</del> <del>or “RBHA”</del>	<del>A.R.S. § 36-3401</del>
“Radiology”	R9-22-102
“Reassessment”	R9-28-103
“Redetermination”	R9-28-104
“Referral”	R9-22-101
<u>“Regional behavioral health authority” or</u> <u>“RBHA”</u>	<u>A.R.S. § 36-3401</u>
“Reinsurance	R9-22-701
“Representative”	R9-28-104
“Respiratory therapy”	R9-22-102
“Respite care”	R9-28-102
“RFP”	<del>R9-22-106</del> <u>R9-22-101</u>
“Room and board”	R9-28-102
“Scope of services”	R9-28-102
“Section 1115 Waiver”	A.R.S. § 36-2901
“Speech therapy”	R9-22-102

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“Spouse”	R9-28-104
“SSA”	42 CFR 1000.10
“SSI”	42 CFR 435.4
“Subcontract”	R9-22-101
“Therapeutic <del>Leave</del> <u>leave</u> ”	R9-28-501
“ <u>TRBHA</u> ”	<u>R9-28-101</u>
“ <u>Tribal contractor</u> ”	<u>R9-28-1101</u>
“ <u>Tribal facility</u> ”	<u>A.R.S. § 36-2981</u>
“Utilization management”	R9-22-501
“Ventilator dependent”	R9-28-102

**B. General definitions.** In addition to definitions contained in A.R.S. §§ 36-551, 36-2901, 36-2931, and 9 A.A.C. 22, Article 1, the following words and phrases have the following meanings unless the context of the Chapter explicitly requires another meaning:

“ALTCs” means the Arizona Long-term Care System as authorized by A.R.S. § 36-2932.

“Alternative HCBS setting” means a living arrangement approved by the Director and licensed or certified by a regulatory agency of the state, where a member may reside and receive HCBS including:

For a person with a developmental disability specified in A.R.S. § 36-551:

- Community residential setting defined in A.R.S. § 36-551;
- Group home defined in A.R.S. § 36-551;
- State-operated group home under A.R.S. § 36-591;
- Group foster home under R6-5-5903;
- Licensed residential facility for a person with traumatic brain injury under A.R.S. § 36-2939;
- ~~Adult therapeutic foster home~~ Behavioral health adult therapeutic home under 9 A.A.C 20, Articles 1 and 15;
- Level 2 and Level 3 behavioral health residential agencies under 9 A.A.C. 20, Articles 1, 4, 5, and 6; and
- ~~Rural substance abuse transitional center~~ Rural substance abuse transitional centers under 9 A.A.C. 20, Articles 1 and 14; and

For a person who is ~~elderly or physically disabled~~ EPD under R9-28-301, and the facility, setting, or institution is registered with AHCCCS:

- Adult foster care homes defined in A.R.S. § 36-401 and as authorized in A.R.S. § 36-2939;
- Assisted living home or assisted living center, units only, under A.R.S. § 36-401, and as authorized in A.R.S. § 36-2939;
- Licensed residential facility for a person with a traumatic brain injury specified in A.R.S. § 36-2939;
- ~~Adult therapeutic foster home~~ Behavioral health adult therapeutic home under 9 A.A.C. 20, Articles 1 and 15;
- Level 2 and Level 3 behavioral health residential agencies under 9 A.A.C. 20, Articles 1, 4, 5, and 6;
- ~~Rural Substance Abuse Transitional Agencies~~ Rural substance abuse transitional centers under 9 A.A.C. 20, Articles 1 and 14; and
- Alzheimer’s treatment assistive living facility as specified in Laws 1999, Ch. 313, § 35 as amended by Laws 2001, Ch. 140, § 1 and Laws 2003, Ch. 76, § 1, ~~and Laws 1999, Chapter 313, § 41, as amended by Laws 2001, Chapter 140, § 2.~~

“Case management plan” means a service plan developed by a case manager that involves the overall management of a member’s care, and the continued monitoring and reassessment of the member’s need for services.

“Case manager” means a person who is either a degreed social worker, a licensed registered nurse, or a person with a minimum of two years of experience in providing case management services to a person who is ~~elderly and physically disabled or has developmental disabilities.~~ EPD.

~~“Contract year” means the period beginning on October 1 and continuing until September 30 of the following year.~~

“CFR” means Code of Federal Regulations, unless otherwise specified in this Chapter.

“Contract year” means the period beginning on October 1 and continuing until September 30 of the following year.

“Covered Services” means the health and medical services described in Articles 2 and 11 of this Chapter as being eli-

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gible for reimbursement by AHCCCS.

~~“Fee For Service” or “FFS” means a method of payment to an AHCCCS registered provider on an amount per service basis.~~

“Home” means a residential dwelling that is owned, rented, leased, or occupied by a member, at no cost to the member, including a house, a mobile home, an apartment, or other similar shelter. A home is not a facility, a setting, or an institution, or a portion of any of these that is licensed or certified by a regulatory agency of the state as a:

Health care institution under A.R.S. § 36-401;

Residential care institution under A.R.S. § 36-401;

Community residential setting under A.R.S. § 36-551; or

Behavioral health ~~service~~ facility under 9 A.A.C. 20, Articles 1, 4, 5, and 6.

“IHS” means the Indian Health Service.

“JCAHO” means the Joint Commission on Accreditation of Healthcare Organizations.

“TRBHA” means the same as in A.A.C. R9-22-1201.

**ARTICLE 11. BEHAVIORAL HEALTH SERVICES**

**R9-28-1101. General Requirements**

General requirements. The following general requirements apply to behavioral health services provided under this Article, subject to all exclusions and limitations.

1. Administration. The program shall be administered under A.R.S. § 36-2932.
2. Provision of services. Behavioral health services shall be provided under A.R.S. § 36-2939, ~~and this Chapter; and 9~~ A.A.C. 22, Article 12, as applicable.
3. Definitions. ~~The following definitions apply to this Article: The definitions in A.A.C. R9-22-1201 and R9-22-102 apply to this Article, in addition to the following definitions:~~
  - a. ~~“Physician assistant” under A.R.S. § 32-2501. In addition, a physician assistant providing a behavioral health service shall be supervised by an AHCCCS registered psychiatrist.~~
  - b. ~~“Respite” as defined under A.A.C. R9-22-1201.~~
  - e. ~~“Substance abuse” as defined under A.A.C. R9-22-1201.~~
  - d. ~~“Therapeutic foster care services” as defined under A.A.C. R9-22-1201.~~

“Case management” means the activities described in R9-28-510.

“Cost avoid” means the same as in A.A.C. R9-22-1201.

“Intergovernmental agreement” or “IGA” means an agreement for services or joint or cooperative action between the Administration and a tribal contractor.

“Qualified behavioral health service provider” means a behavioral health service provider that meets the requirements of R9-28-1106.

“Tribal contractor” means a tribal organization (The Tribe) or urban Indian organization defined in 25 U.S.C. 1603 and recognized by CMS as meeting the requirements of 42 U.S.C. 1396d(b), that provides or is accountable for providing the services or delivering the items described in the intergovernmental agreement.

4. Enrollment of Native American member. The Administration shall enroll an EPD Native American member with a tribal contractor on a FFS basis if:
  - a. The member lives on-reservation of a Native American tribal organization that is an ALTCS tribal contractor, or
  - b. The member lived on-reservation of a Native American tribal organization that is an ALTCS tribal contractor immediately before placement in an off-reservation Nursing Facility or an alternative HCBS setting.
5. Case management. A tribal contractor shall provide case management services to FFS Native American members living on or off-reservation as delineated in the IGA.
6. Services. A tribal contractor or the Administration may authorize behavioral health services for FFS Native American members enrolled with a tribal contractor as delineated in the intergovernmental agreement.
7. Enrollment of Native American members off-reservation. Except as provided in R9-28-1101(4)(b), an EPD Native American who resides off-reservation shall be enrolled with an ALTCS program contractor to receive behavioral health services, including case management, under R9-28-415.
8. Enrollment of developmentally disabled Native American member. A developmentally disabled Native American member who resides on or off-reservation shall be enrolled with the Department of Economic Security’s Division of Developmental Disabilities under R9-28-414 and shall receive behavioral health services from the Department of Economic Security’s Division of Developmental Disabilities.
9. Reimbursement. For FFS Native Americans, the Administration is exclusively responsible for providing reimbursement for covered behavioral health services that are authorized by a tribal contractor or the Administration under the intergovernmental agreement as specified in this Article. A program contractor is exclusively responsible for providing reimbursement for covered behavioral health services that are authorized by a program contractor as specified in

this Article.

**R9-28-1102. ~~Contractor Responsibilities Program or Tribal Contractor Responsibilities~~**

- ~~A. Contractor responsibilities. Contractors shall provide behavioral health services for members as specified in this Article.~~
- ~~1. A contractor shall determine whether a member needs behavioral health services and, if medically necessary, may subcontract through its service provider network for the behavioral health services in R9-28-1105.~~
  - ~~2. A contractor shall coordinate the transition of care and medical records as specified in A.R.S. §§ 36-2932, and 36-509, A.A.C. R9-28-514, and in contract when a member transitions from:
    - a. A behavioral health provider to another behavioral health provider;
    - b. An RBHA to a contractor;
    - c. A contractor to an RBHA, or
    - d. A contractor to a contractor.~~
  - ~~3. A contractor shall ensure that the member's medical records are transferred during the transition in this Section.~~
- ~~B. Administration responsibilities. If a contractor is not available to provide behavioral health services in a county, the Administration shall provide the service.~~
- ~~A. Program contractor. A program contractor shall provide behavioral health services to all enrolled members, including Native American members who are not enrolled with a tribal contractor under R9-28-1101.~~
- ~~B. Tribal contractor. A tribal contractor shall provide behavioral health services to a Native American member who is enrolled with a tribal contractor as prescribed in R9-28-1101. When a tribal contractor determines that an EPD Native American member residing on a reservation needs behavioral health services under R9-28-415, the member shall receive services as authorized by the Administration or a tribal contractor under A.A.C. R9-22-1205 from any AHCCCS-registered provider.~~
- ~~C. A program or tribal contractor shall cooperate when a transition of care occurs and ensure that medical records are transferred in accordance with A.R.S. §§ 36-2932, 36-509, and R9-28-514 when a member transitions from:
  1. A behavioral health provider to another behavioral health provider.
  2. A RBHA or TRBHA to a program contractor.
  3. A program or tribal contractor to a RBHA or TRBHA, or
  4. A program contractor to a tribal contractor or vice versa.~~
- ~~D. The Administration, a tribal contractor, or a program contractor, as appropriate, shall authorize behavioral health services for Native American members.~~

**R9-28-1103. Eligibility for Covered Services**

- ~~A. Eligibility for covered services. A member determined eligible under A.R.S. § 36-2934 shall receive medically necessary covered services specified in R9-28-1105, A.A.C. R9-22-1205 and R9-28-202.~~
- ~~B. Ineligibility. A person is not eligible for behavioral health services if the person is:
  1. An inmate of a public institution as defined in 42-CFR 435.1009,
  2. A resident of an institution for the treatment of tuberculosis, or
  3. Age 21 through 64, who is a resident of an IMD, and who exceeds the limits under Article 11.~~
- ~~B. Limitations. Behavioral health services are covered as specified in A.A.C. R9-22-201 and A.A.C. R9-22-1205.~~

**R9-28-1104. General Service Requirements**

- ~~A. Services. Behavioral health services include both mental health and substance abuse services.~~
- ~~B. Medical necessity. A service shall be medically necessary as specified in R9-28-201.~~
- ~~C. Prior authorization. A service shall be provided by contractors, subcontractors, and providers consistent with prior authorization requirements established by the Director, and under R9-28-1105.~~
- ~~B. Prior authorization for emergency behavioral health services. A provider is not required to obtain prior authorization for emergency behavioral health services.~~
- ~~C. Prohibition against denial of payment. A program contractor, tribal contractor, or the Administration shall not limit or deny payment to an emergency behavioral health provider for emergency behavioral health services to a member for the following reasons:
  1. On the basis of lists of diagnoses or symptoms.
  2. Prior authorization was not obtained, or
  3. The provider does not have a contract.~~
- ~~D. A program contractor or the Administration shall not limit or deny payment to an emergency behavioral health provider for emergency behavioral health services provided to a member if the member received those services as directed by an employee of the program contractor or the Administration.~~
- ~~E. Grounds for denial for persons enrolled with a program or tribal contractor. A program contractor or the Administration may deny payment to an emergency behavioral health provider for emergency behavioral health services for reasons including but not limited to the following:
  1. The claim was not a clean claim,
  2. The claim was not submitted timely, or~~

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3. The provider failed to provide timely notification to the Administration or the program contractor, as applicable.
- F.** Notification to program contractor for persons enrolled with a program contractor. A hospital, emergency room provider, or fiscal agent shall notify a program contractor no later than the 11th day from presentation of the member enrolled with a program contractor for emergency inpatient behavioral health services.
- G.** Notification to Administration for Native Americans enrolled with a tribal contractor. A provider shall notify the Administration no later than 72 hours after a Native American member enrolled with a tribal contractor presents to a hospital for inpatient emergency behavioral health services.
- H.** Behavioral health evaluation. Subject to A.R.S. § 36-545.06 and R9-28-903, an emergency behavioral health evaluation is covered as an emergency service for a member under this Section if:
1. Required to evaluate or stabilize an acute episode of mental disorder or substance abuse; and
  2. Provided by a qualified provider who is a behavioral health medical practitioner as defined in A.A.C. R9-22-1201, including a licensed psychologist, a licensed clinical social worker, a licensed professional counselor, or a licensed marriage and family therapist.
- I.** Post-stabilization requirements for members enrolled with a program contractor.
1. A program contractor is financially responsible for behavioral health post-stabilization services obtained within or outside the network that have received prior authorization from the program contractor.
  2. The program contractor is financially responsible for behavioral health post-stabilization services obtained within or outside the network that have not received prior authorization from the program contractor, but are administered to maintain the member's stabilized condition within one hour of a request to the program contractor for prior authorization of further post-stabilization services:
  3. The program contractor is financially responsible for behavioral health post-stabilization services obtained within or outside the network that have not received prior authorization from the program contractor, but are administered to maintain, improve, or resolve the member's stabilized condition if:
    - a. The program contractor does not respond to a request for prior authorization within one hour;
    - b. The program contractor authorized to give the prior authorization cannot be contacted; or
    - c. The representative of the program contractor and the treating physician cannot reach an agreement concerning the member's care and the program contractor's physician is not available for consultation. The treating physician may continue with care of the member until the program contractor's physician is reached, or:
      - i. A program contractor's physician with privileges at the treating hospital assumes responsibility for the member's care;
      - ii. A program contractor's physician assumes responsibility for the member's care through transfer;
      - iii. A representative of the program contractor and the treating physician reach agreement concerning the member's care; or
      - iv. The member is discharged.
  4. Transfer or discharge. The attending physician or the provider actually treating the member for the emergency behavioral health condition shall determine when the member is sufficiently stabilized for transfer or discharge and that decision shall be binding on the program contractor.
- J.** Prior authorization for non-emergency behavioral health services. When a member's behavioral health condition is determined by the provider not to require emergency behavioral health services, the provider shall follow the program contractor's or the Administration's prior authorization requirements.
- ~~**K.** EPSDT. E.P.S.D.T. services. For Title XIX members, under age 21, EPSDT E.P.S.D.T. services shall include all medically necessary Title XIX-covered behavioral health services for a member to a member.~~
- ~~**L.** Experimental services. The Director shall determine whether a service is experimental or whether a service is provided primarily for the purpose of research. Those services shall not be covered. Experimental services and services that are provided primarily for the purpose of research are not covered.~~
- ~~**M.** Gratuities. A service or an item, if furnished gratuitously to a member by a provider, is not covered and payment shall be denied. to a provider shall be denied.~~
- ~~**N.** Service area. GSA. Behavioral health services rendered to a member enrolled with a program contractor shall be provided within the program contractor's service area GSA except when:~~
- ~~1. A contractor's primary care provider refers a member to another area for medical specialty care;~~
  - ~~2. A member's medically necessary covered service is not available within the service area; GSA;~~
  - ~~3. A net savings in behavioral health service delivery costs can be documented by the RBHA program contractor for a member. Undue travel time or hardship shall be considered for a member or a member's family; or~~
  - ~~4. A member is placed by the program contractor in an NF or an Alternative HCBS setting located out of the program contractor's service area. GSA, but remains enrolled with that program contractor.~~
- ~~**O.** Travel. If a member travels or temporarily resides out outside of a behavioral health service area, a program contractor's GSA covered services are restricted to emergency behavioral health care, unless authorized by the member's program contractor.~~
- ~~**P.** Non-covered services. If a member requests a behavioral health service that is not covered by the Administration or is not~~

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authorized by a program contractor, the tribal contractor, or the Administration, the behavioral health service may be provided by an AHCCCS-registered behavioral health service provider under the following conditions: according to A.A.C. R9-22-702.

