

NOTICES OF PROPOSED RULEMAKING

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

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES COMMUNICABLE DISEASES AND INFESTATIONS

[R07-143]

PREAMBLE

1. Sections Affected

R9-6-401
R9-6-403
R9-6-404
R9-6-405
R9-6-406
R9-6-406
R9-6-407
R9-6-407
R9-6-407
R9-6-408
R9-6-408
R9-6-409
R9-6-409
R9-6-410
R9-6-410

Rulemaking Action

Amend
Amend
Amend
Amend
Renumber
New Section
Renumber
Amend
Repeal
New Section
Renumber
Amend
Renumber
Amend

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

Authorizing statute: A.R.S. § 36-136(A)(7) and (F)

Implementing statutes: A.R.S. § 36-136(H)(1)

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 765, March 10, 2006

Notice of Rulemaking Docket Opening: 13 A.A.R. 1051, March 23, 2007

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

Name: Jay Moman, Program Manager

Address: Arizona Department of Health Services
Bureau of Epidemiology and Disease Control
Office of HIV/Sexually Transmitted Diseases/Hepatitis C
AIDS Drug Assistance Program
150 N. 18th Avenue, Suite 110
Phoenix, AZ 85007

Telephone: (602) 364-3606

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or

Notices of Proposed Rulemaking

Name: Kathleen Phillips, Rules Administrator and Administrative Counsel
Address: Arizona Department of Health Services
Office of Administrative Rules and Counsel
1740 W. Adams, Suite 200
Phoenix, AZ 85007
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5. An explanation of the rules, including the agency's reasons for initiating the rules:

A.R.S. § 36-136(H)(1) requires the Arizona Department of Health Services (Department) to make rules defining and prescribing "reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases" and prescribing measures "reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases." Arizona Administrative Code Title 9, Chapter 6, Article 4 implements A.R.S. § 36-136(H)(1) by establishing rules related to the AIDS Drug Assistance Program (ADAP), a primarily federally-funded program, through which the Department provides prescription drugs to HIV-infected residents of Arizona to prevent the occurrence of or to seek alleviation of disability from HIV-related diseases, including AIDS.

Beginning in January 2006, elderly and disabled individuals who are eligible for enrollment in Medicare are able to obtain prescription drugs under Medicare Part D through prescription drug plans under contract to Medicare. Those who qualify for a full low-income subsidy through Medicare do not pay for Medicare Part D drug coverage. Since ADAP is the payor of last resort for HIV-related prescription drugs for those enrolled in ADAP, the current rules are being amended to require those eligible for Medicare to apply for a Medicare prescription drug plan and for a low-income subsidy for prescription drugs. The proposed rules exclude those eligible to receive a full Medicare low-income subsidy for prescription drugs from enrolling in ADAP. The proposed changes also add definitions, clarify the application process and notification requirements, and define the requirements for distribution of prescription drugs, including those prescription drugs that are available through ADAP only on a case-by-case basis. Many of the changes being proposed in this rulemaking reflect changes that have already been made in the operation of the program due to the implementation of Medicare Part D and the use of a vendor pharmacy for drug distribution or to address issues described in the Five-Year-Review Report approved by the Governor's Regulatory Review Council in October 2004.

All changes conform to current rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule 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 or rely on any study related to this rulemaking package.

7. 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

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

As used in this summary, annual costs/revenues are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000. Costs are listed as significant when meaningful or important, but not readily subject to quantification.

The Department may bear a minimal cost associated with providing education on the new rules and is expected to receive a minimal benefit from both the increased clarity of the rules and the alignment of the rules with the current operation of the program.

Small businesses affected by the rules changes include the practices of physicians, registered nurse practitioners, and physician assistants; the pharmacy under contract with the Department to distribute prescription drugs to individuals enrolled in ADAP; and community service organizations. The Department has begun using a vendor pharmacy for the distribution of prescription drugs to individuals enrolled in ADAP, but the current rules specify the requirements for the Department's distribution of drugs and are in conflict with this new drug distribution scheme. The requirements for the vendor pharmacy are specified in a contract between the Department and the vendor pharmacy, but those contract provisions that affect physicians, registered nurse practitioners, physician assistants providers, or individuals applying for or enrolled in ADAP are also specified in rule. The requirements in the proposed rules for the vendor pharmacy provide a minimal benefit to the vendor pharmacy because they clarify for the affected persons what the vendor pharmacy is required by contract to do.

Under the current rules, primary care providers are the physicians, registered nurse practitioners, and physician assistants who treat individuals for HIV-infection. Primary care providers are required to complete a portion of the application for initial or continuing enrollment of an individual in ADAP, inform the Department within 30 days of changes that may affect an individual's enrollment in ADAP, notify the Department when an enrolled individual changes to another primary care provider, and write prescription orders for the quantity of a drug supplied by a manufacturer.

The proposed rules continue to require a primary care provider to complete a portion of the application for initial or continuing enrollment of an individual in ADAP, and also require a primary care provider to acknowledge the requirement to notify the Department. However, under the proposed rules, a primary care provider is only required to notify the Department upon learning that an enrolled individual has changed to a different primary care provider or has died. The burden of notifying the Department of other changes that may affect an individual's eligibility for ADAP is placed on those in a better position to know of the change – the individual, the individual's representative, or the individual's case manager. The Department's use of a vendor pharmacy for the distribution of prescription drugs to individuals enrolled in ADAP also allows primary care providers to issue written or oral prescription orders to the vendor pharmacy for ADAP-supplied drugs, just as they would issue prescription orders to any pharmacy for drugs supplied through other sources, simplifying the process for primary care providers. Thus, these changes in the proposed rules may provide a minimal benefit to a primary care provider.

The Department currently has a process through which primary care providers may request certain very-expensive drugs for an ADAP-enrolled individual through ADAP. These restricted drugs are now approved on a case-by-case basis for individuals enrolled in ADAP. Although the process is not specified in the current rules, the process has been in place for several years and is specified in the proposed rules. This requirement in the proposed rules may impose a minimal time cost on a primary care provider who requests approval of a restricted drug for an individual enrolled in ADAP.

While community service organizations and case managers employed by community service organizations are not mentioned in the current rules, they play an important role in assisting and supporting the individuals who apply for or are enrolled in ADAP. Their roles in the services provided to HIV-infected individuals are specified in the federal Ryan White CARE Act, through which the ADAP program is funded. The proposed rules specify which ADAP-related activities that community service organizations are already performing, such as receiving written communications for an HIV-infected individual or issuing a statement to verify an individual's Arizona residency, may be used by the HIV-infected individual to support eligibility for ADAP. The proposed rules also specify that a case manager is required to notify the Department of changes that may affect an individual's eligibility for ADAP. An HIV-infected individual's case manager may also issue a statement to verify an individual's Arizona residency and, when assisting the individual to complete a form to establish that the individual has no steady supply of income, is required to attest that information on the form is correct to the best of the case manager's knowledge. The Department anticipates that the proposed rules will impose a minimal time cost on a community service organization or case manager.

The current rules specify the eligibility requirements for individuals to enroll in ADAP, the information an individual must submit to the Department to enroll in ADAP and to continue enrollment in ADAP, the notification requirements for changes that may affect an individual's eligibility, and how the Department is required to distribute drugs for enrolled individuals. The current rules also specify that an individual is required to give the Department permission to contact AHCCCS regarding the individual's eligibility for AHCCCS. Several things have happened in the past year that have caused the Department to change the way that the ADAP program operates. These include the Department's initiating the use of a vendor pharmacy for drug distribution and changes to the Medicare program to allow individuals eligible for Medicare to obtain drugs through Medicare drug plans. The manner in which the ADAP program now operates is reflected in the proposed rules.

The proposed rules clarify the eligibility requirements for ADAP, delineating what constitutes "inadequate health insurance," and change the ADAP eligibility requirements specified in rule to conform to the federal ADAP requirements. The proposed rules also address changes that have occurred due to the Department's use of a vendor pharmacy to distribute drugs, improvements in the Department's data system that allow the Department to review and approve or disapprove an application for enrollment or continuing enrollment within five business days, and the Department's requirements for an individual to submit information regarding the individual's Arizona residency and eligibility to receive a low-income subsidy for drugs through Medicare. The proposed rules also specify under what circumstances the Department may terminate an individual's enrollment in ADAP, allow an individual to name individuals with whom the Department may speak about the individual's enrollment in ADAP, add new documents that an individual may use to establish eligibility for ADAP, and address the fact that the individual submitting information to the Department to enroll an HIV-infected individual in ADAP may be the HIV-infected individual's representative, rather than the HIV-infected individual himself. Although the proposed rules do not change the process that an individual applying for enrollment or continuing enrollment in ADAP is currently following, the process by which the Department reviews the documents submitted to the Department, or the mechanisms by which an enrolled individual is currently receiving drugs, the proposed rules may impose a minimal cost and may provide a minimal benefit to individuals applying for or enrolled in ADAP.

Notices of Proposed Rulemaking

The HIV-infected individuals, their families, and the public may benefit to a minimal extent from the proposed rules in that the improved clarity of the rules and specification of the types of documents that may be submitted to support an application for ADAP may encourage HIV-infected individuals not currently applying for or enrolled in ADAP to apply. The education provided by the Department about the new rules may also increase awareness of the ADAP program. If an HIV-infected individual is able to obtain drugs through the individual's insurance, ADAP, a Medicare drug plan, or AHCCCS, the progression of the HIV-infected individual's disease may slow, and the drugs may prevent the occurrence of or to alleviate disability from HIV-related diseases, including AIDS. A slower disease progression may add years to an HIV-infected individual's working life and decrease the work time lost by families of HIV-infected individuals.

The Department has determined that the benefits related to public health outweigh any potential costs associated with this rulemaking.

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

Name: Jay Moman, Program Manager
Address: Arizona Department of Health Services
Bureau of Epidemiology and Disease Control
Office of HIV/Sexually Transmitted Diseases/Hepatitis C
AIDS Drug Assistance Program
150 N. 18th Avenue, Suite 110
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Telephone: (602) 364-3606
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Name: Kathleen Phillips
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10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

The Department has scheduled the following oral proceeding:

Date: July 3, 2007
Time: 1:00 p.m.
Location: 150 N. 18th Avenue, Room 540A
Phoenix, AZ 85007
Close of record: 4:00 p.m., July 3, 2007

A person may submit written comments on the proposed rules no later than the close of record to either of the individuals listed in items #4 and #9.

A person with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting Ruthann Smejkal at (602) 364-3959 or smejkar@azdhs.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

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

Not applicable

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

Not applicable

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS**

ARTICLE 4. AIDS DRUG ASSISTANCE PROGRAM (ADAP)

Section

- R9-6-401. Definitions
- R9-6-403. Eligibility Requirements
- R9-6-404. Initial Application Process
- R9-6-405. Enrollment Process; Provisional Enrollment
- ~~R9-6-406.~~ Notification Requirements
- ~~R9-6-406-R9-6-407.~~ Continuing Enrollment
- R9-6-408. ~~Time frames~~ Termination from ADAP Services
- ~~R9-6-407-R9-6-409.~~ Drug Prescription and Distribution Requirements
- ~~R9-6-409-R9-6-410.~~ Confidentiality

ARTICLE 4. AIDS DRUG ASSISTANCE PROGRAM (ADAP)

R9-6-401. Definitions

In this Article, unless otherwise specified:

1. "ADAP" means the AIDS Drug Assistance Program.
2. "Adult" means an individual who is:
 - a. Eighteen or more years old;
 - b. Married; or
 - c. Emancipated, as specified in A.R.S. Title 12, Chapter 15.
3. "Advocacy" means the act of encouraging adoption of or arguing in favor of something for the benefit of an individual or group of individuals.
- ~~2-4.~~ "AHCCCS" means the Arizona Health Care Cost Containment System.
5. "Annual family income" means the combined yearly gross earned income and unearned income of all adult individuals within a family unit.
- ~~3-6.~~ "Applicant" means an individual who submits an application for ADAP to the Department for whom a request for initial enrollment in ADAP is submitted to the Department, as specified in R9-6-404.
7. "Applying for a low-income subsidy" means submitting forms and supporting documentation to the Social Security Administration for determining eligibility for receiving a low-income subsidy.
8. "Biological substance" means a compound made by or derived from a plant or animal source.
9. "Business day" means any day of the week other than a Saturday, Sunday, legal holiday, or day on which the Department is authorized or obligated by law or executive order to close.
10. "Calendar day" means any day of the week, including a Saturday or a Sunday.
11. "Case management services" means the activities performed by a case manager for an HIV-infected individual or the individuals in the HIV-infected individual's family unit.
12. "Case manager" means an individual who:
 - a. Assesses the needs of an HIV-infected individual for health services, housing, support services, and financial assistance;
 - b. Assists the HIV-infected individual with obtaining health services, housing, support services, or financial assistance, as applicable;
 - c. Coordinates the interaction of the HIV-infected individual with service providers; and
 - d. Monitors the interaction of the HIV-infected individual with service providers to:
 - i. Determine the effects of each service provider's activities on the needs of the HIV-infected individual; and
 - ii. Develop strategies to reduce unmet needs.
13. "CD4-T-lymphocyte count" means the number of a specific type of white blood cell in a cubic millimeter of blood.
14. "Community service organization" means a nonprofit entity that assists an individual infected with HIV or affected by another individual's infection with HIV by providing or coordinating the interaction of the individual with service providers to obtain or retain:
 - a. Rehabilitation services;
 - b. Case management services.