1. The requested service and the itemized cost of each service is documented by a contractor and provided to the member or the member's guardian; and
2. The member or member's guardian signs a statement acknowledging:
  - a. Services have been explained to the member or member's guardian; and
  - b. The member or member's guardian accepts responsibility for payment.

**J.** Referral. If a member is referred out of a contractor's service area to receive a prior authorized, medically necessary, behavioral health service or a medically necessary covered service, the service shall be provided by the contractor.

**K-Q.** Restrictions and limitations.

1. The restrictions, limitations, and exclusions in this Article shall do not apply to a program contractor when electing that elects to provide a noncovered service.
2. Room and board is not a covered service unless provided by the Administration or a program contractor in an a Level I, I, inpatient, sub-acute, or residential center under R9-28-1105. A.A.C. R9-22-1205.

**L.** Residential placement. Behavioral health services are covered in an Alternative HCBS setting or home as specified in R9-28-101(B).

**M.** Appropriate settings. A behavioral health service shall be provided in an allowable Alternative HCBS setting that meets state and federal licensing standards and that is allowable under A.R.S. § 36-2939.

**R9-28-1105. Scope of Behavioral Health Services**

**A.** Inpatient behavioral health services. The following inpatient services shall be covered subject to the limitations and exclusions in this Article.

1. Inpatient behavioral health services provided in a medicare (Title XVIII) certified hospital include all behavioral health services, medical detoxification, accommodations and staffing, supplies, and equipment. The behavioral health service shall be provided under the direction of a physician in:
  - a. A general acute care hospital; or
  - b. An inpatient psychiatric hospital.
2. Inpatient service limitations:
  - a. Inpatient services, other than emergency services specified in this Section, shall be prior authorized.
  - b. Inpatient services shall be reimbursed on a per diem basis and shall be inclusive of all services and room and board, except the following may bill independently for services:
    - i. A psychiatrist;
    - ii. A certified psychiatric nurse practitioner;
    - iii. A physician assistant;
    - iv. A psychologist;
    - v. A certified independent social worker;
    - vi. A certified marriage and family therapist;
    - vii. A certified professional counselor; or
    - viii. A behavioral health medical practitioner.
  - c. A member age 21 through 64 is eligible for behavioral health services provided in an IMD except as specified in 42 CFR 441.151 and under this Section up to 30 days per admission and no more than 60 days per contract year as allowed under the Administration's Section 1115 Waiver with CMS. These limitations do not apply to a member under age 21 and age 65 or over.

**B.** Level I Residential Treatment Center Services. The following Residential Treatment Center services shall be covered subject to the limitations and exclusions in this Article.

1. Level I Residential Treatment Center services shall be provided under the direction of a physician in a Level I Residential Treatment Center accredited by an AHCCCS approved accrediting body as specified in contract.
2. Residential Treatment Center services include room and board and treatment services for mental health and substance abuse conditions.
3. Residential Treatment Center service limitations:
  - a. Services shall be prior authorized, except for emergency services as specified in this Section.
  - b. Services shall be reimbursed on a per diem basis and shall be inclusive of all services, except the following may bill independently for services:
    - i. A psychiatrist;
    - ii. A certified psychiatric nurse practitioner;
    - iii. A physician assistant;
    - iv. A psychologist;
    - v. A certified independent social worker;
    - vi. A certified marriage and family therapist;



- nity.
2. ~~Partial care service exclusions. School attendance and educational hours shall not be included as a partial care service and shall not be billed concurrently with these services.~~
- G.** ~~Outpatient services. The following outpatient services shall be covered subject to the limitations and exclusions in this Article.~~
1. ~~Outpatient services shall include the following:~~
    - a. ~~Screening provided by a behavioral health professional or a behavioral health technician;~~
    - b. ~~Initial behavioral health evaluation provided by a behavioral health professional;~~
    - c. ~~Ongoing behavioral health evaluation by a behavioral health professional or a behavioral health technician;~~
    - d. ~~Counseling including individual therapy, group, and family therapy provided by a behavioral health professional or a behavioral health technician;~~
    - e. ~~Behavior management services provided by qualified individuals or agencies as specified in contract; and~~
    - f. ~~Psychosocial rehabilitation services provided by qualified individuals or agencies as specified in contract.~~
  2. ~~Outpatient service limitations:~~
    - a. ~~The following practitioners may bill independently:~~
      - i. ~~A psychiatrist;~~
      - ii. ~~A certified psychiatric nurse practitioner;~~
      - iii. ~~A physician assistant as defined in this Article;~~
      - iv. ~~A psychologist;~~
      - v. ~~A certified independent social worker;~~
      - vi. ~~A certified professional counselor;~~
      - vii. ~~A certified marriage and family therapist;~~
      - viii. ~~A behavioral health medical practitioner;~~
      - ix. ~~A therapeutic foster parent; and~~
      - x. ~~Other AHCCCS registered providers as specified in contract.~~
    - b. ~~Other behavioral health professionals and qualified persons not specified in subsection (G)(2)(a) shall be employed by, or contracted with, an AHCCCS registered behavioral health agency.~~
- H.** ~~Behavioral health emergency services. The following emergency services are covered subject to the limitations and exclusions under this Article.~~
1. ~~Behavioral health emergency services may be provided on either an inpatient or outpatient basis. A contractor shall ensure services are provided by the qualified personnel specified in R9-28-1106. The emergency services shall be available 24 hours per day, seven days per week in the contractor's service area in situations when a member is a danger to self or others or is otherwise determined in need of immediate unscheduled behavioral health services.~~
  2. ~~An inpatient emergency service provider shall verify the eligibility and enrollment of a member through the Administration to determine the need for notification to a contractor, and to determine the party responsible for payment of services under Article 7.~~
  3. ~~Prior authorization for a consultation provided by a psychiatrist, a certified psychiatric nurse practitioner, a physician assistant, or a psychologist is not required if necessary to evaluate or stabilize a behavioral health emergency.~~
  4. ~~Inpatient behavioral health service limitations as specified in this Section apply to emergency services provided to a member on an inpatient basis.~~
- I.** ~~Other behavioral health services. Other behavioral health services include:~~
1. ~~Laboratory and radiology services for behavioral health diagnosis and medication management;~~
  2. ~~Psychotropic medication and related medication;~~
  3. ~~Medication monitoring, administration, and adjustment for psychotropic medication and related medications;~~
  4. ~~Respite care as defined in R9-28-1101;~~
  5. ~~Therapeutic foster care;~~
  6. ~~Personal assistance; and~~
  7. ~~Other support services to maintain or increase the member's self sufficiency and ability to live outside an institution.~~
- J.** ~~Transportation services.~~
1. ~~Emergency transportation shall be covered for a behavioral health emergency under A.A.C. R9-22-211. Emergency transportation is limited to behavioral health emergencies.~~
  2. ~~Non-emergency transportation shall be covered to and from covered behavioral health service providers.~~
- A.** Scope of Services. The provisions of A.A.C. R9-22-1205 are the scope of behavioral health services for a member under this Article. A member in an institutional or Alternative HCBS setting as defined in R9-28-101 may receive covered behavioral health therapeutic home care services from a program contractor.
- B.** Applicability. References in A.A.C. R-9-22-1205 to ADHS/DBHS apply to a program contractor.

**R9-28-1106. General Provisions and Standards for Service Providers**

- A.** Applicability. The provisions of A.A.C. R9-22-1206 are the general provisions and standards for service providers. References in A.A.C. R9-22-1206 to ADHS/DBHS or to a RBHA apply to a program contractor.

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- ~~A-B.~~ Qualified service provider. A qualified behavioral health service provider shall:
  - ~~1. Be a non-contracting provider or employed by, or contracted in writing with, a contractor or a subcontractor to provide behavioral health services to a member;~~
  - ~~2.1.~~ Have all applicable state licenses or certifications, or comply with alternative requirements established by the Administration;
  - ~~3.2.~~ Register with the Administration as a behavioral health service provider; and
  - ~~4.3.~~ Comply with all requirements under Article 5 and this Article.
- ~~B-C.~~ Quality and utilization management.
  1. Service providers shall cooperate with the program contractor's quality and utilization management, ~~ADHS, programs~~ and the Administration as under R9-28-511 and in contract.
  2. Service providers shall comply with applicable procedures under 42 CFR 456-, incorporated by reference in A.A.C. R9-22-1206.

**R9-28-1107. Standards for Payments General Provisions for Payment**

- ~~A.~~ Payment to contractors. A payment to a contractor shall be made according to the terms and conditions of the contract executed with the Administration as specified in Article 7, unless otherwise specified in this Article.
- ~~B-A.~~ Prior authorization. Payment to a provider for services or items requiring prior authorization may be denied if prior authorization is not obtained from the Administration, or a contractor, as specified in R9-28-705. For ALTCS members enrolled with a program contractor, payment to a provider for behavioral health services that require prior authorization may be denied as specified in R9-22-705. References in A.A.C. R9-22-705 to a contractor apply to a program contractor.
- ~~B.~~ For ALTCS FFS members, payment to a provider for behavioral health services that require prior authorization may be denied if a provider does not obtain prior authorization from a tribal contractor or the Administration, as applicable.
- ~~C.~~ The Administration or a program contractor shall cost avoid any behavioral health service claims if the Administration or the program contractor establishes the probable existence of first-party liability or third-party liability.

**R9-28-1108. Grievance and Request for Hearing Process Repealed**

- ~~A.~~ Processing a grievance. A grievance for an adverse action for a behavioral health service shall be processed as specified in 9 A.A.C. 22, Articles 8 and 12 and under A.R.S. §§ 36-2932, 36-3413, and 41-1092 et seq. The grievance and request for hearing process is illustrated in 9 A.A.C. 22, Article 8, Exhibit A.
- ~~B.~~ Member request for hearing. A member's request for hearing for a grievance under this Article shall be conducted under 9 A.A.C. 28, Article 8.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

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

[R07-81]

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
R9-31-101	Amend
R9-31-102	Amend
R9-31-112	Repeal
R9-31-1201	Amend
R9-31-1202	Amend
R9-31-1203	Amend
R9-31-1204	Amend
R9-31-1205	Amend
R9-31-1206	Amend
R9-31-1207	Amend
R9-31-1208	Repeal
<b><u>2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u></b>	
Authorizing statute: A.R.S. § 36-2903.01(F)	
Implementing statute: A.R.S. § 36-2907(F)	

Notices of Final Rulemaking

**3. The effective date of the rules:**

May 5, 2007

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

Notice of Rulemaking Docket Opening: 11 A.A.R. 5547, December 30, 2005

Notice of Proposed Rulemaking: 12 A.A.R. 3961, October 27, 2006

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

Name: Jane McVay  
Address: AHCCCS  
Office of Administrative Legal Services  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4135  
Fax: (602) 253-9115  
E-mail: Jane.McVay@azahcccs.gov

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

The primary reason for initiating these rules is to conform the behavioral health rules in the KidsCare program to changes made to the behavioral health rules in the acute care program. The Administration is amending these behavioral health rules to make them clear, concise, and understandable. The changes update the rules to make them consistent with the current program operation and requirements, and the claims submission process. Definitions relating specifically to the behavioral health service program detailed in Article 12 are moved to R9-31-1201.

The Administration contracts with the Arizona Department of Health Services/Division of Behavioral Health Services (ADHS/DBHS) to provide behavioral health services to Title XXI members in the KidsCare program. ADHS contracts with Regional Behavioral Health Agencies (RBHA's) to provide behavioral health services. RBHA's are organizations under contract with ADHS that coordinate the delivery of behavioral health services in a Geographic Service Area (GSA) of the state for eligible members. The Administration capitates ADHS to provide behavioral health services to members. Members who are enrolled with a contractor enroll with a RBHA to receive behavioral health services. The responsibility for behavioral health services in the KidsCare program rests with either the contractors or the RBHA's, with the exception of Native Americans.

In the KidsCare program, Native Americans may choose to receive all services, including behavioral health services, from a Tribal Regional Behavioral Health Agency (TRBHA), an Indian Health Service facility, or a RBHA. A TRBHA is a Native American Indian tribe under contract with ADHS/DBHS to coordinate the delivery of behavioral health services to eligible, enrolled members of the tribal nation. Behavioral health services are provided to Native Americans through Indian Health Service (IHS) facilities. If a covered behavioral health service is not available from an IHS facility, the Native American member must enroll with a Tribal Regional Behavioral Health Authority (TRBHA), if available, or a Regional Behavioral Health Authority (RBHA), to receive services.

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

The agency did not review any studies related to the rulemaking.

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

Not applicable

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

AHCCCS anticipates that the economic impact of the rules on members receiving behavioral health services and small businesses will be minimal. A minimal economic impact is defined as one under \$1,000. These rules are consistent with the current contract between AHCCCS and ADHS/DBHS and the contract between AHCCCS and the health plans, which have been in effect for the past two years.

These rules make the behavioral health service provisions more clear, concise, and understandable for members, ADHS/DBHS, subcontractors of ADHS/DBHS, and AHCCCS contractors. The rules are expected to have a minimal fiscal impact on all affected agencies and members. The Administration has incurred minimal costs to prepare this rulemaking. Although the economic impact to members is expected to be minimal, the availability of behavioral health services is important to members. In October 2006, the approximate total enrollment of children and adults in behavioral health services funded through Title XIX and Title XXI was 97,000.

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

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Grammatical and other changes were made at the request of the Governor’s Regulatory Review Council staff. Areas that had duplicate language, including definitions, were removed from the agency’s rules. Other changes were made to make the rules clear, concise, and understandable. Rule changes were made regarding the terminology used for behavioral health adult therapeutic homes and behavioral health therapeutic home care services to comply with the requirements of the Centers for Medicaid and Medicare Services. New definitions of residual functional deficit, behavioral health adult therapeutic home, behavioral health therapeutic home care services, qualified behavioral health service provider, and other needed terms were added to the rules.

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

The agency did not receive any comments on the rules.