Notices of Proposed Rulemaking

- c. Support services.
- d. Advocacy.
- e. Financial assistance, or
- f. Housing.
- 15. “Confirmatory test” means a laboratory analysis, such as a Western blot analysis, approved by the U.S. Food and Drug Administration to be used after a screening test to diagnose or monitor the progression of HIV infection.
- 16. “Current” means within the six months before the:
 - a. Date of application, or
 - b. Date on which an enrolled individual submits to the Department the documents required in R9-6-407 for continuing enrollment.
- 17. “Date of application” means the month, day, and year that an individual submits the documents specified in R9-6-404 to the Department as an application for initial enrollment in ADAP.
- 4-18. “Diagnosis” means an identification of a communicable disease by an individual authorized by law to make the identification.
- 5-19. “Drug” means a chemical or biological substance determined by the United States U.S. Food and Drug Administration to be useful in the treatment of individuals with HIV infection and available only through a prescription order.
- 6-20. “Earned income” means monetary payments received by an individual as a result of work performed or rental of property owned or leased by the individual, including:
 - a. Wages;
 - b. Commissions and fees;
 - c. Salaries and tips;
 - d. Profit from self-employment;
 - e. Profit from rent received from a tenant or boarder; and
 - f. Any other monetary payments received by an individual for work performed or rental of property.
- 21. “Employed” means working for a person for money in the form of wages or a salary.
- 22. “Enrolling in a Medicare drug plan” means submitting information to the Centers for Medicare and Medicaid Services during an initial enrollment period or general enrollment period and selecting a Medicare drug plan.
- 7. “Family income” means the combined gross earned income and unearned income of all individuals within the family unit.
- 8-23. “Family unit” means:
 - a. A group of individuals residing together who are related by birth, marriage, or adoption; or
 - b. An individual who does not reside with any individual to whom the individual is related by birth, marriage, or adoption.
 - b. An individual who:
 - i. Does not reside with another individual; or
 - ii. Resides only with another individual or group of individuals to whom the individual is unrelated by birth, marriage, or adoption.
- 24. “Formulary” means a list of drugs that are available to an individual through the individual’s health insurance or ADAP.
- 25. “General enrollment period” means the interval of time between November 15 and December 31 of each calendar year during which an individual:
 - a. May enroll in a Medicare drug plan if the individual, before May 15, 2006:
 - i. Was enrolled in Medicare,
 - ii. Was eligible to enroll in a Medicare drug plan, and
 - iii. Did not enroll in a Medicare drug plan; or
 - b. Currently enrolled in a Medicare drug plan may select a different Medicare drug plan.
- 26. “Gift” means something given voluntarily by an individual to another individual without payment in return.
- 27. “Guardian” means an individual appointed as a legal guardian by a court of competent jurisdiction.
- 28. “Health-related services” means the same as in A.R.S. § 36-401.
- 29. “Health services” means medical services, nursing services, or health-related services provided to an individual.
- 30. “HIV infection” means the same as in A.R.S. § 36-661.
- 31. “Homeless” means having a primary nighttime sleeping place that is not:
 - a. Designed to be a sleeping place for human beings, or
 - b. Ordinarily used as a primary nighttime sleeping place for human beings.
- 32. “Initial enrollment period” means the interval of time during which an individual may first enroll in a Medicare drug plan.
- 33. “Job” means a position in which an individual is employed.
- 34. “Low-income subsidy” means Medicare-provided assistance that may partially or fully cover the costs of drugs and is based on the income of an individual and, if applicable, the individual’s spouse.

35. “Medical services” means the same as in A.R.S. § 36-401.
36. “Medicare” means a federal health insurance program established under Title XVIII of the Social Security Act.
37. “Medicare drug plan” means insurance approved by Medicare to cover some of the costs of drugs for individuals enrolled in Medicare.
38. “Non-permanent housing” means a living situation in which an individual is:
a. Homeless, or
b. Living in a shelter or other temporary living arrangement.
39. “Nonprofit” means owned and operated under the direction of an entity that is recognized as exempt under § 501 of the U.S. Internal Revenue Code.
40. “Nursing services” means the same as in A.R.S. § 36-401.
9. ~~“Outpatient” means in an ambulatory setting.~~
41. “Physician” means an individual licensed as a doctor of allopathic medicine under A.R.S. Title 32, Chapter 13, or as a doctor of osteopathic medicine under A.R.S. Title 32, Chapter 17.
42. “Physician assistant” means an individual licensed under A.R.S. Title 32, Chapter 25.
- 40-43. “Poverty level” means the annual family income for a family unit of a particular size, as specified included in the poverty guidelines updated annually in the Federal Register by the United States U.S. Department of Health and Human Services.
44. “Prescription order” means the same as in A.R.S. § 32-1901.
- 41-45. “Primary care provider” means a the physician, registered nurse practitioner, or physician assistant who is treating an applicant or enrolled individual for HIV disease or HIV infection.
46. “Provisional enrollment” means an interval of time, determined by the Department, during which an individual who meets the eligibility criteria specified in R9-6-403 (1) through (4) may receive drugs on the ADAP formulary through the vendor pharmacy while the individual is waiting for:
a. An eligibility determination for AHCCCS enrollment or a low-income subsidy; or
b. Enrollment in a Medicare drug plan.
- 42-47. “Public assistance” means a government program that provides benefits to individuals a monetary payment, or that supplies goods or services that have a monetary value, based on need, such as Aid to Families with Dependent Children, SSI Supplemental Security Income, Temporary Aid to Needy Families, Food Stamps, or non-federally funded general assistance General Assistance.
48. “Registered nurse practitioner” means an individual who meets the definition of registered nurse practitioner in A.R.S. § 32-1601 and is licensed under A.R.S. Title 32, Chapter 15.
49. “Regular” means recurring at fixed intervals.
50. “Rehabilitation services” means the same as in A.A.C. R9-10-201.
51. “Representative” means the:
a. Guardian of an individual,
b. Parent of an individual who is not an adult, or
c. Person designated as an agent for an individual through a power of attorney, as specified in A.R.S. Title 14, Chapter 5, Article 5.
52. “Reservist” means a member of the Reserves of the U.S. Army, Air Force, Navy, Marine Corps, or Coast Guard.
- 43-53. “Resident” means an individual who has a place of habitation in Arizona and lives in Arizona as other than a tourist.
54. “Restricted drug” means a drug on the ADAP formulary that is approved on a case-by-case basis for enrolled individuals who meet medical indications for the use of the drug.
55. “Routine training” means military education and related hands-on activities designed to make an individual ready for the tasks the individual would be expected to perform as a member of the U.S. Air Force, Army, Coast Guard, Marine Corps, or Navy.
56. “Screening test” means a laboratory analysis approved by the U.S. Food and Drug Administration as an initial test to indicate the possibility that an individual is HIV infected.
57. “Self-employed” means receiving money as a direct result of the work performed by an individual rather than from wages or a salary paid to the individual.
58. “Service provider” means an individual who provides medical services, nursing services, health-related services, or support services for an HIV-infected individual.
59. “Shelter” means a facility that provides individuals with a temporary place to sleep at night with the expectation that the individual will go elsewhere during the daylight hours.
14. “SSI” means Supplemental Security Income, a program of the Social Security Administration.
60. “Support services” means activities, not related to the treatment of HIV infection, intended to maintain or improve the physical, mental, or psychosocial capabilities of an HIV-infected individual or the individual’s family unit and that may include:
a. Providing opportunities for social interactions for HIV-infected individuals;

Notices of Proposed Rulemaking

- b. Taking care of a child of an HIV-infected individual while the HIV-infected individual receives medical services;
- c. Providing food or meals to an HIV-infected individual in the HIV-infected individual's residence; or
- d. Providing information about available support services or materials about how to reduce the risk of spreading HIV.
- 61. "Temporary" means transient, with no expectation of permanence.
- 62. "Third-party payor" means a person other than an HIV-infected individual, such as health insurance or an employer, that is responsible for paying a portion of the costs of drugs for the HIV-infected individual.
- 63. "Tourist" means an individual who is living in Arizona but maintains a place of habitation outside of Arizona and lives outside of Arizona for more than six months during a calendar year.
- 64. "Treatment" means the administration to an individual of health services intended to relieve illness or injury.
- ~~45-65.~~ "Unearned income" means ~~non-gift~~ monetary payments received by an individual that are unrelated to work performed or rental of property owned or leased by the individual, including:
 - a. Unemployment insurance;
 - b. Workers' compensation;
 - c. Disability payments;
 - d. ~~Social security payments~~ Payments from the Social Security Administration;
 - e. ~~Public assistance payments~~ Payments from public assistance;
 - f. Periodic insurance or annuity payments;
 - g. Retirement or pension payments;
 - h. Strike benefits from union funds;
 - i. Training stipends;
 - j. Child support payments;
 - k. Alimony payments;
 - l. Military family allotments;
 - m. Regular or other regular support payments from a relative or other individual not residing in the household;
 - ~~m-n.~~ Investment income;
 - ~~n-o.~~ Royalty payments;
 - ~~o-p.~~ Periodic payments from estates or trusts; and
 - p. ~~Any other non-gift monetary payments received by an individual that are unrelated to work performed by the individual and that are not capital gains, lump sum inheritance or insurance payments, or payments made to compensate for personal injury.~~
 - q. Any other monetary payments received by an individual that are not:
 - i. Related to work performed by the individual,
 - ii. Gifts,
 - iii. Capital gains payments,
 - iv. Lump-sum inheritance payments,
 - v. Insurance payments, or
 - vi. Payments made to compensate for personal injury.
- 66. "Vendor pharmacy" means an entity contracted with the Department to perform the activities specified in R9-6-409(C).
- 67. "Veteran" means an individual who has served in the United States Armed Forces.
- 68. "Viral load test" means a laboratory analysis to determine the amount of HIV circulating in the body of an individual.

R9-6-403. Eligibility Requirements

- A:** An individual is eligible to participate in ADAP if the individual:
 - 1. Applies for enrollment in AHCCCS and possesses one of the following:
 - a. A letter from AHCCCS stating that an application for eligibility is pending, or
 - b. A letter from AHCCCS denying eligibility;
 - 2. Has no or inadequate health insurance to cover the cost of the drugs that are or may become available from ADAP on an outpatient basis or is an American Indian or Alaska Native who is eligible for but chooses not to use Indian Health Services;
 - 3. Has annual family income that is less than or equal to 300% of the poverty level;
 - 4. Is ineligible for Veterans' Administration benefits;
 - 5. Has a medical diagnosis of HIV disease or HIV infection; and
 - 6. Is a resident of Arizona.
- B:** For purposes of ADAP application, an individual may report annual family income using actual family income for the most recent 12 months or estimated annual family income determined by multiplying the current monthly family income by 12.

An individual is eligible to enroll in ADAP if the individual:

1. Has a diagnosis of HIV infection from a physician, registered nurse practitioner, or physician assistant;
2. Is a resident of Arizona, as established by documentation that complies with R9-6-404(A)(9);
3. Has an annual family income that is less than or equal to 300% of the poverty level;
4. Satisfies one of the following:
 - a. Has no health insurance coverage;
 - b. Has health insurance coverage that:
 - i. Does not cover drugs; or
 - ii. Does not include on its formulary at least one of the drugs prescribed for the individual that is on the ADAP formulary;
 - c. Is an American Indian or Alaska Native who:
 - i. Is eligible for, but chooses not to use, the Indian Health Service to receive drugs; and
 - ii. Either has no other health insurance coverage or has health insurance coverage that:
 - (1) Does not cover drugs; or
 - (2) Does not include on its formulary at least one of the drugs prescribed for the individual that is on the ADAP formulary; or
 - d. Is a veteran who:
 - i. Is eligible for, but chooses not to use, Veterans Health Administration benefits to receive drugs; and
 - ii. Either has no other health insurance coverage or has health insurance coverage that:
 - (1) Does not cover drugs; or
 - (2) Does not include on its formulary at least one of the drugs prescribed for the individual that is on the ADAP formulary;
5. Is ineligible for enrollment in AHCCCS, as established by documentation issued by AHCCCS; and
6. If eligible for Medicare:
 - a. Is ineligible for a full low-income subsidy, as established by documentation issued by the Social Security Administration; and
 - b. Has enrolled in a Medicare drug plan.

R9-6-404. Initial Application Process

An applicant shall submit to the Department the following documents:

1. An application completed by the applicant, on a form provided by the Department, including the following:
 - a. The applicant's name, date of birth, and sex;
 - b. The applicant's address;
 - c. The applicant's telephone number;
 - d. The number of individuals in the applicant's family unit;
 - e. The applicant's annual family income;
 - f. The applicant's social security number;
 - g. The applicant's residency;
 - h. The applicant's race and ethnicity;
 - i. The applicant's employment status;
 - j. Whether the applicant is receiving benefits from SSI or AHCCCS;
 - k. Whether the applicant is eligible to receive benefits from the Veterans' Administration;
 - l. Whether the applicant has health insurance that would pay for drugs and, if so, to what extent;
 - m. The applicant's scheduled AHCCCS eligibility appointment date, if any;
 - n. A statement by the applicant or the parent or guardian of a minor applicant that:
 - i. The information on the form is accurate and complete;
 - ii. The applicant does not have health insurance coverage for the requested drugs or is an American Indian or Alaska Native who is eligible for but chooses not to use Indian Health Services;
 - iii. The applicant, or the parent or guardian of a minor applicant, understands that eligibility does not create an entitlement; and
 - iv. The applicant, or the parent or guardian of a minor applicant, grants permission to the Department to discuss the applicant's application with AHCCCS for purposes of determining AHCCCS eligibility; and
 - o. The signature of the applicant or the parent or guardian of a minor applicant and the date of signature;
2. An application completed by the applicant's primary care provider, on a form provided by the Department, including the following:
 - a. The applicant's name;
 - b. The primary care provider's name and business address, telephone number, and facsimile number;
 - c. A statement that the applicant has been diagnosed with HIV disease or HIV infection;
 - d. The dates, results, and laboratory names and addresses for the most recent HIV related tests conducted for the applicant;

Notices of Proposed Rulemaking

- e. Each drug prescribed by the primary care provider for the applicant;
- f. A statement by the primary care provider that the information presented on the application is accurate and complete; and
- g. The signature of the primary care provider and the date of signature;
- 3. An original prescription signed by the primary care provider for each drug indicated as prescribed on the primary care provider's application;
- 4. A copy of one of the following:
 - a. A letter from AHCCCS stating that an application for eligibility is pending; or
 - b. A letter from AHCCCS denying eligibility; and
- 5. Proof of annual family income, including the following items, as applicable:
 - a. The most recent paycheck stub, or a statement from the employer listing gross wages, from each job;
 - b. Business records showing net income from self employment;
 - c. A letter describing any monetary award received by a student to cover non-tuition expenses;
 - d. A letter describing each public assistance award; and
 - e. Documentation showing the amount and source of any other income.