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

Not applicable

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

None

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

No

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

TITLE 9. HEALTH SERVICES

CHAPTER 31. CHILDREN’S HEALTH INSURANCE PROGRAM

ARTICLE 1. DEFINITIONS

Section

- R9-31-101. Location of Definitions
- R9-31-102. ~~Scope of Services-Related Definitions~~ Scope of Services-related Definitions
- R9-31-112. ~~Behavioral Health Definitions~~ Repealed

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

Section

- R9-31-1201. General Requirements
- R9-31-1202. ADHS and Contractor Responsibilities
- R9-31-1203. Eligibility for Covered Services
- R9-31-1204. General Service Requirements
- R9-31-1205. Scope of Behavioral Health Services
- R9-31-1206. General Provisions and Standards for Service Providers
- R9-31-1207. ~~Standards for Payments~~ General Provisions for Payment
- R9-31-1208. ~~Grievance and Request for Hearing Process~~ Repealed

ARTICLE 1. DEFINITIONS

**R9-31-101. Location of Definitions**

A. Location of definitions. Definitions applicable to 9 A.A.C. 31 are found in the following:

Definition	Section or Citation
“ADHS”	<del>R9-31-112</del> <u>R9-22-102</u>
“Administration”	A.R.S. § 36-2901
“Adverse action”	R9-34-102
“Aggregate”	R9-22-701
“AHCCCS”	R9-31-101
“AHCCCS registered provider”	9-22-101
“Ambulance”	<del>R9-22-102</del> <u>A.R.S. § 36-2201</u>
“American Indian”	<del>R9-31-101</del>
“Ancillary department”	<del>R9-22-701</del>
“Applicant”	R9-31-101

**Notices of Final Rulemaking**

“Application”	R9-31-101
“Behavior management service”	<del>R9-31-112</del> <u>R9-31-1201</u>
“Behavioral health evaluation”	<del>R9-31-112</del> <u>R9-31-1201</u>
“Behavioral health medical practitioner”	<del>R9-31-112</del> <u>R9-31-1201</u>
“Behavioral health professional”	<del>R9-31-112</del> <u>R9-31-1201</u>
<del>“Behavioral health evaluation”</del>	<del>R9-31-112</del>
<del>“Behavioral health medical practitioner”</del>	<del>R9-31-112</del>
“Behavioral health service”	<del>R9-31-112</del> <u>R9-31-1201</u>
“Behavioral health technician”	<del>R9-20-101</del> <u>R9-31-1201</u>
“Billed charges”	R9-22-701
<del>“Board eligible for psychiatry”</del>	<del>R9-31-112</del>
“Capital costs”	R9-22-701
“Certified nurse practitioner”	R9-31-102
“Certified psychiatric nurse practitioner”	<del>R9-31-112</del> <u>R9-31-1201</u>
“Child”	42 U.S.C. 1397jj
“Chronically ill”	A.R.S. § 36-2983
“Clean claim”	A.R.S. § 36-2904
“Clinical supervision”	<del>R9-31-112</del> <u>R9-22-102</u>
“CMDP”	R9-31-103
“Continuous stay”	R9-22-101
“Contract”	R9-22-101
“Contractor”	A.R.S. § 36-2901
“Contract year”	R9-31-101
<del>“Copayment”</del>	<del>R9-22-701</del>
<del>“Cost avoidance”</del> <u>“Cost avoid”</u>	<del>R9-22-1001</del> <u>R9-22-1201</u>
<del>“Cost to charge ratio”</del> <u>“Cost-to-Charge”</u>	R9-22-701
“Covered charges”	R9-31-107
“Covered services”	R9-22-102
“CPT”	R9-22-701
“CRS”	R9-31-103
“Date of eligibility posting”	R9-22-701
“Day”	R9-22-101
“De novo hearing”	42 CFR 431.201
“Dentures” <u>and “Denture services”</u>	R9-22-102
“DES”	R9-31-103
“Determination”	R9-31-103
“Diagnostic services”	R9-22-102
“Director”	A.R.S. § 36-2981
“DME”	R9-22-102
“DRI inflation factor”	R9-22-701
“Emergency medical condition”	42 U.S.C. 1396b(v)
“Emergency medical services <sup>22</sup> <u>for the non-FES member”</u>	R9-22-102
“Encounter”	R9-22-701
“Enrollment”	R9-31-103
“Experimental services”	R9-22-101
“Facility”	R9-22-101

**Notices of Final Rulemaking**

“Factor”	R9-22-101
<del>“First-party liability”</del>	<del>R9-22-1001</del>
“Federal Poverty Level” or “FPL”	A.R.S. § 36-2981
<del>“FPL”</del>	<del>A.R.S. § 36-2981</del>
<u>“First-party liability”</u>	<u>R9-22-1001</u>
“Grievance”	R9-34-202
“Group Health Plan”	42 U.S.C. 1397jj
“GSA”	R9-22-101
“Head of Household”	R9-31-103
“Health care practitioner”	<del>R9-31-112</del> <u>R9-31-1201</u>
“Hearing aid”	R9-22-102
“Home health services”	R9-22-102
“Hospital”	R9-22-101
“Household income”	R9-31-103
“ICU”	R9-22-701
“IGA”	R9-31-116
“IHS”	R9-31-116
“IHS” or “Tribal Facility Provider”	R9-31-116
<del>“Indian”</del>	<del>42 CFR 137.10</del>
“Information”	R9-31-103
“Institution for Mental Diseases” or “IMD”	<del>42 CFR 435.1009</del> and <del>R9-22-112</del> <u>42 CFR 435.1010</u> and R9-22-102
“Inmate of a public institution”	<del>42 CFR 435.1009</del> <u>42 CFR 435.1010</u>
“Inpatient hospital services”	R9-31-101
“License” or “licensure”	R9-22-101
“Medical record”	R9-22-101
“Medical review”	R9-31-107
“Medical services”	R9-22-101
“Medical supplies”	<del>R9-22-101</del> <u>R9-22-102</u>
“Member”	A.R.S. § 36-2981
“Mental disorder”	A.R.S. § 36-501
“Native American”	R9-31-101
“New hospital”	R9-22-701
“NF” or “nursing facility”	42 U.S.C. 1396r(a)
“NICU”	R9-22-701
“Noncontracting provider”	A.R.S. § 36-2981
“Occupational therapy”	R9-22-102
“Offeror”	R9-31-106
“Operating costs”	R9-22-701
“Outlier”	R9-31-107
“Outpatient hospital service”	R9-22-701
“Ownership change”	R9-22-701
“Partial care”	<del>R9-22-112</del> <u>R9-31-1201</u>
“Peer group”	R9-22-701
“Pharmaceutical service”	R9-22-102
“Physical therapy”	R9-22-102
“Physician”	A.R.S. § 36-2981
“Post stabilization care services”	42 CFR 438.114

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“Practitioner”	R9-22-102
“Pre-existing condition”	R9-31-501
“Prepaid capitated”	A.R.S. § 36-2981
“Prescription”	R9-22-102
“Primary care physician”	A.R.S. § 36-2981
“Primary care practitioner”	A.R.S. § 36-2981
“Primary care provider (PCP)”	R9-22-102
“Primary care provider services”	R9-22-102
“Prior authorization”	R9-22-102
<del>“Private duty nursing services”</del>	<del>R9-22-102</del>
“Program”	A.R.S. § 36-2981
“Proposal”	R9-31-106
“Prospective rates”	R9-22-701
“Provider”	A.R.S. § 36-2931
“Psychiatrist”	A.R.S. § 36-501
“Psychologist”	A.R.S. § 36-501
“Psychosocial rehabilitation”	<del>R9-22-112</del> <u>R9-22-102</u>
“Qualified alien”	A.R.S. § 36-2903.03
“Qualifying plan”	A.R.S. § 36-2981
“Quality management”	R9-22-501
“Radiology”	R9-22-102
<del>“Regional Behavioral Health Authority” or “RBHA”</del>	<del>A.R.S. § 36-3401</del>
<del>“Rebasing”</del> <u>“Rebase”</u>	<del>R9-22-107</del> <u>R9-22-701</u>
“Redetermination”	R9-31-103
“Referral”	R9-22-101
<u>“Regional Behavioral Health Authority” or “RBHA”</u>	<u>A.R.S. § 36-3401</u>
“Rehabilitation services”	R9-22-102
“Reinsurance”	R9-22-701
“Remittance advice”	R9-22-701
“RFP”	R9-31-106
“Respiratory therapy”	R9-22-102
“Scope of services”	R9-22-102
“Seriously ill”	R9-31-101
“Service location”	R9-22-101
“Service site”	R9-22-101
“SMI” or “Seriously mentally ill”	A.R.S. § 36-550
“Specialist”	R9-22-102
“Speech therapy”	R9-22-102
“Spouse”	R9-31-103
“SSI-MAO”	R9-31-103
“Stabilize”	42 U.S.C. 1395dd
“Standard of care”	R9-22-101
“Sterilization”	R9-22-102
“Subcontract”	R9-22-101
“Subcontractor”	R9-31-101

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“Third-party”	R9-22-1001
“Third-party liability”	R9-22-1001
“Tier”	R9-22-701
“Tiered per diem”	R9-31-107
“TRBHA” or “Tribal Regional Behavioral Health Authority”	<del>R9-31-116</del> R9-31-1201
“Tribal facility”	A.R.S. § 36-2981
“Utilization management”	R9-22-501

**B.** General definitions. The words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

“ADHS” has the same meaning as in A.A.C. R9-22-102.

“AHCCCS” means the Arizona Health Care Cost Containment System, which is composed of the Administration, contractors, and other arrangements through which health care services are provided to a member.

~~“American Indian” means Indian as specified in 42 CFR 137.10.~~

“Applicant” means a person who submits, or whose representative submits, a written, signed, and dated application for Title XXI medical coverage.

“Application” means an official request for Title XXI medical coverage made under this Chapter.

“Contract year” means the period beginning on October 1 and continuing until September 30 of the following year.

“Inpatient hospital services” means medically necessary services that require an inpatient stay in an acute care hospital and that are provided by or under the direction of a physician or other health care practitioner upon referral from a member’s primary care provider.

“Native American” means Indian as specified in 42 CFR 137.10.

“Seriously ill” means a medical or psychiatric condition manifesting itself by acute symptoms that left untreated may result in:

- Death,
- Disability,
- Disfigurement, or
- Dysfunction.

“Subcontractor” means a person, agency, or organization that enters into an agreement with a contractor or subcontractor to provide services.

**R9-31-102. ~~Scope of Services-Related Definitions~~ Scope of Services-related Definitions**

Definitions. The words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

“Certified nurse practitioner” means a registered nurse practitioner as certified by the Arizona Board of Nursing according to A.R.S. Title 32, Ch. 15.

~~“Psychosocial rehabilitation services” means the same as in R9-22-102.~~

**R9-31-112. ~~Covered Behavioral Health Services-Related Definitions~~ Repealed**

~~Definitions. The words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:~~

~~“ADHS” means the Arizona Department of Health Services, the agency mandated to serve the public health needs of all Arizona residents.~~

~~“Behavior management service” means those services that assist the member in carrying out daily living tasks and other activities essential for living in the community.~~

~~“Behavioral health evaluation” means the assessment of a member’s medical, psychological, psychiatric, or social condition to determine if a behavioral health disorder exists and, if so, to establish a treatment plan for all medically necessary services.~~

~~“Behavioral health medical practitioner” means a health care practitioner with at least one year of full-time behavioral health work experience.~~

~~“Behavioral health professional” defined in 9 A.A.C. 20.~~

~~“Behavioral health service” means those services provided for the evaluation and diagnosis of a mental health or substance abuse condition, and the planned care, treatment, and rehabilitation of the member.~~

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~~“Behavioral health technician” defined in 9 A.A.C. 20.~~

~~“Board eligible for psychiatry” means completion of an accredited psychiatry residency program approved by the American College of Graduate Medical Education, or the American Osteopathic Association defined in 9 A.A.C. 22, Article 1.~~

~~“Certified psychiatric nurse practitioner” defined in 9 A.A.C. 22, Article 1.~~

~~“Clinical supervision” specified in A.A.C. 22, Article 1.~~

~~“De novo hearing” defined in 42 CFR 431.201.~~

~~“Health care practitioner” means a:~~

~~Physician;~~

~~Physician assistant;~~

~~Nurse practitioner; or~~

~~Other individual licensed and authorized by law to dispense and prescribe medication and devices, as defined in A.R.S. § 32-1901.~~

~~“IMD” defined in 9 A.A.C. 22, Article 1.~~

~~“Mental disorder” defined in A.R.S. § 36-501.~~

~~“Partial Care” defined in 9 A.A.C. 22, Article 1.~~

~~“Psychiatrist” specified in A.R.S. §§ 32-1401 or 32-1800 and 36-501.~~

~~“Psychologist” specified in A.R.S. §§ 32-2061 and 36-501.~~

~~“Psychosocial rehabilitation” defined in 9 A.A.C. 22, Article 1.~~

~~“RBHA” means the Regional Behavioral Health Authority defined in A.R.S. § 36-3401.~~

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

**R9-31-1201. General Requirements**

General requirements. The following general requirements apply to behavioral health services provided under this Article, subject to all exclusions and limitations:

1. Administration. The program shall be administered as specified in A.R.S. § 36-2982.
2. Provision of services. Behavioral health services shall be provided as specified in A.R.S. § 36-2989 and this Chapter.
3. Definitions. The following definitions apply to this Article:
  - a. ~~“Case management services” defined in 9 A.A.C. 22, Article 12.~~
  - b. ~~“Health plan” means a “Contractor” as defined in A.R.S. § 36-2901.~~
  - e. ~~“Physician assistant” as specified in A.R.S. § 32-2501. In addition, a physician assistant providing a behavioral health service shall be supervised by an AHCCCS-registered psychiatrist.~~
  - d. ~~“Respite” defined in 9 A.A.C. 22, Article 12.~~
  - e. ~~“Substance abuse” as defined in 9 A.A.C. 22, Article 12.~~
  - f. ~~“TRBHA” means the Tribal Regional Behavioral Health Authority.~~
  - g. ~~“Therapeutic foster care services” as defined in 9 A.A.C. 22, Article 12.~~
    - a. “Agency” for the purposes of this Article, means the same as in A.A.C. R9-22-1201.
    - b. “Behavior management services” means the same as in A.A.C. R9-22-1201.
    - c. “Behavioral health adult therapeutic home” means the same as in A.A.C. R9-22-1201.
    - d. “Behavioral health therapeutic home care services” means the same as in A.A.C. R9-22-1201.
    - e. “Behavioral health evaluation” means the same as in A.A.C. R9-22-1201.
    - f. “Behavioral health medical practitioner” means the same as in A.A.C. R9-22-1201.
    - g. “Behavioral health professional” means the same as in A.A.C. R9-20-101.
    - h. “Behavioral health service” means the same as in A.A.C. R9-22-1201.
    - i. “Behavioral health technician” means the same as in A.A.C. R9-22-1201.
    - j. “Certified psychiatric nurse practitioner” means the same as in A.A.C. R9-22-1201.
    - k. “Client” means the same as in A.A.C. R9-22-1201.
    - l. “Cost avoid” means the same as in A.A.C. R9-22-1201.
    - m. “Health care practitioner” means the same as in A.A.C. R9-22-1201.
    - n. “Licensee” means the same as in A.A.C. R9-22-1201.
    - o. “OBHL” means the same as in A.A.C. R9-20-101.
    - p. “Partial care” means the same as in A.A.C. R9-22-1201.
    - q. “Physician assistant” means the same as in A.A.C. R9-22-1201.
    - r. “Psychiatrist” means the same as in A.A.C. R9-22-1201.
    - s. “Psychologist” means the same as in A.A.C. R9-22-1201.

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- t. “Qualified behavioral health service provider” means the same as in A.A.C. R9-22-1201.
- u. “Residual functional deficit” means the same as in A.A.C. R9-22-1201.
- v. “Respite” means the same as in A.A.C. R9-22-1201.
- w. “Substance abuse” means the same as in A.A.C. R9-22-102.
- x. “TRBHA” or “Tribal Regional Behavioral Health Authority” means the same as in A.A.C. R9-22-1201.

**R9-31-1202. ADHS and Contractor Responsibilities**

- A. ADHS responsibilities. Behavioral health services shall be provided by a RBHA through a contract with ADHS/~~DBHS~~. ADHS/~~DBHS~~ shall ~~contract with a RBHA for the provision of behavioral health services in R9-22-1205 for all Title XXI members as specified in A.R.S. § 36-2989. ADHS/DBHS, the RBHA’s, TRBHA’s or subcontractors shall provide behavioral health services to Title XXI members in accordance with R9-22-1202.~~
  - 1. ~~Contract with a RBHA for the provision of behavioral health services in R9-31-1205 for all Title XXI members as specified in A.R.S. § 36-2989. DHS shall ensure that a RBHA provides behavioral health services directly to members or through subcontracts with qualified service providers who meet the qualifications specified in R9-31-1206. If behavioral health services are unavailable within a RBHA’s service area, ADHS shall ensure that a RBHA provides behavioral health services outside the service area.~~
  - 2. ~~Ensure that a member’s behavioral health service is provided in collaboration with a member’s primary care provider.~~
  - 3. ~~Coordinate the transition of care and medical records, as specified in A.R.S. §§ 36-2986, 36-509, A.A.C. R9-31-512, and in contract, when a member transitions from:
    - a. ~~A behavioral health provider to another behavioral health provider;~~
    - b. ~~A RBHA to another RBHA;~~
    - e. ~~A RBHA to a contractor;~~
    - d. ~~A contractor to a RBHA; or~~
    - e. ~~A contractor to another contractor.~~~~
- B. ADHS/~~DBHS~~ may contract with a TRBHA for the provision of covered behavioral health services for Native American members. ~~In the absence of a contract with ADHS, Native American members may:~~ receive covered behavioral health services:
  - 1. ~~Receive behavioral health services from~~ From an IHS facility, ~~or a TRBHA, or~~
  - 2. ~~Be referred off-reservation to a RBHA for covered behavioral health services.~~ From a TRBHA, or
  - 3. From a RBHA when referred off-reservation.
- ~~C. Contractor responsibilities. A contractor shall:~~
  - 1. ~~Refer a member to an a RBHA according to the contract terms;~~
  - 2. ~~Provide inpatient emergency behavioral health services specified in R9-31-1205 for a member not yet enrolled with a RBHA;~~
  - 3. ~~Provide psychotropic medication services for a member, in consultation with the member’s RBHA as needed, for behavioral health conditions that are specified in contract within the primary care provider’s scope of practice; and~~
  - 4. ~~Coordinate a member’s transition of care and medical records specified in R9-31-1202.~~
- ~~D.C.~~ ADHS/~~DBHS~~, its subcontractors the RBHA’s, TRBHA’s, subcontractors of ADHS/~~DBHS~~, and AHCCCS acute care contractors shall cooperate as specified in contract when a transition from one entity to another becomes necessary.