A. An applicant for initial enrollment in ADAP or the applicant's representative shall submit to the Department the following documents:

- 1. A Department-provided form, completed by the applicant or the applicant's representative containing:
 - a. The applicant's name, date of birth, and gender;
 - b. Except as provided in subsection (A)(1)(c), the applicant's residential address and mailing address;
 - c. If the applicant is in non-permanent housing, the address of a community service organization that has agreed to receive written communications for the applicant;
 - d. If applicable, the name of the applicant's representative and the mailing address of the applicant's representative, if different from the applicant's mailing address;
 - e. The telephone number of the applicant or a person that has agreed to receive telephone communications for the applicant;
 - f. The number of individuals in the applicant's family unit and the names and ages of the individuals;
 - g. The names of individuals with whom the Department may speak about the applicant's enrollment in ADAP;
 - h. The applicant's annual family income;
 - i. The applicant's race and ethnicity;
 - j. Whether the applicant or an adult in the applicant's family unit:
 - i. Is employed;
 - ii. Is self-employed;
 - iii. Is receiving public assistance;
 - iv. Is receiving regular monetary payments from a source not specified in subsection (A)(1)(j)(i) through subsection (A)(1)(j)(iii) and what the source of the monetary payments is; or
 - v. Is using a source not specified in subsection (A)(1)(j)(i) through subsection (A)(1)(j)(iv) or savings to assist the applicant in obtaining food, water, housing, or clothing for the applicant and what the source is;
 - k. Whether the applicant is receiving benefits from AHCCCS;
 - l. The applicant's scheduled AHCCCS-eligibility appointment date, if applicable;
 - m. Whether the applicant is eligible for Medicare benefits and, if not, the date on which the applicant will be eligible for Medicare benefits;
 - n. If the applicant is eligible for Medicare benefits, whether:
 - i. The applicant or the applicant's representative has applied for a low-income subsidy for the applicant and, if so, the date of the application for the low-income subsidy;
 - ii. The applicant or the applicant's representative has applied for a Medicare drug plan for the applicant and, if so, the date of the application for the Medicare drug plan; and
 - iii. The applicant is enrolled in a Medicare drug plan;
 - o. Whether the applicant has health insurance other than Medicare that would pay for drugs on the ADAP formulary;
 - p. Whether the applicant has served on active duty:
 - i. In the U.S. Air Force, Army, Coast Guard, Marine Corps, or Navy;
 - ii. In the Army National Guard or Air National Guard; or
 - iii. As a reservist serving on active duty other than for routine training purposes;
 - q. A statement by the applicant or the applicant's representative confirming that the applicant or the applicant's representative:
 - i. Understands that the applicant or the applicant's representative is required to submit to the Department proof of ineligibility for enrollment in AHCCCS and for a low-income subsidy within 30 calendar days after the date of application, if not provided to the Department with the application;

- ii. Understands that the applicant or the applicant's representative is required to submit to the Department proof of enrollment in a Medicare drug plan, if the applicant is eligible for Medicare, within 30 calendar days after the date of application, if not provided to the Department with the application;
- iii. Grants permission to the Department to discuss the information provided to the Department under subsection (A) with:
 - (1) AHCCCS, for the purpose of determining AHCCCS eligibility;
 - (2) Medicare and the Social Security Administration, for the purpose of determining eligibility for a low-income subsidy and enrollment in a Medicare drug plan;
 - (3) The applicant's primary care provider or designee;
 - (4) The vendor pharmacy, to assist with drug distribution; and
 - (5) Any other entity as necessary to establish eligibility for enrollment in ADAP or assist with drug distribution to the applicant;
- iv. Understands that the applicant or the applicant's representative is required to submit to the Department proof of annual family income as part of the application; and
- v. Understands that the applicant or the applicant's representative is required to notify the Department of changes specified in R9-6-406(A);
- r. A statement by the applicant or the applicant's representative attesting that:
 - i. To the best of the knowledge and belief of the applicant or the applicant's representative, the information provided to the Department as specified in subsection (A), including the information in the documents accompanying the form specified in subsection (A)(1), is accurate and complete;
 - ii. The applicant meets the eligibility criteria specified in R9-6-403; and
 - iii. The applicant or applicant's representative understands that eligibility does not guarantee that the Department will be able to provide drugs and understands that an individual's enrollment in ADAP may be terminated as specified in R9-6-408; and
- s. The dated signature of the applicant or the applicant's representative;
- 2. The Department-provided form specified in subsection (B), completed by the applicant's primary care provider;
- 3. A written prescription order signed by the applicant's primary care provider or a copy of the written prescription order for each drug on the list specified in subsection (B)(5);
- 4. A copy of current documentation from AHCCCS stating that the applicant's eligibility for enrollment in AHCCCS has not yet been determined or that AHCCCS is denying eligibility to the applicant;
- 5. If the applicant is eligible for Medicare, a copy of current documentation from the Social Security Administration stating that the applicant's eligibility for a low-income subsidy has not yet been determined or that the applicant is ineligible for a full low-income subsidy;
- 6. If the applicant is eligible for Medicare, a copy of the applicant's Medicare prescription card or copy of a letter from the company providing the applicant's Medicare drug plan, confirming that the applicant has applied for or is enrolled in a Medicare drug plan;
- 7. Proof of annual family income, including the following items as applicable to the applicant's family unit:
 - a. For each job held by an adult in the family unit:
 - i. Paycheck stubs from the 30 calendar days before the date of application, or
 - ii. A statement from the employer listing gross wages for the 30 calendar days before the date of application;
 - b. From each self-employed adult in the family unit, documentation of the current net income from self-employment, such as:
 - i. An income tax return submitted for the previous tax year to the U.S. Internal Revenue Service or the Arizona Department of Revenue;
 - ii. The Internal Revenue Service Forms 1099 prepared for the previous tax year for the self-employed adult in the family unit;
 - iii. A profit and loss statement for the self-employed adult's business; or
 - iv. Bank statements from the self-employed adult's checking and savings accounts;
 - c. A letter from each entity providing public assistance to an adult in the family unit, describing payments from public assistance;
 - d. A letter from an entity providing a monetary award to cover educational expenses other than tuition to an adult in the family unit, describing the monetary award; and
 - e. Documentation showing the amount and source of any regular monetary payments received by an adult in the family unit from sources other than those specified in subsection (A)(7)(a) through subsection (A)(7)(d);
- 8. If the applicant or the applicant's representative has stated on the form specified in subsection (A)(1) that the applicant has no source of regular monetary payments and is unable to provide any of the documentation specified in subsection (A)(7), a Department-provided form, completed and signed within 30 calendar days before the date of application, containing:
 - a. Information completed by the applicant or the applicant's representative stating whether:

- v. A current vehicle insurance card, including the Arizona residential address included on the Department-provided form specified in subsection (A)(1);
 - vi. An official document, such as an Arizona voter registration card, issued by a governmental entity and including the Arizona residential address included on the Department-provided form specified in subsection (A)(1);
 - vii. A written statement issued by the applicant's case manager indicating that the case manager has conducted a home visit with the applicant at the Arizona residential address included on the Department-provided form specified in subsection (A)(1) within 30 calendar days before the date of application; or
 - viii. A written statement issued by the applicant's primary care provider, verifying that the applicant is a resident of Arizona; and
10. If the applicant or the applicant's representative has stated on the Department-provided form specified in subsection (A)(8) that the applicant receives assistance from another individual, a letter from the individual to support the statement of the applicant or the applicant's representative.
- B.** The primary care provider of an applicant for initial enrollment in ADAP shall complete for the applicant a Department-provided form containing:
- 1. The applicant's name;
 - 2. The primary care provider's name, business address, telephone number, fax number, and professional license number;
 - 3. A statement that the applicant has been diagnosed with HIV infection;
 - 4. The dates of and results for the most recent confirmatory test, CD4-T-lymphocyte count, and, if available, viral load test conducted for the applicant;
 - 5. A list of each drug from the current ADAP formulary prescribed for the applicant by the primary care provider;
 - 6. A statement by the primary care provider that the primary care provider understands that the primary care provider is required to notify the Department of changes specified in R9-6-406(B);
 - 7. A statement by the primary care provider attesting that, to the best of the primary care provider's knowledge and belief, the information provided to the Department as specified in subsection (B) is accurate and complete; and
 - 8. The dated signature of the primary care provider.
- C.** For purposes of enrollment in ADAP, an applicant or the applicant's representative may report annual family income using actual family income for the most recent 12 months or estimated annual family income determined by multiplying the most recent monthly family income by 12.