**R9-31-1203. Eligibility for Covered Services**

- A. Eligibility for covered services. A member determined eligible under A.R.S. § 36-2981 shall receive medically necessary covered services specified in ~~R9-31-1205. R9-22-1205.~~
- ~~B. Ineligibility. A person is not eligible for behavioral health services if the person is:~~
  - 1. ~~An inmate of a public institution as defined in 42 CFR 435.1009;~~
  - 2. ~~A resident of an institution for the treatment of tuberculosis; or~~
  - 3. ~~In an institution for mental diseases at the time of application.~~
- ~~B. Limitations. Behavioral health services are covered as specified in R9-22-201 and R9-22-1205.~~

**R9-31-1204. General Service Requirements**

- A. Services. Behavioral health services include both mental health and substance abuse services.
- B. Medical necessity. A service shall be medically necessary as under R9-31-201.
- ~~C. Prior authorization. A service shall be provided by contractors, subcontractors, and providers consistent with the prior authorization requirements established by the Director and under R9-31-210 and R9-31-1205.~~
- ~~C. Prior authorization. A provider shall comply with the prior authorization requirements of the contractor and the following:~~
  - 1. Emergency behavioral health services. A provider is not required to obtain prior authorization for emergency behavioral health services.
  - 2. Non-emergency behavioral health services. When a member’s behavioral health condition is determined not to require emergency behavioral health services, the provider shall follow the prior authorization requirements of a contractor.
- D. Experimental services. The Director shall determine if a service is experimental, or whether a service is provided prima-

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rily for the purpose of research. Those services shall not be covered. Experimental services and services that are provided primarily for the purpose of research are not covered.

- E. Gratuities. A service or an item, if furnished gratuitously to a member, is not covered and payment to a provider shall be denied. to a provider.
- F. Service area: GSA. Behavioral health services rendered to a member shall be provided within the RBHA's service area RBHA's GSA except when:
  - 1. A contractor's primary care provider refers a member to another area for medical specialty care,
  - 2. A member's medically necessary covered service is not available within the service area: GSA, or
  - 3. A net savings in behavioral health service delivery costs can be documented by the RBHA for a member. Undue travel time or hardship shall be considered for a member or a member's family.
- G. Travel. If a member travels or temporarily resides ~~out~~ outside of a behavioral health service area, covered services are restricted to emergency behavioral health care, unless otherwise authorized by a member's RBHA.
- H. Non-covered services. If a member requests a behavioral health service that is not covered by Title XXI or is not authorized by a RBHA; or TRBHA, the behavioral health service may be provided by an AHCCCS registered behavioral health service provider AHCCCS registered behavioral health service provider under the following conditions: provisions of R9-22-702.
  - ~~1. The requested service and the itemized cost of each service is documented and provided to the member or member's guardian; and~~
  - ~~2. The member or member's guardian signs a statement acknowledging:
    - a. Services have been explained to the member or member's guardian, and
    - b. The member or member's guardian accepts responsibility for payment.~~
- I. Referral. If a member is referred ~~out of~~ outside of a RBHA's service area RBHA or TRBHA GSA to receive an authorized medically necessary behavioral health service or a medically necessary covered service; services, the service shall be provided by the contractor, or RBHA; or TRBHA is responsible for reimbursement, if the claim is otherwise payable under these rules. Behavioral health services shall be provided with the limitations specified in R9-31-1205.
- J. Restrictions and limitations.
  - 1. The restrictions, limitations, and exclusions in this Article shall do not apply to a contractor, ADHS/DBHS, or a RBHA when electing to provide a noncovered service.
  - 2. Room and board is not a covered service unless provided in an inpatient, Level 1, sub-acute, or residential facility under R9-31-1205. R9-22-1205.

**R9-31-1205. Scope of Behavioral Health Services**

- ~~A. Inpatient behavioral health services. The following inpatient services shall be covered subject to the limitations and exclusions in this Article:
  - ~~1. Inpatient behavioral health services provided in a Medicare (Title XVIII) certified hospital include all behavioral health services, medical detoxification, accommodations and staffing, supplies, and equipment. The behavioral health service shall be under the direction of a physician in:
    - a. A general acute care hospital, or
    - b. An inpatient psychiatric hospital.~~
  - ~~2. Inpatient service limitations:
    - a. Inpatient services, other than emergency services specified in this Section, are prior authorized.
    - b. Inpatient services are reimbursed on a per diem basis and s includes all services and room and board, except the following may bill independently for services:
      - i. A licensed psychiatrist,
      - ii. A certified psychiatric nurse practitioner,
      - iii. A physician assistant,
      - iv. A psychologist,
      - v. A certified independent social worker,
      - vi. A certified marriage and family therapist,
      - vii. A certified professional counselor, or
      - viii. A behavioral health medical practitioner under R9-31-112.
    - e. A member cannot be in an IMD at the time of application or at the time of redetermination.~~~~
- ~~B. Level I residential treatment center services. Level I residential treatment center services under 9 A.A.C. 20, Article 2 and Article 5 are covered subject to the limitations and exclusions in this Article and:
  - ~~1. Are under the direction of a physician in a Level I residential treatment center accredited by an AHCCCS approved accrediting body as specified in contract.~~
  - ~~2. Are room and board and treatment services for mental health and substance abuse conditions.~~
  - ~~3. Residential treatment center service are limited as follows:
    - a. Services are prior authorized, except for emergency services as specified in this Section.
    - b. Services are reimbursed on a per diem basis and are inclusive of all services, except the following may bill inde-~~~~

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pendently for services:

- i. A psychiatrist,
- ii. A certified psychiatric nurse practitioner,
- iii. A physician assistant,
- iv. A psychologist,
- v. A certified independent social worker,
- vi. A certified marriage and family therapist,
- vii. A certified professional counselor, or
- viii. A behavioral health medical practitioner.

e. An applicant or member cannot be in an IMD at the time of application or at the time of redetermination.

- 4. The following services may be billed independently if prescribed by a provider specified in subsection (B)(3)(b)(i), (ii), (iii), and (viii):
  - a. Laboratory,
  - b. Radiology, and
  - c. Psychotropic medication.

**C.** Level I sub-acute facility services. Level I sub-acute facility services under 9 A.A.C. 20, Article 2 and Article 5 are covered subject to the limitations and exclusions in this Article and:

- 1. Are provided under the direction of a physician in a Level I sub-acute facility accredited by an AHCCCS approved accrediting body as specified in contract.
- 2. Are room and board and treatment services for mental health and substance abuse conditions.
- 3. Are reimbursed on a per diem basis and are inclusive of all services, except the following may bill independently for services:

- a. A psychiatrist,
- b. A certified psychiatric nurse practitioner,
- c. A physician assistant,
- d. A psychologist,
- e. A certified independent social worker,
- f. A certified marriage and family therapist,
- g. A certified professional counselor, or
- h. A behavioral health medical practitioner.

4. An applicant or member cannot be in an IMD at the time of application or at the time of redetermination.

- 5. The following services may be billed independently if prescribed by a provider specified in subsection (C)(3)(a), (b), (c), and (h):
  - a. Laboratory,
  - b. Radiology, and
  - c. Psychotropic medication.

**D.** ADHS licensed Level II behavioral health residential services. Level II behavioral health residential services under 9 A.A.C. 20, Article 2 and Article 4 are covered subject to the limitations and exclusions in this Article and:

- 1. Are provided by a licensed Level II agency.
- 2. Are inclusive of all covered services except room and board.
- 3. The following may bill independently for services:

- a. A psychiatrist,
- b. A certified psychiatric nurse practitioner,
- c. A physician assistant,
- d. A psychologist,
- e. A certified independent social worker,
- f. A certified marriage and family therapist,
- g. A certified professional counselor, or
- h. A behavioral health medical practitioner.

**E.** ADHS licensed Level III behavioral health residential services. Level III Behavioral Health Residential services under 9 A.A.C. 20, Article 2 and Article 4 are covered subject to the limitations and exclusions in this Article and:

- 1. Are provided by a licensed Level III agency.
- 2. Are inclusive of all covered services except room and board.
- 3. The following may bill independently for services:

- a. A psychiatrist,
- b. A certified psychiatric nurse practitioner,
- c. A physician assistant,
- d. A psychologist,
- e. A certified independent social worker,

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- f. A certified marriage and family therapist;
  - g. A certified professional counselor; or
  - h. A behavioral health medical practitioner.
- F.** Partial care. Partial care services are covered subject to the limitations and exclusions in this Article.
- 1. Partial care service is rendered by an agency qualified to provide a regularly scheduled day program of individual member, group or family activities that are designed to improve the ability of the member to function in the community.
  - 2. Partial care service exclusions. School attendance and educational hours are not included as a partial care service and are not billed concurrently with a partial care service.
- G.** Outpatient services. Outpatient services are covered subject to the limitations and exclusions in this Article.
- 1. Outpatient services shall include the following:
    - a. Screening provided by a behavioral health professional or a behavioral health technician;
    - b. Initial behavioral health evaluation provided by a behavioral health professional;
    - e. Ongoing behavioral health evaluation by a behavioral health professional or a behavioral health technician;
    - d. Counseling including individual therapy, group, and family therapy provided by a behavioral health professional or a behavioral health technician;
    - e. Behavior management services provided by qualified individuals or agencies as specified in contract; and
    - f. Psychosocial rehabilitation services provided by qualified individuals or agencies as specified in contract.
  - 2. Outpatient service limitations:
    - a. The following practitioners may bill independently:
      - i. A psychiatrist;
      - ii. A certified psychiatric nurse practitioner;
      - iii. A physician assistant as defined in this Article;
      - iv. A psychologist;
      - v. A certified independent social worker;
      - vi. A certified professional counselor;
      - vii. A certified marriage and family therapist;
      - viii. A behavioral health medical practitioner;
      - ix. A therapeutic foster parent under 6 A.A.C. 5, Article 58, and
      - x. Other AHCCCS registered providers as specified in contract.
    - b. A behavioral health professional not specified in subsection (G)(2)(a) shall not bill independently unless employed by, or contracted with, an AHCCCS-registered behavioral health agency.
- H.** Behavioral health emergency services.
- 1. A RBHA shall ensure that behavioral health emergency services are provided by qualified personnel specified in R9-31-1206. The emergency services are available 24 hours per day, seven days per week in the RBHA's service area in emergency situations for a member who is a danger to self or others or is otherwise determined to be in need of immediate unscheduled behavioral health services. Behavioral health emergency services are provided on either an inpatient or outpatient basis.
  - 2. A contractor shall provide behavioral health emergency services on an inpatient basis not to exceed three days per emergency episode and 12 days per contract year, for a member not yet enrolled with a RBHA.
  - 3. An inpatient emergency service provider shall verify the eligibility and enrollment of a member through the Administration to determine the need for notification to a contractor or a RBHA and to determine the party responsible for payment of services under Article 7 of this Chapter.
  - 4. Behavioral health emergency service limitations:
    - a. An emergency behavioral health service does not require prior authorization. The provider shall, however, comply with the notification requirements under R9-31-210.
    - b. A behavioral health service for an condition unrelated to the behavioral health emergency service that requires diagnosis and treatment shall be prior authorized by a RBHA.
    - e. Inpatient service limitations specified in subsection (A) of this Section shall apply to emergency services provided on an inpatient basis.
- I.** Other behavioral health services.
- 1. Case management as under R9-31-1201;
  - 2. Laboratory and radiology services for behavioral health diagnosis and medication management;
  - 3. Psychotropic medication and related medication;
  - 4. Monitoring, administration, and adjustment for psychotropic medication and related medications;
  - 5. Respite care;
  - 6. Therapeutic foster care; and
  - 7. Other support services to maintain or increase the member's self-sufficiency and ability to live outside an institution.
- J.** Transportation services. The Administration shall provide transportation services under A.A.C. R9-22-211.

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The provisions of R9-22-1205 apply to the scope and coverage of behavioral health services under this Article, but an applicant or member is not eligible to receive covered behavioral health services if in an IMD at the time of application or at the time of redetermination.

R9-31-1206. General Provisions and Standards for Service Providers

- A. Qualified service provider. A qualified behavioral health service provider shall:
1. Be a non-contracting provider or employed by, or contracted in writing with a RBHA or a contractor to provide behavioral health services to a member;
2. Have all applicable state licenses or certifications, or comply with alternative requirements established by the Administration;
3. Register with the Administration as a service provider; and
4. Comply with all requirements under Article 5 and this Article.
B. Quality and Utilization management.
1. Service providers shall cooperate with the quality and utilization management programs of a RBHA, a contractor, ADHS, and the Administration which are stated in R9-31-522 and contract.
2. Service providers shall comply with applicable procedures specified in 42 CFR 456.
A. The provisions of R9-22-1206 apply to the general provisions and standards for a behavioral health service provider under this Article.
B. A qualified behavioral service provider shall comply with all requirements under Article 5 of this Chapter and this Article.

R9-31-1207. Standards for Payments General Provisions for Payment

- A. Payment to ADHS/DBHS. ADHS shall receive The Administration shall make a monthly capitation payment; to ADHS/DBHS based on the number of Title XXI members acute care members at the beginning of each month. ADHS/DBHS' administrative costs shall be incorporated into the capitation payment.
B. Claims submissions.
1. ADHS/DBHS shall require all contracted service providers to submit clean claims no later than the time-frame specified in the ADHS/DBHS' contract with the Administration.
2. A claim for emergency services for a member not yet enrolled with an RBHA shall be submitted to a contractor by a provider and shall comply with the time frames and other applicable payment procedures in Article 7 of this Chapter.
2. Behavioral health service providers shall submit claims according to the payment provisions in A.A.C. R9-22-1207.
C. Prior authorization. The Administration has the authority to deny payment to a provider for services or items requiring prior authorization if prior authorization is not obtained from the Administration, a RBHA, or a contractor as specified in R9-31-705. Payment to a provider for behavioral health services or items requiring prior authorization may be denied if a provider does not obtain prior authorization from a RBHA, ADHS/DBHS, a TRBHA, or a contractor.

R9-31-1208. Grievance and Request for Hearing Process Repealed

- A. Processing a grievance. A grievance for an adverse action for a behavioral health service shall be processed under A.R.S. §§ 36-2986, 36-3413, 41-1092.02, and 9 A.A.C. 31, Articles 8 and 13. The grievance and request for hearing process is illustrated in 9 A.A.C. 31, Article 8, Exhibit A.
B. Member request for hearing. A member's request for hearing regarding a grievance under this Article shall be conducted under 9 A.A.C. 31, Article 8.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 8. ARIZONA STATE PARKS BOARD

[R07-91]

PREAMBLE

1. Sections Affected

- R12-8-101
R12-8-102
R12-8-103
R12-8-104
R12-8-105
R12-8-106
R12-8-107

Rulemaking Action

- Amend
Amend
Amend
Amend
Repeal
Amend
Amend

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R12-8-108	Amend
R12-8-109	Amend
R12-8-110	Amend
R12-8-111	Amend
R12-8-112	Amend
R12-8-113	Amend
R12-8-114	Amend
R12-8-115	Amend
R12-8-116	Amend
R12-8-119	Amend
R12-8-120	Amend
R12-8-122	Amend
R12-8-124	Amend
R12-8-125	Amend
R12-8-126	Amend
R12-8-301	Amend
R12-8-305	Amend

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

Authorizing statute: A.R.S. § 41-511.05(9)

Implementing statute: A.R.S. §§ 41-511.04 and 41-511.05

**3. The effective date for the rules:**

May 5, 2007

**4. List of all previous notices appearing in the Register addressing the final rules:**

Notice of Rulemaking Docket Opening: 12 A.A.R. 229, January 27, 2006

Notice of Rulemaking Docket Opening: 12 A.A.R. 230, January 27, 2006

Notice of Proposed Rulemaking: 12 A.A.R. 2750, August 4, 2006

Notice of Rulemaking Docket Opening: 12 A.A.R. 4024, October 27, 2006

Notice of Proposed Rulemaking: 12 A.A.R. 4242, November 17, 2006

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

For the rules in Article 1:

Name: Rich Evans  
Address: 1300 W. Washington  
Phoenix, AZ 85007  
Telephone: (602) 542-7151  
Fax: (602) 542-4180  
E-mail: revans@pr.state.az.us

For the rules in Article 3:

Name: James Garrison  
Address: 1300 W. Washington  
Phoenix, AZ 85007  
Telephone: (602) 542-7135  
Fax: (602) 542-4180  
E-mail: jgarrison@pr.state.az.us

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

The Board is amending selected rules regarding use of state parks to make the rules more clear, concise, and understandable and consistent with agency practice. Of importance is a new definition of "commercial activity" and expanded information regarding obtaining and operating under a special use permit. The Board also is simplifying the process to verify eligibility for property tax reclassification.

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

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**material:**

None

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

Not applicable

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

Because this rulemaking does not substantively change the current rules or the Board's policies and procedures, its economic impact will be minimal. Individuals who might want to engage in commercial activity within a state park will benefit from having a clearer definition of "commercial activity" and clarification of when a special use permit or a commercial retail or rental permit is required. Owners of properties, which may be eligible for reclassification for property tax purposes, will benefit from the simplified verification process. The Board, which incurred the cost of this rulemaking, will benefit from rules that are more clear, concise, and understandable and consistent with its current policies and procedures.

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

Numerous word choice and formatting changes were made to make the rules more clear, concise, and understandable. None of the changes was substantial under the standards at A.R.S. § 41-1025. Additionally, the Board clarified that a special use permit is not needed to use a dock within a state park unless the use is for a commercial purpose. In that case, a commercial rental or retail permit is required rather than a special use permit.

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

An oral proceeding was held on January 18, 2007. No comments were received from the public.

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

Under A.R.S. § 41-511.05(9), after the Board makes a rule regarding the protection of, maintaining, or keeping the peace in State Parks, the Board is required to submit the rule to the legislature for its approval. The rules in Article 1 are affected by this requirement.

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

None

**14. Were these rules previously made as emergency rules?**

No

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

TITLE 12. NATURAL RESOURCES

CHAPTER 8. ARIZONA STATE PARKS BOARD

ARTICLE 1. GENERAL PROVISIONS

Section

R12-8-101.	Definitions
R12-8-102.	Permission to Enter or Remain in a State Park
R12-8-103.	Vandalism
R12-8-104.	Hours of Use; <del>Use</del> ; Closure
R12-8-105.	<del>Day-use Areas; Hours</del> <u>Repealed</u>
R12-8-106.	Limited Services on Christmas <del>Day</del>
R12-8-107.	Litter and Waste
R12-8-108.	Payment of Fees
R12-8-109.	Fees and Permits
R12-8-110.	Fee Waivers
R12-8-111.	Camping
R12-8-112.	Campfires
R12-8-113.	Vehicles, Speed Limits, and Parking
R12-8-114.	Watercraft; Launching and Mooring
R12-8-115.	Pets
R12-8-116.	Glass Containers
R12-8-119.	Weapons
R12-8-120.	Fireworks and Explosives
R12-8-122.	Commercial Use of a <u>State</u> Park

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- R12-8-124. Disorderly Conduct
- R12-8-125. Special Use Permits
- R12-8-126. ~~Penalty for Regulation~~ Violation; Classification

ARTICLE 3. STATE HISTORIC PRESERVATION OFFICE PROGRAMS

Section

- R12-8-301. Definitions
- R12-8-305. ~~Application~~ Verification of Eligibility for Property Tax Reclassification

ARTICLE 1. GENERAL PROVISIONS

**R12-8-101. Definitions**

In this Chapter:

- 1. "Board" means the Arizona State Parks Board.
- 2. "Cabana site" means a camping ~~space~~ unit with a shelter and electricity available.
- 3. "Camp or camping" means overnight use of a ~~park area~~ camping unit.
- 4. "Camping unit ~~or camp site~~" means a defined space within an area designated for overnight use in a state park.  
"Commercial activity" means soliciting funds, offering to sell a good or service, advertising, receiving money or another thing of value in exchange for a good, service, or activity, or conducting a business or a portion of a business, whether for profit or on behalf of a non-profit entity, on property managed by the Board. Commercial activity does not include distributing written material that describes how to make a donation at a location that is not on property managed by the Board.
- 5. "Concession" means a contract issued by the Board for the use of ~~state~~ land managed by the Board to provide goods, services, or facilities to the public.
- 6. "Day-use area" means a space within a state park that is closed to camping ~~or overnight use~~ but open to the public during established hours.
- 7. "Director" means the Executive Director of the ~~Arizona State Parks Board~~ or a representative of the Executive Director.  
"Disorderly conduct" has the same meaning as prescribed in A.R.S. § 13-2904.
- 8. "Fee area" means a space in a state park for which ~~there is~~ a fee is charged to use, occupy, or enter ~~the space~~.
- 9. "Hook-up site" means a camping unit with a connection for water, sewer, or electricity.
- 10. "Interpretive program" means a scheduled program conducted by ~~State Park personnel~~ an employee or volunteer of the Board at a ~~State Park~~ state park, to inform, educate, or interpret resources for the public.
- 11. "Park Officer" means an employee of ~~Arizona State Parks~~ appointed by the Board who is appointed under A.R.S. § 41-511.09 as a Park Ranger Law Enforcement Officer ~~park ranger law enforcement officer~~ with the authority and power of a ~~Peace Officer~~ peace officer under A.R.S. § 41-511.09.
- 12. "Park Ranger" means an employee of the Board responsible for protecting and preserving the property at a state park and providing information services to park visitors.
- 13. "Person" means an individual, corporation, firm, partnership, club, or association.
- 14. "Recreational facility" means a ~~park area used primarily to provide recreational opportunities for the visiting public~~.  
"Service animal" has the same meaning as prescribed in A.R.S. § 11-1024.
- 15. "Special program" means an activity sponsored by the Arizona State Parks Board for the enjoyment of park visitors.
- 16. "Special use" means a ~~nonpublic activity such as a wedding, organized group meeting, jog-a-thon, or seminar, that is outside of a park's activity design or that requires exclusion of the general public from an area of a park. the following categories of use of property managed by the Board:~~
  - Private special event: A non-public use that requires exclusion of the general public;
  - Public special event: A commercial activity that is not conducted under a concession or commercial rental or retail permit;
  - Festival special event: An exhibition, performance, or competition, whether for profit or non-profit, that is open to the public and for which a special entrance fee is charged; and
  - Commercial photography use: Taking photographs for any medium or making a motion picture or video."State-park annual pass" means a document authorizing the holder to enter, remain in, and use state parks multiple times during one year, subject to some restrictions.

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17. "State Park System" or "~~State Park~~ state park" means the lands, waters, monuments, historical sites, state recreation areas, and any other areas ~~administered~~ managed by the State Parks Board.
18. "Wildlife" ~~means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans, and fish, including their eggs or spawn,~~ has the same meaning as defined prescribed in A.R.S. § 17-101(A)(21).

**R12-8-102. Permission to Enter or Remain in a State Park**

- A.** A person who enters, remains in, or uses a ~~State Park~~ state park shall comply with state law, including ~~these rules and regulations~~ this Chapter.
- B.** A person who violates ~~any state law, or rule~~ including this Chapter, while in a ~~State Park~~ state park shall leave the ~~state park premises~~ upon order of a Park Ranger or Park Officer.
- C.** ~~The violator~~ A person who leaves a state park under subsection (B) shall not ~~re-enter~~ reenter the ~~state park~~ state park for a ~~period of~~ at least 72 hours.

**R12-8-103. Vandalism**

~~It is unlawful to~~ Within a state park, a person shall not deface, injure, destroy, remove, or use, without authority, any:

1. public ~~Public~~ facility or ~~public~~ property;
2. including all wildlife ~~Wildlife, plants~~ plant, or animals, animal, or
3. archaeological ~~Archaeological, geological, or historical objects found within a state park~~ object.

**R12-8-104. Hours of Use; ~~Use~~; Closure**

- A.** Camping ~~units and undeveloped~~ areas are open to public use at all hours.
- B.** ~~Historic sites~~ Day-use areas are open to the public ~~from 8:00 a.m. to 5:00 p.m.~~ during the hours posted. ~~Day-use areas are governed by R12-8-105.~~
- ~~B-C.~~** ~~The Director or Park Manager~~ may temporarily restrict the hours of public use or close ~~any State Park~~ or all or a portion of the a state park in the interest of public safety or to protect ~~public~~ the property.
- D.** ~~The Park Manager~~ Director may modify the hours of use on a temporary basis to accommodate unusual or seasonal circumstances. ~~The Director or Park Manager~~ shall post any exception to usual hours of public use at the ~~park entrance~~ to the state park.
- C.** ~~A person shall not enter, remain in, or use any State Park in violation of the restrictions governing hours of use or an order for closure.~~

**R12-8-105. ~~Day-use Areas; Hours Repealed~~**

~~Day-use areas are open for public use from 8:00 a.m. until 10:00 p.m. The Director or Park Manager may restrict the hours of public use in the interest of public safety or to protect public property. The Park Manager may modify the hours of use to accommodate special uses or seasonal or unusual variations in public use. The Director or Park Manager shall post any exception to usual hours of public use at the park entrance.~~

**R12-8-106. Limited Services on Christmas ~~Day~~**

~~Park~~ State park facilities are not staffed on Christmas ~~Day~~ except in an emergency. ~~On that day~~ Christmas, caves, museums, contact stations, and visitor centers are closed. Other state park areas are open for public use as posted.

**R12-8-107. Litter and Waste**

- A.** Within a state park, ~~No~~ a person shall not leave or discard ~~any~~ trash, garbage, or human or animal waste ~~in a state park~~ unless the person:
1. confined ~~Confines the trash, garbage, or human or animal waste~~ in a sanitary manner; and
  2. deposited ~~Deposits the trash, garbage, or human or animal waste~~ in a ~~maintained~~ facility specifically designated to receive it.
- B.** Within a state park, a person shall not ~~It is unlawful to~~ deposit ~~in a state park~~ any trash, garbage, or human or animal waste collected from a private residence, ~~or commercial business,~~ or other place outside the state park.

**R12-8-108. Payment of Fees**

- A.** ~~A person shall not enter~~ Before entering, remain remaining in, or use using a designated fee area, a person shall:
1. without paying ~~Pay~~ the required fee,
  2. Purchase a current state-park annual pass, or
  3. obtaining ~~Obtain~~ permission from a ~~Park Ranger~~ the Director.
- B.** A fee, ~~unless exempted by an Annual Entrance or 5-Visit permit,~~ collected paid under subsection (A)(1) to enter, remain in, or use one ~~State Park~~ state park does not authorize ~~use of facilities~~ entering, remaining in, or using another ~~State Park~~ state park.

**R12-8-109. Fees and Permits**

- A.** Annual ~~Fee Review~~ fee review. The Board shall annually review and set fees for entrance, camping, and overnight parking at a state park, facilities. The fees shall be posted at each state park and ~~printed in appropriate state park literature for~~

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~~public information. Fees~~ The Board shall be based ~~base the fees~~ upon ~~an~~ analysis of the following criteria:

- ~~1. Fee and permit charges by of state park agencies of in the 11 western states, and~~
- ~~2. Fee and permit charges of entities with similar facilities within Arizona,~~
- ~~2-3. Arizona State Parks operational Operational and developmental costs of the Board,~~
- ~~3-4. Public demand for services, and~~
- ~~4-5. Impacts Public-use impacts upon park resources.~~

**B.** ~~The Board shall ensure that fees for entrance, camping, and overnight parking are posted at each state park and printed in state-park literature intended for public information.~~

~~B.C. Entrances fees/permits Fee schedule.~~ Entrance, camping, and overnight parking fees for each state park ~~can be found are listed~~ in Exhibit A. A fee will not be charged for private vehicles or individuals requesting a 15 minute or less preview of a recreation park.

~~C.D. Special Use Fees use fees.~~ The Director ~~may shall~~ negotiate a specific fee for a special uses ~~use.~~ The range for noncommercial and commercial uses at state park facilities shall be the fee charged unless if the Executive Director determines that an increase a fee greater than the fee listed in Exhibit A is justified based upon analysis of the following criteria:

- ~~1. Park Board expenses resulting from the special use,~~
- ~~2. Loss of revenue resulting from the special use,~~
- ~~3. Impacts upon park resources and visitors as a result of the special use, or and~~
- ~~4. The goodwill produced by for sponsors of the special use informing or educating the public.~~

~~D.E. Special interpretive Interpretive program fees.~~ A ~~The Director may establish a special interpretive fee for events sponsored by state parks may be assessed or waive the usual state park fees entrance fee during the event may be waived an interpretive program.~~ If assessed, this fee shall be established by the ~~The Executive Director shall determine whether to assess a special fee or waive the usual state park entrance fee for an interpretive program using according to the criteria specified in subsection (C) (D). Special~~ If the Director establishes a special interpretive fees fee for an interpretive program, the Director shall ~~be established ensure that the special fee is posted and printed in state-park literature in advance of the event and posted as stated in this rule interpretive program.~~

~~E.F. Commercial Vehicle Access Permit (CVAP) permit.~~ A ~~will be required by any person that enters intends to enter a state park to conduct any portion of a business that is not covered by a concession agreement or special use permit shall obtain either a commercial retail or commercial rental permit from the Board before entering the state park. Permits will be issued either as Rental Businesses or Retail Businesses. A commercial permit authorizes one commercial vehicle carrying no more than four individuals to enter the state park for which the commercial permit is issued.~~

**R12-8-110. Fee Waivers**

**A.** ~~The Park Manager Director, or an official designee of the Park Manager, is authorized to grant waivers of may waive the entrance fee listed in Exhibit A to educational and handicapped for the following groups, in accordance with the following guidelines: If the Director does not waive the entrance fee, members of the group shall pay the entrance fee listed in Exhibit A:~~

- ~~1. Subject to the discretion of the Park manager, fees for preschools A preschool and accredited or K-12 school groups may be waived. Program fees for large groups that are scheduled for special interpretive programs, ranger led hikes, or tours of the park will be charged (refer to Exhibit A, 1998 Regular Fee Schedule for specific rates) when a waiver is not granted. group and accompanying chaperons;~~
- ~~2. Professional groups shall be A group of professional individuals participating in a parks and recreation, or historic, and or interpretive seminar; or conference tour; and~~
- ~~3. Handicapped groups shall be A group of disabled individuals affiliated with organizations an organization or agencies agency established for their to care for, rehabilitation, training rehabilitate, train, or service serve the disabled individuals. For the purpose of this rule subsection, handicapped is defined as disabled means blind and or visually impaired, deaf and or hard of hearing, mobility impaired, or developmentally disabled impaired.~~

**B.** ~~Persons serving in An individual who serves as a volunteer capacity with and has a signed volunteer agreement with the Arizona State Parks Board are is exempt from all entrance fees listed in Exhibit A.~~

**C.** ~~No fees shall be charged on Christmas Day.~~

~~D.C.~~ The Director ~~or the Director's designee may modify any and all rates fee prescribed in under R12-8-109 and R12-8-110 to include discounts, promotional rates, and other modifications to grant a discount or promotional rate.~~

**R12-8-111. Camping**

**A.** ~~Camping is permitted only in a designated camping unit, and is subject to the following conditions:~~

**B.** ~~Except when camping at a Board-approved concession area within a state park, a person using a camping unit shall not:~~

- ~~1. A person shall not camp Camp in a State Park state park for more than 15 days within a 30-day period unless authorized by the Park Manager. Director;~~
- ~~2. A person may camp Camp in a state park for an additional 14 more than 29 days within a 45-day period during a that is posted, designated as a long-term stay period unless authorized by the Director; This limitation does not apply to a Board-approved concession area within the park system. The long-term stay provision does not apply to a visitor~~

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~~using a camping unit as a principal place of residence while employed in the area.~~

~~2.3. A person shall not leave~~ Leave an occupied camping unit unattended overnight without written permission from a ~~Park Ranger, the Director, or~~

~~3.4. A person shall ensure that~~ Allow the number of persons occupying a camping unit ~~and~~ or the number of vehicles in the camping unit ~~do not to~~ exceed the limits posted at the ~~area~~ entrance to the state park or camping unit.

~~B.C.~~ A camping unit is considered occupied after the ~~appropriate~~ use fee is paid and the camper establishes a conspicuous presence. A person shall not occupy a camping unit in violation of instructions from a ~~Park Ranger~~ the Director or if there is reason to believe that the camping unit is occupied by another camper.

~~C.D.~~ A Park Ranger ~~may~~ shall allow the occupants of a single vehicle to register for more than one camping unit only if the number of occupants exceeds the posted occupancy limit for the camping unit.

~~D.E.~~ A person shall pay the fee for a permit to use of a camping unit on a per-day basis. Payment authorizes use of the ~~facility~~ camping unit until 2:00 p.m. on the day the permit expires.

~~E.F.~~ A person shall remove all personal property from a camping unit by 2:00 p.m. on the day ~~of that a permit expiration~~ expires or purchase an additional permit if eligible under subsection (B).

**R12-8-112. Campfires**

~~A. An~~ A person shall ignite an outdoor fire ~~may be ignited~~ only in a ~~designated~~ camping unit or day-use area specifically designated for an outdoor fire.