R9-6-405. Enrollment Process; Provisional Enrollment

- A.** The Department shall review each completed application received and determine enrollment based on applicant eligibility, the date on which the application is completed, and the availability of funds.
- B.** An applicant shall execute any consent forms or releases of information necessary for the Department to verify eligibility.
- ~~**C.** The time frames for approving or denying an application are described in R9-6-408.~~
- A.** The Department shall:
- 1. Review the documents submitted by an applicant as required in R9-6-404(A);
 - 2. Determine whether the applicant is eligible under R9-6-403;
 - 3. Grant or deny enrollment based on applicant eligibility, the date of application, and the availability of funds; and
 - 4. Notify the applicant or the applicant's representative of the Department's decision within five business days after receiving the documents specified in R9-6-404(A).
- B.** An applicant or the applicant's representative shall execute any consent forms or releases of information necessary for the Department to verify eligibility.
- C.** The Department shall send an applicant or the applicant's representative a written notice of denial, setting forth the information required under A.R.S. § 41-1092.03, if:
- 1. The applicant or the applicant's representative fails to provide documentation establishing eligibility for enrollment in ADAP;
 - 2. The documentation submitted to the Department under R9-6-404 is found to contain false information, or
 - 3. The Department does not have funds available to enroll the applicant in ADAP.
- D.** The Department shall grant a 30-day provisional enrollment in ADAP to an applicant if:
- 1. The Department determines that the applicant meets the requirements of R9-6-403(1) through (4); and
 - 2. The applicant or the applicant's representative attests that the applicant has applied for AHCCCS enrollment and, if eligible for Medicare, a low-income subsidy and a Medicare drug plan, but is unable to provide documentation that complies with R9-6-403(5) or (6) or both.
- E.** The Department shall provide an applicant to whom the Department has granted provisional enrollment in ADAP with the drugs on the list specified in R9-6-404(B)(5) during the provisional enrollment period.
- F.** Except as specified in subsection (H), to continue ADAP enrollment beyond a 30-day provisional enrollment period, an applicant or the applicant's representative shall provide to the Department, before the end of the 30-day provisional enrollment period, documentation that complies with R9-6-403(5) and, if applicable, R9-6-403(6).

Notices of Proposed Rulemaking

- G.** Except as specified in subsection (H), if an applicant with provisional enrollment or the applicant's representative fails to provide documentation as required in subsection (F) to the Department before end of a 30-day provisional enrollment period, the Department shall send the applicant or the applicant's representative a written notice of denial, setting forth the information required under A.R.S. § 41-1092.03.
- H.** The Department may grant an extension of provisional enrollment to an applicant beyond a 30-day provisional enrollment period if the applicant or the applicant's representative provides documentation to the Department that the applicant has applied for AHCCCS enrollment and, if eligible for Medicare, a low-income subsidy and Medicare drug plan and:

 - 1. AHCCCS has not yet determined whether the applicant is eligible for AHCCCS enrollment; or
 - 2. If the applicant is eligible for Medicare:

 - a. The Social Security Administration has not yet determined whether the applicant is eligible for a low-income subsidy; or
 - b. The applicant may not enroll in a Medicare drug plan until the next general enrollment period.

R9-6-406. Notification Requirements

- A.** An enrolled individual or the enrolled individual's representative shall notify the Department in writing or by telephone within 30 calendar days after any of the following occurs:

 - 1. The residential or mailing address or the telephone number of the enrolled individual changes from that provided to the Department under R9-6-404(A)(1) or R9-6-407;
 - 2. The enrolled individual adds or deletes an individual with whom the Department may speak about the enrolled individual's ADAP enrollment from the list specified in R9-6-404(A)(1)(g);
 - 3. The enrolled individual begins receiving treatment for HIV infection from a primary care provider different from the primary care provider who completed:

 - a. The form specified in R9-6-404(B); or
 - b. The most recent form specified in R9-6-407(D);
 - 4. The enrolled individual has:

 - a. Been determined eligible for and enrolled to receive drug coverage through AHCCCS;
 - b. Received notification of drug coverage from a third-party payor other than AHCCCS, the Indian Health Service, or the Veterans Health Administration; or
 - c. Been determined eligible for a low-income subsidy;
 - 5. The enrolled individual's annual family income has:

 - a. Increased to an amount above 300% of the poverty level; or
 - b. Decreased to an amount that may make the enrolled individual eligible for enrollment in AHCCCS; or
 - 6. The enrolled individual establishes residency outside Arizona.
- B.** An enrolled individual's primary care provider shall:

 - 1. Notify the Department in writing or by telephone:

 - a. That the enrolled individual has died, within 14 calendar days after the primary care provider learns of the death; and
 - b. That the enrolled individual is receiving treatment for HIV infection from a different primary care provider, within 14 calendar days after the primary care provider learns of the change in primary care provider; and
 - 2. Include in the notification:

 - a. The name and date of birth of the enrolled individual;
 - b. If notifying under subsection (B)(1)(a), the date of death; and
 - c. If notifying under subsection (B)(1)(b), the name, business address, and telephone number of the new primary care provider.
- C.** An enrolled individual's primary care provider shall notify the vendor pharmacy, as specified in R9-6-409(A):

 - 1. When prescribing a new drug for the enrolled individual, or
 - 2. Within seven calendar days after discontinuing a drug that was contained in the list completed by the enrolled individual's primary care provider under R9-6-404(B) or R9-6-407(D).
- D.** An enrolled individual's case manager shall notify the Department in writing or by telephone within 30 calendar days after the case manager learns that:

 - 1. The residential or mailing address or the telephone number of the enrolled individual has changed from that provided to the Department under R9-6-404(A)(1) or R9-6-407;
 - 2. The enrolled individual has begun receiving treatment for HIV infection from a primary care provider who is different from the primary care provider who completed:

 - a. The form specified in R9-6-404(B); or
 - b. The most recent form specified in R9-6-407(D);
 - 3. The enrolled individual has:

 - a. Been determined eligible for and enrolled to receive drug coverage through AHCCCS;
 - b. Received notification of drug coverage from a third-party payor other than AHCCCS, the Indian Health Service,

- or the Veterans Health Administration; or
 - c. Been determined eligible for a low-income subsidy;
 - 4. The enrolled individual's annual family income has:
 - a. Increased to an amount above 300% of the poverty level; or
 - b. Decreased to an amount that may make the enrolled individual eligible for enrollment in AHCCCS;
 - 5. The enrolled individual has established residency outside Arizona; or
 - 6. The enrolled individual has died.