~~B.~~ A person who ignites an outdoor fire shall ensure that a the fire is confined to a ~~designated~~ grill, a fire ring, or other facility provided by the state park.

~~B.C.~~ A person shall not ignite or maintain a fire when a high wind is blowing or when open burning is prohibited by order of ~~any Park Ranger~~ the Director.

~~C.D.~~ A responsible person who ignites an outdoor fire shall ensure that the fire is ~~attend~~ attended and ~~control~~ controlled ~~any fire~~ at all times.

**R12-8-113. Vehicles, Speed Limits, and Parking**

~~A. A~~ The operator of a motor vehicle within a state park shall ~~be driven~~ drive the motor vehicle only on a maintained ~~roadways and roadway~~ parking areas area, and in areas or other area designated by signs for motor vehicle use.

~~B. The operation~~ The operator of a motor vehicle within a state park is governed by the provisions of the Uniform Act Regulating Traffic on Highways, A.R.S. Title 28. A person shall comply with all state law regarding operation of a motor vehicle and shall not drive the motor vehicle at a speed greater than is reasonable and prudent under the circumstances and conditions or in excess of a posted limits limit.

~~C. Motor vehicle operators~~ The operator of a motor vehicle within a state park shall not park or leave the motor vehicles vehicle unattended except in a designated parking area or parking zone. ~~A Park Ranger~~ The Director may remove an unattended motor vehicle that is illegally parked or ~~illegally~~ left standing upon ~~any a~~ roadway or in a park area and in a manner that may obstruct traffic or impair the normal activities of the state park.

**R12-8-114. Watercraft; Launching and Mooring**

~~It is unlawful to~~ A person shall not moor or launch a watercraft from ~~the a~~ shore within a state park ~~after such action has been prohibited by~~ if the Director has determined that it is in the best interest of the state park to prohibit mooring or launching of watercraft and has posted ~~and~~ notice of the ~~restriction is posted at the location where the prohibition applies at the shore.~~

**R12-8-115. Pets**

~~A. A~~ Except as provided in subsection (B), a person shall keep a dog, cat, or other pet on a leash that does not exceed ~~6~~ six feet in length or otherwise ~~restrained~~ restrain the animal while in a ~~State Park~~ state park.

~~B.~~ The restraint requirement in subsection (A) does not apply to a dog in an area open to hunting or field trials, ~~and if the dog is~~ participating in these activities.

~~C.~~ A person shall not take ~~any a~~ pet into a state park building, cabana site, developed beach, or other area that the Director has ~~been determined to be~~ is environmentally or ecologically sensitive. This restriction does not apply to a ~~certified assist~~ service animal.

**R12-8-116. Glass Containers**

A person shall not possess ~~a~~ glass or ceramic ~~containers of any type~~ container in a ~~State Park~~ state park area that is designated as a public beach or swimming area, or ~~other~~ posted area "No Glass Containers."

**R12-8-119. Weapons**

~~A.~~ The following definitions apply ~~under~~ to this rule Section:

1. "Improved recreation area" means ~~all a~~ camping units unit, campground roads roadway, amphitheaters amphitheater, boat launching ramps ramp, developed picnic areas area, developed swimming beaches beach, and any other area ~~which has been~~ within a state park that is designated by the ~~director~~ Director and reserved for an assembly or other temporary gathering of persons.

2. "Prohibited weapon" means a firearm as defined by A.R.S. § 13-3101(4), including a BB gun, or pellet gun, bow, or

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slingshot.

- B. ~~Peace officers and~~ A peace officer or private security guards guard employed by the holder of a park concessioner are ~~concession is~~ authorized to carry a firearms firearm in a state park if:
1. The peace officer is certified under state law, or
  2. The holder of the park concession complies with A.R.S. § 32-2606(3) regarding private security guards.
- C. ~~No unauthorized~~ Unless authorized under subsection (B), a person may shall not enter or remain in a ~~park building or an~~ improved recreation area while carrying a prohibited weapon ~~on his person~~ after a reasonable request from a park ranger to remove it. A ~~reasonable~~ request to remove a prohibited weapon is reasonable if a park ranger believes that ~~one made~~ under circumstances where the person or persons carrying the a prohibited weapon or weapons poses a danger or threat to others lawfully present. If, after a reasonable request is made, a person carrying a prohibited weapon within a ~~park building or an~~ improved recreation area chooses to remain in the ~~building or improved recreation~~ area, ~~that the person shall~~ place the weapon in the custody of a park ranger ~~upon demand~~ until the person ~~abandons~~ leaves the ~~building or restricted~~ improved recreation area.
- C. ~~Firearms~~ A firearm may be transported or stored in a vehicle on any state park area as allowed by A.R.S. § 13-3102(F).
- D. ~~Licensed hunters~~ A hunter who holds a current license issued by the Arizona Game and Fish Department may carry a lawfully hunting ~~weapons~~ weapon in any state park area ~~where they may be used to take wildlife designated for hunting and may carry such weapons~~ the hunting weapon through an improved recreation ~~the state park area in order to hunt~~ reach the state park area designated for hunting.

**R12-8-120. Fireworks and Explosives**

~~No~~ A person shall not discharge fireworks or any other explosive device within a state park without first obtaining a special permit from the ~~park manager~~ Director a special use permit that authorizes the discharge of fireworks or any other explosive device.

**R12-8-122. Commercial Use of a State Park**

- A. ~~The unauthorized use of any state park for commercial purposes is prohibited. No person may solicit funds, offer to sell any goods or services or otherwise advertise or conduct a business or any portion of a business in a state park without permission from the Director. A person shall not engage in a commercial activity within a state park unless the commercial activity is authorized by:~~
1. A special use permit issued under R12-8-125,
  2. A concession, or
  3. A commercial rental or retail permit.
- B. ~~This rule shall not prohibit the entry onto~~ Subsection (A) does not apply to an individual who enters a state park ~~of in~~ a commercially marked vehicle if the individual intends to for the purpose of recreation, provide service to a park concessioner ~~the holder of a special use permit, concession, or commercial rental or retail permit, or in response~~ respond to an emergency.

**R12-8-124. Disorderly Conduct**

- ~~A. Disorderly~~ A person shall not engage in disorderly conduct is prohibited within a state park.
- ~~B. No person~~ Within a state park, a person shall, with knowledge that he is disturbing ~~not knowingly disturb~~ the peace of an area or ~~person~~ another person, make unreasonable noise, engage in violent behavior, use provocative language or gestures, or recklessly handle, display, or discharge a firearm or deadly weapon or dangerous instrument.
- C. ~~The~~ A person shall not use of a loudspeaker is prohibited in a state park without first obtaining a permit from the Director ~~or a Park Manager~~ a special use permit that authorizes the use of a loudspeaker.

**R12-8-125. Special Use Permits**

- A. ~~A Special use permit required. Within a state park, a person who requires special use of a State Park, such as an organized sporting event, pageant, or assembly, shall obtain a special use permit.~~ shall obtain a special use permit from the Board before:
1. Engaging in an activity that is prohibited by this Chapter without a permit;
  2. Excluding the general public from an area or facility within the state park;
  3. Engaging in a commercial activity not covered by a concession or commercial rental or retail permit;
  4. Engaging in a spectator event designed to attract a large crowd;
  5. Engaging in an activity that requires a permit from another entity such as the Coast Guard, Arizona Game and Fish Department, or a city, county, or municipality;
  6. Engaging in an activity that requires a reservation outside an area designated for use by reservation; or
  7. Using a state park area for a purpose different from that for which the area is designated.
- B. ~~The Director may reserve a portion of a State Park fee area for approved special use. A special use permit application shall be submitted at least 15 days in advance, and it shall include relevant information to establish that the proposed special use will not constitute a threat to public safety or unduly inconvenience normal park activities. Applications for special use permits are available from each of the Arizona State Parks. General terms and conditions. The Board shall issue a spe-~~

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cial use permit only subject to the following general terms and conditions:

1. An application for the special use permit is submitted less than one year before the planned special use;
  2. The special use permit may be revoked if the Board determines that the permit holder fails to comply with state park statutes, this Chapter, and all Board policies that are terms of the special use permit;
  3. The special use permit does not conflict with a concession without written approval from the concession holder;
  4. The special use permit is issued to the first person that applies for a special use permit for a particular day at a particular location;
  5. The special use permit is issued only after the applicant complies with any indemnity and insurance requirements that the Board determines are necessary to protect the state;
  6. The special use permit is issued only after the applicant pays required fees or obtains a fee waiver under R12-8-110;
  7. The special use does not conflict with the Board's management goals for the state park; and
  8. The special use does not create a safety hazard to participants, spectators, or the general public.
- C. The Director may impose conditions on the conduct of any special use to protect the area and maintain its availability as a State Park. The Director may require that a sponsor post a deposit for damage and clean-up expenses, carry special insurance, and provide adequate medical, sanitary, and security services. If the special use is staged for profit, the Director may require the sponsor to enter into an agreement with the Board for a negotiated percentage of gross receipts or a flat fee. Private special event. The Board shall issue a special use permit for a private special event only subject to the following specific terms and conditions:
1. The person requesting a special use permit for a private special event requests the special use permit for no more than seven consecutive days of use and no more than 14 days of use in a calendar year;
  2. The private special event does not significantly interfere with the public's use of the state park; and
  3. The person holding a special use permit for a private special event does not engage in commercial activity within a state park.
- D. A decision by the Director concerning any special use may be appealed to the Parks Board. Public special event. The Board shall issue a special use permit for a public special event only subject to the following specific terms and conditions:
1. The person requesting a special use permit for a public special event requests the special use permit for no more than four consecutive days of use in a calendar quarter and no more than 16 days of use in a calendar year at a particular state park; and
  2. No more than two special use permits for a public special event are issued per day per state park.
- E. Festival special event. The Board shall issue a special use permit for a festival special event only subject to the following specific terms and conditions:
1. The person requesting a special use permit for a festival special event requests the special use permit at least 120 days before the festival special event if no more than 1,500 people are expected to attend each day of the festival special event or at least 180 days before the festival special event if more than 1,500 people are expected to attend each day;
  2. The person requesting a special use permit for a festival special event requests no more than seven consecutive days of use and no more than 14 days of use in a calendar year at a particular state park;
  3. No more than one special use permit for a festival special event is issued per day per state park;
  4. The person requesting a special use permit for a festival special event provides to the Board a detailed plan regarding security, sanitary facilities, medical services, parking, food and drink facilities, booths, and sponsorships at least 90 days before the festival special event; and
  5. The person requesting a special use permit for a festival special event obtains all permits required by other entities such as a city, county, municipality, or agency and submits a copy of all permits to the Board at least 30 days before the festival special event.
- F. Commercial photography special use. The Board shall issue a special use permit for commercial photography only subject to the following specific terms and conditions:
1. The person requesting a special use permit for commercial photography requests the special use permit at least 30 days before the commercial photography event;
  2. The person requesting a special use permit for commercial photography requests no more than seven consecutive days of use and no more than 14 days of use in a calendar year at a particular state park; and
  3. The person holding a commercial photography special use permit does not engage in commercial activity within a state park.

**R12-8-126. ~~Penalty for Regulation Violation; Classification~~**

~~A person Under A.R.S. § 41-511.13, an individual who violates a State Parks Board Regulation provision of this Chapter commits a Class class 2 Misdemeanor misdemeanor. See A.R.S. § 41-511.13.~~

**ARTICLE 3. STATE HISTORIC PRESERVATION OFFICE PROGRAMS**

**R12-8-301. Definitions**

In this Article, unless the context otherwise requires:

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1. "State Historic Preservation Officer" or "Officer" means an employee of the Board ~~with~~ who has professional competence and expertise in the field of historic preservation ~~who and~~ administers the State Historic Preservation Program.
2. "Arizona Register of Historic Places," "Arizona Register," or "Register" ~~is~~ means the state's list of Arizona's historic properties worthy of preservation ~~and that~~ serves as an official record of Arizona's historic districts, sites, buildings, structures, and objects of national, state, or local significance in the fields of history, architecture, archaeology, engineering, or culture. Properties listed on or eligible for the Arizona Register of Historic Places may also be eligible for listing on the National Register of Historic Places.
3. "National Register of Historic Places" means the ~~Nation's~~ official national list of historic districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, or culture. ~~Listing on the National Register of Historic Places is required to qualify for state tax incentives.~~
4. "Historic Sites Review Committee" or "HSRC" means a standing committee of the Arizona Historical Advisory Commission, which is appointed by the State Historic Preservation Officer under A.R.S. § 41-1352 to review nominations ~~to of properties for listing on the registers~~ National or Arizona Register of Historic Places.
5. "Historic ~~Property~~ property" means a building, site, district, object, or structure evaluated by the HSRC as historically significant.
6. "State Historic Preservation Office" or "SHPO" means the program staff that work under the supervision of the Officer.

**R12-8-305. Application for Verification of Eligibility for Property Tax Reclassification**

- A. ~~The Board shall approve the content and format of the Verification of Eligibility form for use in certifying the eligibility of A person that seeks to have a property for classification reclassified for property tax purposes as either a Commercial or Non-Commercial Non-commercial Historic Property shall submit a verification of eligibility form. The person seeking reclassification may obtain the verification of eligibility form from the SHPO or. An application form may be obtained from the County Assessor's Office in the county where the property is located and shall submit the completed form to the Assessor's Office in the county where the property is located.~~
- B. ~~For A person that seeks to have a property reclassified for property tax purposes as either a Commercial or Non-Commercial Non-commercial Historic Property, an application containing the following information shall be submitted to the County Assessor in the county in which the property is located shall ensure that the verification of eligibility form provides the following information:~~
  1. Address of the property,
  2. Legal description of the property,
  3. Property classification,
  4. Name of owner,
  5. Historic property name as listed on the National Register of Historic Places,
  6. Date of original construction,
  7. Description of any exterior changes to the building property since being the property was listed on the National Register of Historic Places,
  8. Pictures Photographs of the historic property that meet the specifications of the Board, and
  9. The owner's written consent for ~~the viewing of the property by the Officer or the Officer's representative to view the property.~~
- C. ~~For Commercial Historic Property, an application containing the following information shall be submitted to the County Assessor in the county in which the property is located:~~
  1. ~~Address of the property,~~
  2. ~~Legal description of the property,~~
  3. ~~Property classification,~~
  4. ~~Name of owner,~~
  5. ~~Historic property name as listed on the National Register of Historic Places,~~
  6. ~~Date of original construction,~~
  7. ~~Description of any exterior changes to the property since being listed on the National Register of Historic Places,~~
  8. ~~Pictures of the historic property that must meet the specifications approved by the State Parks Board. Specifications are available to the public by contacting the State Historic Preservation Office, and~~
  9. ~~The owner's written consent for the viewing of the property by the Officer or the Officer's representative.~~In addition to complying with subsection (B), a person that seeks to have a property reclassified as a Commercial Historic Property shall submit with the verification of eligibility form rehabilitation construction documents including plans and specifications.
- D. ~~Upon Following the assessor's verification review of the application verification of eligibility form and any documents required under subsection (C), the assessor shall submit the application verification of eligibility form and documents to the Officer for verification of eligibility for reclassification.~~
- E. ~~An applicant for Commercial Historic Property shall submit rehabilitation construction documents including plans and specifications to the County Assessor's Office in the county where the property is listed.~~

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- ~~F. If a Historic Property Inventory Form for the property is not already on file with the State Historic Preservation Office, the applicant for Commercial Historic Property reclassification shall complete the Inventory Form and submit it along with the rehabilitation construction documents to the Officer. The Inventory Form is referenced in R12-8-303.~~

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 7. DEPARTMENT OF REVENUE  
BINGO SECTION

[R07-73]

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| Article 6                   | Repeal                   |
| R15-7-602                   | Repeal                   |
| R15-7-603                   | Repeal                   |
| R15-7-604                   | Repeal                   |
| R15-7-606                   | Repeal                   |
| R15-7-608                   | Repeal                   |
| R15-7-621                   | Repeal                   |
| R15-7-622                   | Repeal                   |
- 2. The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statutes: A.R.S. § 5-402; A.R.S. § 42-1005  
Implementing statutes: A.R.S. § 5-402; A.R.S. § 41-1092.02
- 3. The effective date of the rules:**  
May 5, 2007
- 4. A list of all previous notices appearing in the Register addressing the final rules:**  
Notice of Rulemaking Docket Opening: 12 A.A.R. 4108, November 3, 2006  
Notice of Proposed Rulemaking: 12 A.A.R. 4059, November 3, 2006
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Dan Jensen, Tax Analyst  
Address: Tax Policy and Research Division  
Arizona Department of Revenue  
1600 W. Monroe, Rm. 810  
Phoenix, AZ 85007  
Telephone: (602) 716-6377  
Fax: (602) 716-7995  
E-mail: DJensen@azdor.gov  
Please visit the ADOR web site to track the progress of these rules and other agency rulemaking matters at [www.azdor.gov/ResearchStats/draftdocuments.htm](http://www.azdor.gov/ResearchStats/draftdocuments.htm).
- 6. An explanation of the rules, including the agency's reasons for initiating the rules:**  
The following rulemaking is pursuant to changes recommended in the latest five-year review report of the rules in Chapter 7 of Title 15 applicable to games of bingo. That review recommended that the following rules be amended because legislative changes now place bingo hearing under the direction of the Office of Administrative Hearings. After reviewing all applicable statutes and rules, the Department has determined that there is no need at this time to have separate hearing and appeal procedure rules for games of bingo. The Office of Administrative Hearings already has in place rules governing hearing and appeal procedures. Therefore, the Department is repealing these rules.
- 7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the final rules and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**  
The Department did not review any study relevant to the rules.

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

Not applicable

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

There should be little to no economic impact associated with repealing these rules. Neither the Department nor the Office of Administrative Hearings has had a bingo hearing in over 15 years. Bingo licensees who may request a hearing in the future will benefit from one clear set of rules governing bingo hearings and appeal procedures, instead of looking at multiple sets of rules on the subject from two different administrative agencies. The Department may experience cost savings due to this increased clarification. This rulemaking is unlikely to cause an increase in bingo hearings or appeals.

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

Only minor technical changes were made to the rules at the request of the Governor's Regulatory Review Council staff.

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

None

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

None

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

None

**14. Were these rules previously adopted as an emergency rules?**

No

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

TITLE 15. REVENUE

CHAPTER 7. DEPARTMENT OF REVENUE  
BINGO SECTION

**ARTICLE 6. HEARING AND APPEAL PROCEDURES REPEALED**

Section

- R15-7-602. ~~Proper Parties~~ Repealed
- R15-7-603. ~~Form of Objection~~ Repealed
- R15-7-604. ~~Manner of Filing~~ Repealed
- R15-7-606. ~~Supplementation of Petition~~ Repealed
- R15-7-608. ~~Withdrawal of Petition~~ Repealed
- R15-7-621. ~~Objections to Proposed Decision or Order of Hearing Officer; Request for Rehearing~~ Repealed
- R15-7-622. ~~Appeal to Superior Court~~ Repealed

**ARTICLE 6. HEARING AND APPEAL PROCEDURES REPEALED**

**R15-7-602. ~~Proper Parties~~ Repealed**

The licensing authority and the licensee shall be the parties to any hearing involving bingo licensing, license suspension, or license revocation. The manager, if any, shall represent the licensee at all hearings.

**R15-7-603. ~~Form of Objection~~ Repealed**

All objections to the licensing authority's actions or proposed actions shall be by petition. The petition shall be legible and state the following information:

1. The name, address, and phone number of the licensee and the licensee's manager;
2. A description of the action by, and a copy of the notice from, the licensing authority, if any;
3. Statement of errors alleged with particularity to have been committed by the licensing authority in the determination of the action;
4. Statement of facts upon which licensee relies to support the assignment of errors alleged to have been committed by the licensing authority;
5. Relief sought; and
6. Whether an oral hearing is requested.

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**R15-7-604. ~~Manner of Filing~~ Repealed**

- A.** A petition filed in opposition to an action or a proposed action by the licensing authority and any supporting memoranda shall be filed in duplicate with the licensing authority's Hearing Office in Phoenix, Arizona.
- B.** No fee shall be charged for the filing of any petition or supporting memoranda.
- C.** Upon receipt of a petition, the licensing authority's Hearing Office shall record the filing of the petition in the docket book and assign a case number. A copy of the petition and any supporting memoranda shall then be transmitted to the licensing authority.
- D.** A fee will not be charged for the filing of any document.

**R15-7-606. ~~Supplementation of Petition~~ Repealed**

If a petition is timely filed but incomplete, the Hearing Officer may grant the licensee an additional period of time, not to exceed 15 days, within which to supplement the petition. A supplement to the petition shall be excluded if it is not filed within the additional time period which was granted.

**R15-7-608. ~~Withdrawal of Petition~~ Repealed**

- A.** Prior to the issuance of a final decision by the Department, the petition may be withdrawn at the written request of the licensee.
- B.** When the petition is withdrawn, the licensing authority's action or proposed action shall be deemed final and shall not be subject to any further review.

**R15-7-621. ~~Objections to Proposed Decision or Order of Hearing Officer; Request for Rehearing~~ Repealed**

- A.** The licensing authority or the licensee may file objections to the proposed decision or order of the Hearing Officer in the form of a petition setting forth the specific reasons for the objections, within 15 days after the objecting party receives notice of the proposed decision or order. Either party may request a rehearing at the time it files its objections to the proposed decision or order.
- B.** At the expiration of the 15-day petitioning period, or after the rehearing if the request for rehearing is granted, the proposed decision or order of the Hearing Officer shall be forwarded to the Director of the Department, together with all petitions filed in opposition to the proposed decision or order.
- C.** The Director of the Department may adopt the proposed decision or order of the Hearing Officer as the Final Order of the Department or may prepare a Director's decision.
- D.** If the Director of the Department adopts the proposed decision or order of the Hearing Officer, it shall be issued as the Final Order of the Department.
- E.** If the Director of the Department prepares a Director's decision, it shall be issued as the Final Order of the Department.

**R15-7-622. ~~Appeal to Superior Court~~ Repealed**

The licensee may appeal to the superior court a Final Order of the Department, only after exhaustion of all administrative remedies, under the provisions of A.R.S. Title 12, Chapter 7, Article 6.

**NOTICE OF FINAL RULEMAKING**

**TITLE 17. TRANSPORTATION**

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

[R07-77]

**PREAMBLE**

**1. Sections Affected**

R17-4-501  
R17-4-502  
Exhibit A.  
R17-4-504  
R17-4-508

**Rulemaking Action**

Amend  
Amend  
Repeal  
New Section  
Amend

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

Authorizing statute: A.R.S. § 28-366  
Implementing statute: A.R.S. § 28-3167

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**3. The effective date of the rules:**

May 5, 2007

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 3244, September 8, 2006

Notice of Proposed Rulemaking: 12 A.A.R. 3974, October 27, 2006

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

Name: Celeste M. Cook, Administrative Rules Analyst

Address: Administrative Rules Unit  
Department of Transportation, Motor Vehicle Division  
1801 W. Jefferson St., Mail Drop 530M  
Phoenix, AZ 85007

Telephone: (602) 712-7624

Fax: (602) 712-3081

E-mail: ccook@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at <http://mvd.azdot.gov/mvd/MVDRules/rules.asp>.

**6. An explanation of the rule, including the agency's reason for initiating the rules:**

The Arizona Department of Transportation, Motor Vehicle Division, proposes to amend the existing rules to update related citations, reflect modernization in rule drafting style, condense the medical questionnaire language and repeal Exhibit A. Medical Screening Questions and Certification. Changes are also made to ensure conformity to Arizona Administrative Procedure Act, the Secretary of State, and the Governor's Regulatory Review Council rulemaking format and style requirements.

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

None

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

Not applicable

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

The economic, small business, and consumer impact of these rules will be minimal because the rules simply condense the three medical questions into two medical questions and repeals Exhibit A. Medical Screening Questions and Certification.

The Division impact of these rules is minimal. The costs incurred by the Division are the costs of rulemaking and forms design as the medical questions are printed on the application for a driver license.

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

None

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

Not applicable

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

Not applicable

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

Not applicable

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

No

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

TITLE 17. TRANSPORTATION

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

ARTICLE 5. SAFETY

Section

- R17-4-501. Definitions
- R17-4-502. General Provisions for Visual, Physical, and Psychological Ability to Operate a Motor Vehicle Safely
- Exhibit A. ~~Medical Screening Questions and Certification~~ Repealed
- R17-4-504. ~~Repealed~~ Medical Alert Conditions
- R17-4-508. Commercial Driver License “CDL” Physical Qualifications

ARTICLE 5. SAFETY

**R17-4-501. Definitions**

~~The following definitions apply to this Article unless otherwise specified~~ In addition to the definitions in A.R.S. §§ 28-101 and 28-3001, in this Article, unless otherwise specified:

- ~~1-~~ “Adaptation” means a modification of or addition to the standard operating controls or equipment of a motor vehicle.
- ~~2-~~ “Applicant” or “licensee” means a person:
  - ~~a-~~ Applying for an Arizona driver license or driver license renewal, or
  - ~~b-~~ Required by the Division to complete an examination successfully or to obtain an evaluation.
- ~~3-~~ “Application” means the Division form required to be completed by or for an applicant for a driver license or driver license renewal.
- ~~4-~~ “Arizona Driver License Manual” or “manual” means the reference booklet for applicants, issued by the Division, containing non-technical explanations of the Arizona motor vehicle laws.
- ~~5-~~ “Aura” means a sensation experienced before the onset of a neurological disorder.
- ~~6-~~ “Certified substance abuse counselor” is defined in A.R.S. § 28-3005(C)(4).
- ~~7-~~ “Commercial Driver License physical qualifications” or ~~“CDL physical qualifications”~~ means driver medical qualification standards for a person licensed in class A, B, or C to operate a commercial vehicle as prescribed under 49 CFR 391, incorporated by reference under R17-5-202 and R17-5-204.
- ~~8-~~ “Director” means the Division Director or the Division Director’s designee.
- ~~9-~~ “Disqualifying medical condition” means a visual, physical, or psychological condition, including substance abuse, that impairs functional ability.
- ~~10-~~ “Division” means the Arizona Department of Transportation, Motor Vehicle Division.
- ~~11-~~ “Driver license” is defined in A.R.S. § 28-101(19).
- ~~12-~~ “Evaluation” means a medical assessment of an applicant or licensee by a specialist as defined ~~under subsection (22) below~~ to determine whether a disqualifying medical condition exists.
- ~~13-~~ “Examination” means testing or evaluating an applicant’s or licensee’s:
  - ~~a-~~ Ability to read and understand official traffic control devices,
  - ~~b-~~ Knowledge of safe driving practices and the traffic laws of this state, and
  - ~~e-~~ Functional ability.
- ~~14-~~ “Functional ability” means the ability to operate safely a motor vehicle of the type permitted by an Arizona driver license class or endorsement.
- ~~15-~~ “Identification number” means a distinguishing number assigned by the Division to a person for a license or instruction permit.
- ~~16-~~ “Licensee” means a person issued a driver license by this state.
- ~~17-~~ “Licensing action” means an action by the Division to:
  - ~~a-~~ Issue, deny, suspend, revoke, cancel, or restrict a driver license; or
  - ~~b-~~ Require an examination or evaluation of an applicant or licensee.“Medical code” means a system of numerals or letters indicating the licensee suffers from some type of adverse medical condition.
- ~~18-~~ “Medical screening questions and certification” means the questions and certification on the application, as shown in Exhibit A following R17-4-502.
- ~~19-~~ “Neurological disorder” means a malfunction or disease of the nervous system.
- ~~20-~~ “Physician” means a person licensed to practice medicine or osteopathy in any state, territory, or possession of the United States or the Commonwealth of Puerto Rico has the same meaning as prescribed under A.R.S. § 28-3005.
- ~~21-~~ “Seizure” means a neurological disorder characterized by a sudden alteration in consciousness, sensation, motor control, or behavior, due to an abnormal electrical discharge in the brain.
- ~~22-~~ “Specialist” means:
  - ~~a-~~ A physician who is a surgeon or a psychiatrist;
  - ~~b-~~ A physician whose practice is limited to A physician whose practice is limited to a particular anatomical or physiological area or function of the human body, patients with a specific age range; or

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- i. ~~A particular anatomical or physiological area or function of the human body, or~~
  - ii. ~~Patients within a specific age range; or~~
  - e. A psychologist.
23. "Substance abuse" means:
- a. Use of alcohol in a manner that makes the user an alcoholic as defined in A.R.S. § 36-2021(4), or
  - b. ~~Drug dependency as described in A.R.S. § 36-2501(A)(5)~~ Use of controlled substance in a manner that makes the user a drug dependent person as defined in A.R.S. § 36-2501.
- "Substance abuse counselor" is defined in A.R.S. § 28-3005.
24. "Substance abuse evaluation" means an assessment by a physician, specialist, or certified substance abuse counselor to determine whether the use of alcohol or a drug impairs functional ability.
25. "Successful completion of an examination" means an applicant or licensee:
- a. Establishes the visual, physical, and psychological ability to operate a motor vehicle safely, or
  - b. ~~Achieves a score of at least 80 percent on a written test and road test~~ % on any required tests.

**R17-4-502. General Provisions for Visual, Physical, and Psychological Ability to Operate a Motor Vehicle Safely**

- A. Applicant's or licensee's responsibility. To comply with the Division's screening process for safe operation of a motor vehicle, an applicant or licensee shall:
1. Provide the Division with all requested information about the applicant's or licensee's visual, physical, or psychological condition;
  2. Successfully complete all required examinations;
  3. Obtain all required evaluations;
  4. Ensure timely submission of evaluation reports to the Division; and
  5. Appear at all required interviews.
- B. Screening process for safe operation of a motor vehicle. This subsection and subsections (C) through subsection (E) state the screening process for safe operation of a motor vehicle.
1. An applicant shall complete the application, including the medical screening questions and certification.
  2. An applicant without a valid driver license, who successfully completes all required examinations, shall obtain an evaluation if:
    - a. The Division informs the applicant that the applicant's responses to the medical screening questions indicate the existence of a disqualifying medical condition; or
    - b. The applicant comes under subsection (C)(1)(a), subsection (C)(1)(c), or subsection (C)(1)(d).
  3. An applicant for license renewal shall successfully complete an examination if the applicant's responses to the medical screening questions indicate that since the applicant's last driver license renewal:
    - a. The applicant has developed a visual, physical, or psychological condition that may constitute a disqualifying medical condition; or
    - b. There has been a change in an existing visual, physical, or psychological condition that may constitute a disqualifying medical condition.
  4. As soon as an applicant's medical condition allows, the applicant shall notify the Division, in writing or by telephone, that the applicant has or may have a medical condition not previously reported to the Division that affects the applicant's functional ability.
  5. Upon receipt of the notification required under subsection (B)(4), the Division shall require the applicant to:
    - a. Complete the medical screening questions and certification on the application, and
    - b. Continue with the screening process for safe operation of a motor vehicle.
- C. Evaluation, interview, and additional evaluation. An applicant or licensee shall submit to an evaluation, attend an interview, or submit to an additional evaluation as required by the Division.
1. The Division shall require an evaluation if the Director notifies the applicant or licensee in writing that:
    - a. The applicant or licensee comes under the provisions of R17-4-503 or R17-4-506;
    - b. The applicant or licensee reports a possible disqualifying medical condition or fails to successfully complete an examination;
    - c. The applicant or licensee ~~exhibits~~ shows unexplained confusion, loss of consciousness, or incoherence that is observed by Division personnel; or
    - d. A person with direct knowledge submits to the Division written information about specific events or conduct indicating the applicant or licensee may have a disqualifying medical condition.
  2. The applicant or licensee shall have the physician, appropriate specialist, or certified substance abuse counselor who performs an evaluation submit, to the Division's Medical Review Program, an evaluation report on a ~~Division prescribed~~ form provided by the Division.
  3. If the evaluation report on the applicant or licensee is inconclusive regarding the existence of a disqualifying medical condition, the Division shall require the applicant or licensee to appear for an interview to explain information in the evaluation report.
  4. If the Division is unable to determine whether a disqualifying medical condition exists after an interview with the