~~R9-6-406~~R9-6-407, Continuing Enrollment

- ~~A.~~ The Department shall review eligibility every six months after enrollment unless one of the following events occurs within the six-month period to end eligibility:
 - 1. The enrolled individual dies;
 - 2. The enrolled individual stops using the drug or drugs on the advice of a primary care provider;
 - 3. The enrolled individual is determined eligible and enrolled to receive medical services through AHCCCS or another third-party payor other than Indian Health Services;
 - 4. The enrolled individual's annual family income increases to an amount above 300% of the poverty level; or
 - 5. The enrolled individual establishes residency outside Arizona.
- ~~B.~~ The enrolled individual or the enrolled individual's primary care provider shall notify the Department within 30 days after any of the events listed in subsection (A) occurs.
- ~~C.~~ Before the expiration of each six-month period, the Department shall send each enrolled individual a letter requesting that the enrolled individual submit proof of annual family income and complete and submit a follow-up application form provided by the Department.
 - 1. The enrolled individual shall submit to the Department proof of annual family income as described in R9-6-404(5) and a completed follow-up application form within 30 days after the date of the letter.
 - 2. The completed follow-up application form shall contain the following:
 - a. The enrolled individual's name, address, and telephone number;
 - b. The enrolled individual's race and ethnicity, date of birth, sex, and social security number;
 - e. The enrolled individual's residency;
 - d. The number of individuals in the enrolled individual's family unit;
 - e. The enrolled individual's employment status;
 - f. The enrolled individual's annual family income;
 - g. Whether the enrolled individual is receiving benefits from SSI or AHCCCS;
 - h. Whether the enrolled individual is eligible to receive benefits from the Veterans' Administration;
 - i. Whether the enrolled individual has health insurance that would pay for drugs and, if so, to what extent;
 - j. The status of any application made to AHCCCS since the individual's enrollment in ADAP;
 - k. A statement by the enrolled individual or the parent or guardian of an enrolled minor individual that:
 - i. The information on the form is accurate and complete;
 - ii. The enrolled individual does not have health insurance coverage for the requested drugs or is an American Indian or Alaska Native who is eligible for but chooses not to use Indian Health Services;
 - iii. The enrolled individual, or the parent or guardian of an enrolled minor individual, understands that eligibility does not create an entitlement; and
 - iv. The enrolled individual, or the parent or guardian of an enrolled minor individual, grants permission to the Department to discuss the enrolled individual's follow-up application with AHCCCS for purposes of determining AHCCCS eligibility;
 - l. The signature of the enrolled individual or the parent or guardian of an enrolled minor individual and the date of signature; and
 - m. After every 24 months of continuous enrollment, a portion of the follow-up application completed by the enrolled individual's primary care provider including the following:
 - i. The primary care provider's name and business address, telephone number, and facsimile number;
 - ii. A statement by the primary care provider that treatment with the drug or drugs is still appropriate;
 - iii. The results and dates of the most recent HIV-related tests for the enrolled individual, if available;
 - iv. A statement by the primary care provider that the information presented on the application is accurate and complete; and
 - v. The signature of the primary care provider and the date of signature.
- ~~D.~~ The Department shall determine continuing enrollment based on the enrolled individual's eligibility and the availability of funds.
- ~~E.~~ The time frames for approving or denying continuing enrollment are described in R9-6-408.
- A. To continue enrollment in ADAP, an enrolled individual or the enrolled individual's representative shall:
 - 1. When the enrolled individual's residential or mailing address changes, comply with subsection (B);

Notices of Proposed Rulemaking

2. When the enrolled individual's primary care provider changes, comply with subsection (C);
 3. When the enrolled individual's annual family income decreases to an amount that may make the individual eligible for enrollment in AHCCCS, comply with subsection (E);
 4. When the enrolled individual becomes eligible for Medicare, comply with subsection (F);
 5. Before the expiration of each six-month period after an individual's initial enrollment, comply with subsection (G); and
 6. Before the expiration of each 24-month period after an individual's initial enrollment, comply with subsection (H).
- B.** When an enrolled individual's residential or mailing address changes, the enrolled individual or the enrolled individual's representative shall:
1. Complete a Department-provided form containing for the enrolled individual the information specified in R9-6-404(A)(1)(a) through R9-6-404(A)(1)(h) and R9-6-404(A)(1)(j), (k), (m), (n), and (o);
 2. Attest on the form specified in subsection (B)(1) that:
 - a. To the best of the knowledge and belief of the enrolled individual or the enrolled individual's representative, the information submitted in the form and the documents submitted with the form are accurate and complete;
 - b. The enrolled individual meets the eligibility criteria specified in R9-6-403; and
 - c. The enrolled individual or the enrolled individual's representative understands that eligibility does not guarantee that the Department will be able to provide drugs and that an individual's enrollment in ADAP may be terminated as specified in R9-6-408;
 3. Grant permission on the form specified in subsection (B)(1) for the Department to discuss the enrolled individual's enrollment with:
 - a. AHCCCS, for the purpose of determining AHCCCS eligibility;
 - b. Medicare and the Social Security Administration, for the purpose of determining eligibility for a low-income subsidy and enrollment in a Medicare drug plan;
 - c. The applicant's primary care provider or designee;
 - d. The vendor pharmacy, to assist with drug distribution; and
 - e. Any other entity as necessary to establish eligibility for enrollment in ADAP or assist with drug distribution;
 4. Sign and date the form specified in subsection (B)(1); and
 5. Submit to the Department within 30 calendar days of the change:
 - a. The form specified in subsection (B)(1); and
 - b. Proof of Arizona residency, as specified in R9-6-404(A)(9), showing the new Arizona residential address included on the form specified in subsection (B)(1).
- C.** When an enrolled individual's primary care provider changes, the enrolled individual or the enrolled individual's representative shall:
1. Comply with subsections (B)(1) through (4);
 2. Obtain from the new primary care provider the Department-provided form specified in subsection (D), completed by the new primary care provider; and
 3. Submit the form specified in subsection (B)(1) and the form specified in subsection (C)(2) to the Department within 30 calendar days after the change.
- D.** The primary care provider of an enrolled individual shall complete for the enrolled individual a Department-provided form containing:
1. The information required under R9-6-404(B)(1), (2), and (5) through (8); and
 2. The dates of and results for the most recent CD4-T-lymphocyte count and, if available, viral load test conducted for the enrolled individual.
- E.** When an enrolled individual's annual family income decreases to an amount that may make the individual eligible for enrollment in AHCCCS, the enrolled individual or the enrolled individual's representative shall:
1. Apply for enrollment in AHCCCS within 30 calendar days after the change in annual family income; and
 2. Submit to the Department within 30 calendar days after the change, documentation that complies with R9-6-403(5).
- F.** When an enrolled individual becomes eligible for Medicare, the enrolled individual or the enrolled individual's representative shall, within 30 calendar days after the enrolled individual becomes eligible for Medicare:
1. Apply for a low-income subsidy and for a Medicare drug plan; and
 2. Submit to the Department documentation that complies with R9-6-403(6).
- G.** Before the expiration of each six-month period after an individual's initial enrollment, the enrolled individual or the enrolled individual's representative shall submit to the Department:
1. Proof of annual family income, as specified in R9-6-404(A)(7) or (8), and
 2. Proof that the enrolled individual is a resident of Arizona, as specified in R9-6-404(A)(9).
- H.** Before the expiration of each 24-month period after an individual's initial enrollment, the enrolled individual or the enrolled individual's representative shall:
1. Comply with subsections (B)(1) through (4);
 2. Obtain from the enrolled individual's primary care provider the Department-provided form completed as specified in

subsection (D); and

3. Submit to the Department:
 - a. The form specified in subsection (H)(1).
 - b. The form specified in subsection (H)(2).
 - c. Proof of annual family income, as specified in R9-6-404(A)(7) or (8), and
 - d. Proof that the enrolled individual is a resident of Arizona, as specified in R9-6-404(A)(9).