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- applicant or licensee, the Division shall require an additional evaluation, performed by an appropriate specialist and reported to the Division's Medical Review Program, on a ~~Division-prescribed~~ form provided by the Division.
5. An applicant or licensee shall pay for any expense incurred by the applicant or licensee to show compliance with the visual, physical, and psychological standards for a driver license.
- D. Licensing action.** The Division shall take a licensing action after requiring an applicant or licensee to complete an examination successfully, obtain an evaluation and submit an evaluation report, or appear at an interview.
1. The Division shall deny a driver license if an applicant:
    - a. Fails to complete successfully an examination; or
    - b. Fails to:
      - i. Obtain an evaluation;
      - ii. Have a physician, appropriate specialist, or certified substance abuse counselor submit an evaluation report to the Division within 30 days after the Division notifies the applicant that an evaluation is required; or
      - iii. Appear at an interview; or
    - c. Has an evaluation report submitted that indicates a disqualifying medical condition.
  2. The Division shall summarily suspend a licensee's driver license under A.R.S. §§ 28-3306(A)(5) and 41-1064(C) for a reason stated in subsection (D)(1).
  3. The Division shall issue a revocation notice with a notice of summary suspension. The revocation notice shall inform the licensee that:
    - a. Unless the Division receives the licensee's timely hearing request under subsection (F), the revocation becomes effective:
      - i. Fifteen days after the date the licensee is personally served with the notice; or
      - ii. Twenty days after the date the notice is mailed to the licensee.
    - b. A person who wishes to obtain a license after suspension or revocation shall reapply for a license as follows:
      - i. ~~After suspension as specified in A.R.S. § 28-3315(H), or~~
      - ii. ~~After revocation as specified in A.R.S. § 28-3315(B).~~
  4. The Division shall issue a driver license to an applicant or shall not suspend or revoke a licensee's driver license if:
    - a. The applicant or licensee successfully completes all required examinations and the Division does not require an evaluation, or
    - b. The applicant or licensee obtains all required evaluations and the most recent evaluation report submitted on behalf of the applicant or licensee conclusively indicates no disqualifying medical condition.
- E. Driver license restrictions.** If an applicant or licensee uses an adaptation, including those listed below to demonstrate functional ability during an examination, the Division shall indicate the adaptation as a restriction on a driver license issued to the applicant or licensee and on the applicant's or licensee's driving record.
1. Automatic transmission,
  2. Hand dimmer switch,
  3. Left-foot gas pedal,
  4. Parking-brake extension,
  5. Power steering,
  6. Power brakes,
  7. Six-way power seat,
  8. Right-side directional signal,
  9. A device that enables an operator to spin the steering wheel,
  10. A device that enables full foot control,
  11. Dual outside mirrors,
  12. Chest restraints,
  13. Shoulder restraints,
  14. A device that extends pedals,
  15. A device that enables full hand control, and
  16. Adapted seat.
- F. Hearings.** This subsection states the hearing procedure for licensing actions taken by the Division after the screening process for safe operation of a motor vehicle.
1. If the Division takes an adverse licensing action under this Section, an applicant or licensee may request a hearing with the Division's Executive Hearing Office. A hearing request is timely if received by the Division:
    - a. Within 15 days after the date the notice is delivered to the applicant or licensee, or
    - b. Within 20 days after the date the notice is mailed to the applicant or licensee.
  2. A.A.C. R17-1-501 through R17-1-511 and R17-1-513 govern a hearing conducted under this subsection.
  3. The administrative law judge shall sustain, modify, or void the Division's licensing action.
- G.** The Division shall not release information required to be submitted to the Division under this Section by an applicant or

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licensee except to a person or entity qualified under A.R.S. § 28-450(B) ~~28-455~~.

**Exhibit A. ~~Medical Screening Questions and Certification~~ Repealed**

**Medical Screening**

**(Driver Applicants Only)**

Yes  No Do you have an alcohol or drug dependency that may affect your ability to operate a motor vehicle safely?

If Yes:  Yes  No Have you been in recovery for one year or more?

Yes  No Do you have a court-appointed guardian because you are incapacitated?

Yes  No Do you have a medical condition (other than a condition requiring vision correction by eye-glasses or contact lenses) that may affect your ability to operate a motor vehicle safely?

If Yes, explain below.

Medical Conditions \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Certification**

All Applicants: I certify that the information above is true and correct. I understand that I must report a change of address or name to the Division within ten days.

Driver applicants: I understand the laws, rules, and regulations described in the Arizona Driver License Manual, and that I am required to report to the Division in writing, within ten days, any medical condition that develops or worsens that may affect my ability to operate a motor vehicle safely.

Applicant Signature (If under 18, Legal Guardian certificate on the back must be completed)

\_\_\_\_\_  
\_\_\_\_\_

**R17-4-504. ~~Repealed~~ Medical Alert Conditions**

- A.** Definition. In this Section, "license" means any class driver license, commercial driver license, non-operating identification license, or instruction permit.
- B.** Medical alert condition displayed on license. The Division will provide on each license a space to indicate a medical alert condition. A list of recognized medical alert conditions is available at all Motor Vehicle Division Customer Service offices and Authorized Third Party Driver License offices.
- C.** Retention of medical alert condition authorization. The Division will not maintain the medical alert code on the Division computer record unless written authorization is submitted.
- D.** A person shall submit a signed statement from a physician stating that the person is diagnosed with a medical condition. The signed statement is required every time the person requests a license unless the person authorizes the Division to maintain the medical code in the Division computer.

**R17-4-508. Commercial Driver License "CDL" Physical Qualifications**

- A.** Requirements.

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1. A ~~CDL~~ Commercial Driver License applicant shall submit to the Division a U.S. Department of Transportation medical examination form completed as prescribed under 49 CFR 391.43:
    - a. By a professional licensed to practice by the federal government, any state, or U.S. territory with one of the following credentials:
      - i. Medical Doctor,
      - ii. Doctor of Osteopathy,
      - iii. Doctor of Chiropractic,
      - iv. Nurse Practitioner, or
      - v. Physician Assistant, and
    - b. Upon the applicant's initial application and at the time of each 24-month renewal.
  2. As prescribed under 49 CFR 391.41(a), a ~~CDL~~ licensee who possesses a Commercial Driver License shall keep an original or photographic copy of the licensee's current medical examination form required under subsection (A)(1) available for law enforcement inspection upon request.
  3. A ~~CDL~~ licensee who possesses a Commercial Driver License shall notify the Division of a physical condition that develops or worsens causing noncompliance with the Commercial Driver License physical qualifications ~~within 10 days after the condition develops or worsens~~ as soon as the licensee's medical condition allows.
- B.** ~~CDL~~ Commercial Driver License suspension and revocation notification procedure. To notify a licensee of any ~~CDL~~ Commercial Driver License suspension and revocation under subsection (C), the Division shall simultaneously mail two notices within 15 days after a medical examination form's due or actual submission date to the licensee's address of record that:
1. Suspends the licensee's ~~CDL~~ Commercial Driver License beginning on the notice's date; and
  2. Revokes the licensee's ~~CDL~~ Commercial Driver License 15 days after the date of the suspension notice issued under subsection (B)(1).
- C.** Noncompliance actions.
1. Initial application denial. If an applicant's initial medical examination form required under subsection (A)(1) shows that the applicant ~~is not in compliance~~ does not comply with the ~~CDL~~ Commercial Driver License physical qualifications, the Division shall immediately mail ~~CDL~~ the Commercial Driver License denial notification to the applicant's address of record.
  2. ~~24-month renewal~~ Twenty-four month renewal suspension and revocation. If a renewing ~~CDL~~ Commercial Driver License licensee submits:
    - a. No medical examination form required under subsection (A)(1) or a form indicating noncompliance with ~~CDL~~ Commercial Driver License physical qualifications, the Division shall follow the suspension and revocation notification procedure prescribed under subsection (B).
    - b. An incomplete medical examination form required under subsection (A)(1), the Division shall immediately return the incomplete form with a letter requesting that the licensee provide missing information to the Division within 45 days after the date of the Division's letter. The Division shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return requested information in the time-frame prescribed in this subsection.
    - c. A medical examination form required under subsection (A)(1) that indicates the licensee's blood pressure is greater than 140 systolic or 90 diastolic, the Division shall mail notice to the licensee requiring three additional blood pressure evaluations:
      - i. Made on three different days,
      - ii. Performed by a qualified professional as prescribed under subsection (A)(1)(a), and
      - iii. Returned to the Division within 90 days after the Division's written notification. The Division shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return requested information prescribed under this subsection.
    - d. A medical examination form required under subsection (A)(1) that indicates the licensee's blood pressure is greater than 180 systolic or ~~104~~ 110 diastolic, the Division shall follow the suspension and revocation notification procedure prescribed under subsection (B).
- D.** A ~~CDL~~ Commercial Driver License that remains revoked for longer than 12 months expires. The holder of an expired ~~CDL~~ Commercial Driver License may obtain a new ~~CDL~~ Commercial Driver License by ~~successful~~ successfully completing all ~~CDL~~ Commercial Driver License original-application written, vision, and demonstration-skill testing and submitting the medical examination form prescribed under subsection (A)(1).
- E.** Administrative hearing. A person who is denied a ~~CDL~~ Commercial Driver License or whose ~~CDL~~ Commercial Driver License is suspended or revoked under this Section may request a hearing according to the procedure prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures prescribed under A.A.C. R17-1-501 through R17-1-511 and R17-1-513.



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ADEQ expects this rulemaking to have minimal impact upon sources applying for a Prevention of Significant Deterioration (PSD) permit. Seven such permits have been issued by the Department, but will not be impacted by this rulemaking. Three PSD permits are being processed currently, and those sources may be minimally impacted. No further impacts are expected from the change to the definition in R18-2-401(4)(c)(ii)(3).

**Rule impact reduction on small businesses.**

Because this amendment is a minor change, reconciling a discrepancy between two already existing definitions, no negative impacts to small business are expected to accrue. Therefore, ADEQ has concluded that the five methods set forth in A.R.S. § 41-1035 are neither feasible nor necessary for this proposed rulemaking.

A.R.S. § 41-1035 requires ADEQ to reduce the impact of a rule on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives (see below) for the rule making. The five listed methods are:

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
4. Establish performance standards for small businesses to replace design or operational standards in the rule.
5. Exempt small businesses from any or all requirements of the rule.

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

- 1) In response to Comment 1, "shall be presumed" has been reinserted into the definition at R18-2-401(10), and "shall be considered" has been reinserted into the rule, while "are" has been stricken, at R18-2-401(11).
- 2) Minor technical and grammatical changes to improve the rule's clarity, conciseness and understandability.

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

**Comment 1:** Commenter asserts that the change in wording in R18-2-401(10), by deleting "be presumed to," and the change in wording in R18-2-401(11) from "shall be considered" to "are" may be interpreted as increasing the stringency of the rule by removing a rebuttable presumption.

**Response:** ADEQ agrees that this change in the rule language might be so interpreted and has returned to the original wording in those definitions.

**Comment 2:** Commenter asserts that if the only change to the rule is to make the Article 4 definition the same as the Article 3 definition, they have no objection.

**Response:** ADEQ acknowledges the comment.

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

Not applicable

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

Not applicable

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

No

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

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY  
AIR POLLUTION CONTROL**

**ARTICLE 4. PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND MAJOR MODIFICATIONS TO EXISTING MAJOR SOURCES**

Section  
R18-2-401. Definitions

**ARTICLE 4. PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND MAJOR MODIFICATIONS TO EXISTING MAJOR SOURCES**

**R18-2-401. Definitions**

In addition to the definitions contained in Article 1 of this Chapter and A.R.S. § 49-401.01, the following definitions apply to this Article:

1. "Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of a Class I area, as determined according to R18-2-410.
2. "Categorical sources" means the following classes of sources:
  - a. Coal cleaning plants with thermal dryers;
  - b. Kraft pulp mills;
  - c. Portland cement plants;
  - d. Primary zinc smelters;
  - e. Iron and steel mills;
  - f. Primary aluminum ore reduction plants;
  - g. Primary copper smelters;
  - h. Municipal incinerators capable of charging more than 50 tons of refuse per day;
  - i. Hydrofluoric, sulfuric, or nitric acid plants;
  - j. Petroleum refineries;
  - k. Lime plants;
  - l. Phosphate rock processing plants;
  - m. Coke oven batteries;
  - n. Sulfur recovery plants;
  - o. Carbon black plants using the furnace process;
  - p. Primary lead smelters;
  - q. Fuel conversion plants;
  - r. Sintering plants;
  - s. Secondary metal production plants;
  - t. Chemical process plants;
  - u. Fossil-fuel boilers, combinations thereof, totaling more than 250 million Btu's per hour heat input;
  - v. Petroleum storage and transfer units with a total storage capacity more than 300,000 barrels;
  - w. Taconite preprocessing plants;
  - x. Glass fiber processing plants;
  - y. Charcoal production plants;
  - z. Fossil-fuel-fired steam electric plants and combined cycle gas turbines of more than 250 million Btu's per hour heat input.
3. "Complete" means, in reference to an application for a permit or permit revision, that the application contains all the information necessary for processing the application.
4. "Dispersion technique" means any technique that attempts to affect the concentration of a pollutant in the ambient air by any of the following:
  - a. Using that portion of a stack that exceeds good engineering practice stack height;
  - b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or
  - c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams ~~so as to increase~~ that increases the exhaust gas plume rise. This shall not include any of the following:
    - i. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.
    - ii. The merging of exhaust gas streams under any of the following conditions:
      - (1) The source owner or operator demonstrates that the facility was originally designed and constructed with the merged gas streams;
      - (2) After July 18, 1985, the merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant, applying only to the emission limitation for that pollutant; or
      - (3) Before July 8, 1985, the merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Department shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Department shall deny credit for the effects

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of the merging in calculating the allowable emissions for the source.

- iii. Smoke management in agricultural or silvicultural prescribed burning programs.
  - iv. Episodic restrictions on residential woodburning and open burning.
  - v. Techniques that increase final exhaust gas plume rise if the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.
5. "High terrain" means any area having an elevation of 900 feet or more above the base of the stack of a source.
  6. "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice, or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.
  7. "Low terrain" means any area other than high terrain.
  8. "Lowest achievable emission rate" (LAER) means, for any source, the more stringent rate of emissions based on one of the following:
    - a. The most stringent emissions limitation that is contained in the SIP of any state for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitations are not achievable; or,
    - b. The most stringent emissions limitation that is achieved in practice by the class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. ~~In no event shall~~ The application of this term shall not permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable standards of performance in Articles 9 and 11 of this Chapter.
  9. "Major source" means:
    - a. Any stationary source located in a nonattainment area that emits, or has the potential to emit, 100 tons per year or more of any conventional air pollutant, except as follows:

Pollutant Emitted	Nonattainment Pollutant and Classification	Quantity Threshold tons/year or more
Carbon Monoxide (CO)	CO, Serious, with stationary sources as more than 25% of source inventory	50
Volatile Organic Compounds (VOC)	Ozone, Serious	50
VOC	Ozone, Severe	25
PM <sub>10</sub>	PM <sub>10</sub> , Serious	70
NO <sub>x</sub>	Ozone, Serious	50
NO <sub>x</sub>	Ozone, Severe	25
or		

- b. Any stationary source located in an attainment or unclassifiable area that emits, or has the potential to emit, 100 tons per year or more of any conventional air pollutant if the source is classified as a Categorical Source, or 250 tons per year or more of any pollutant subject to regulation under the Act if the source is not classified as a Categorical Source;
  - c. Any change to a minor source, except for VOC or NO<sub>x</sub> emission increases at minor sources in serious or severe ozone nonattainment areas, that would increase its emissions to the qualifying levels in subsections (a) or (b);
  - d. Any change in VOC or NO<sub>x</sub> at a minor source in serious or severe ozone nonattainment areas that would be "significant" under R18-2-405(B) and that would increase its emissions to the qualifying levels in subsection (a);
  - e. Any stationary source that emits, or has the potential to emit, five or more tons of lead per year;
  - f. Any source classified as major undergoing modification that meets the definition of reconstruction;
  - g. A major source that is major for VOC shall be considered major for ozone; or
  - h. A major source that is major for oxides of nitrogen shall be ~~considered~~ major for ozone in nonattainment areas classified as marginal, moderate, serious, or severe.
10. "Reconstruction" of sources located in nonattainment areas shall be presumed to have taken place if the fixed capital cost of the new components exceeds 50% of the fixed capital cost of a comparable entirely new stationary source, as determined in accordance with the provisions of 40 CFR 60.15(f)(1) through (3).
11. "Resource recovery project" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Only energy conversion facilities that utilize solid waste that provides more than 50% of the heat input shall be considered a resource recovery project under this Article.

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12. "Significance levels" means the following ambient concentrations for the enumerated pollutants:

Averaging Time

Pollutant	Annual	24-Hour	8-Hour	3-Hour	1-Hour
SO <sub>2</sub>	1 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>		25 µg/m <sup>3</sup>	
NO <sub>2</sub>	1 µg/m <sup>3</sup>				
CO			0.5 mg/m <sup>3</sup>		2 µg/m <sup>3</sup>
PM <sub>10</sub>	1 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>			

Except for the annual pollutant concentrations, the Department shall deem that exceedance of significance levels ~~shall be deemed to occur~~ has occurred when the ambient concentration of the above pollutant is exceeded more than once per year at any one location. If the concentration occurs at a specific location and at a time when Arizona ambient air quality standards for the pollutant are not violated, the significance level does not apply.