I. The Department shall:

1. Review information about an enrolled individual and determine eligibility for continuing enrollment for the enrolled individual:
 - a. Every six months after the individual's initial enrollment;
 - b. When the Department receives information from the enrolled individual or the enrolled individual's representative under subsection (A); or
 - c. When the Department no longer has sufficient funds to provide continuing enrollment to all enrolled individuals;
2. Grant continuing enrollment to an enrolled individual, subject to the availability of funds, when:
 - a. The enrolled individual or the enrolled individual's representative complies with subsection (A); and
 - b. The Department determines that:
 - i. The information in the documents submitted to the Department is accurate and complete, and
 - ii. The enrolled individual is eligible under R9-6-403; and
3. Notify the enrolled individual or the enrolled individual's representative of the Department's decision within five business days after receipt of the documents required in subsection (A).

J. If the Department denies continuing enrollment to an enrolled individual, the Department shall send to the enrolled individual or the enrolled individual's representative a written notice of denial setting forth the information required under A.R.S. § 41-1092.03.

R9-6-408. Time frames Termination from ADAP Services

- A.** ~~The overall time frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Article is provided in Table 1. The applicant or enrolled individual and the Department may agree in writing to extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed 25% of the overall time frame.~~
- B.** ~~The administrative completeness review time frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Article is provided in Table 1 and begins on the date that the Department receives an application:~~
1. ~~The Department shall send a notice of administrative completeness or deficiencies to the applicant or enrolled individual within the administrative completeness review time frame.~~
 - a. ~~A notice of deficiencies shall list each deficiency and the information and documentation needed to complete the application.~~
 - b. ~~If the Department issues a notice of deficiencies within the administrative completeness review time frame, the administrative completeness review time frame and the overall time frame are suspended from the date that the notice is issued until the date that the Department receives the missing information from the applicant or enrolled individual.~~
 - c. ~~If the applicant or enrolled individual fails to submit to the Department all of the information and documents listed in the notice of deficiencies within 30 days from the date that the Department sent the notice of deficiencies, the Department shall consider the application or follow up application withdrawn.~~
 2. ~~If the Department issues an approval to the applicant or enrolled individual during the administrative completeness review time frame, the Department shall not issue a separate written notice of administrative completeness.~~
- C.** ~~The substantive review time frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Article is provided in Table 1 and begins as of the date on the notice of administrative completeness.~~
1. ~~The Department shall send written notification of approval or denial of enrollment or continuing enrollment to the applicant or enrolled individual within the substantive review time frame.~~
 2. ~~During the substantive review time frame, the Department may make one comprehensive written request for additional information, unless the Department and the applicant or enrolled individual have agreed in writing to allow the Department to submit supplemental requests for information.~~
 3. ~~If the Department issues a comprehensive written request or a supplemental request for information, the substantive review time frame and the overall time frame are suspended from the date that the Department issues the request until the date that the Department receives all of the information requested.~~
 4. ~~The Department shall issue an approval of enrollment or continuing enrollment unless:~~
 - a. ~~The Department determines that the applicant or enrolled individual is ineligible;~~
 - b. ~~The Department does not have funds available to enroll the applicant in or to continue the enrolled individual's enrollment in ADAP;~~

Notices of Proposed Rulemaking

- e. The Department determines that the applicant or enrolled individual submitted false or inaccurate information to the Department;
 - d. The Department determines that the applicant or enrolled individual failed to submit to the Department all of the information requested in a comprehensive or supplemental written request for information within 30 days after the request; or
 - e. The Department determines that the enrolled individual failed to submit to the Department proof of annual family income or a completed follow-up application as requested in the letter described in R9-6-406.
- D.** The Department shall send a written notice of appealable agency action that complies with A.R.S. Title 41, Chapter 6, Article 10 to each applicant or enrolled individual who is denied enrollment or continuing enrollment. The applicant or enrolled individual may file a notice of appeal with the Department within 30 days after receiving the notice of appealable agency action. The appeal shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- E.** For the purpose of computing time frames in this Section, the day of the act, event, or default from which the designated period of time begins to run is not included. Intermediate Saturdays, Sundays, and legal holidays are included in the computation. The last day of the period so computed is included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.

Table 1. Time frames (in days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Substantive Review Time-frame
Application for ADAP Enrollment	A.R.S. § 36-136	52	10	42
Follow-up Application for ADAP Continuing Enrollment	A.R.S. § 36-136	30	10	20

- A.** The Department may terminate an individual’s enrollment in ADAP if:
1. The Department learns that information submitted under R9-6-404(A) or (C), R9-6-407(A), or R9-6-409(E) to the Department by the individual or the individual’s representative is inaccurate or incomplete;
 2. The vendor pharmacy does not receive a request from the individual or the individual’s representative for any refill of a drug for a period of 90 calendar days; or
 3. The individual or the individual’s representative exhibits violent or threatening behavior to an employee of the Department or the vendor pharmacy, as established by documentation such as a police report or a written document from the individual.
- B.** The Department may terminate approval of a restricted drug for an individual enrolled in ADAP if the Department learns that the enrolled individual:
1. Is not following the instructions of the enrolled individual’s primary care provider regarding the use of the restricted drug; or
 2. Has not had additional laboratory analyses performed to support continuing use of the restricted drug.
- C.** The Department shall send to an individual or the individual’s representative a written notice of termination setting forth the information required under A.R.S. § 41-1092.03 if the Department terminates:
1. The individual’s enrollment in ADAP, or
 2. Approval of a restricted drug for the individual.

R9-6-407, R9-6-409. Drug Prescription and Distribution Requirements

- A.** The primary care provider shall write each drug prescription for an applicant or enrolled individual for the quantity of the drug packaged in the original container by the manufacturer.
- B.** The Department shall purchase a prescribed drug and provide the drug to the enrolled individual’s pharmacy in a quantity sufficient to meet the therapeutic regimen prescribed by the enrolled individual’s primary care provider.
- C.** The Department shall provide a drug in original, unopened containers as packaged by the manufacturer.
- D.** If an enrolled individual changes primary care providers, the original primary care provider shall notify the Department in writing within seven days after the change. The original primary care provider shall provide the following information in the written notice:
1. The name and address of the enrolled individual;
 2. The name and business address and telephone number of the new primary care provider; and
 3. A release signed by the enrolled individual authorizing the Department to contact and exchange information with the new primary care provider.

- E.** Failure to comply with subsection (D) may cause an interruption in or termination of support.
- A.** A primary care provider shall:
1. Issue a prescription order:
 - a. For each drug from the ADAP formulary prescribed for an applicant or enrolled individual by the primary care provider;
 - b. For dispensing up to a 30-day supply of the drug; and
 - c. To authorize no more than a six-month supply of the drug, including the original prescription order and all refills;
 2. Submit:
 - a. A written prescription order or copy of a written prescription order to the Department as specified in R9-6-404(A)(3); and
 - b. A written or oral prescription order to the vendor pharmacy when:
 - i. Prescribing a drug for a newly enrolled individual,
 - ii. Prescribing a new drug for an enrolled individual, or
 - iii. Authorizing an additional six-month supply of a drug for an enrolled individual; and
 3. Notify the vendor pharmacy when discontinuing a drug for an enrolled individual.
- B.** The Department shall forward a written prescription order submitted to the Department as specified in subsection (A)(2)(a) to the vendor pharmacy within three business days of approving an individual for initial enrollment.
- C.** The vendor pharmacy shall:
1. Maintain a supply of the drugs on the ADAP formulary available for dispensing;
 2. Receive prescription orders issued by an enrolled individual's primary care provider;
 3. Before dispensing drugs, verify:
 - a. With an enrolled individual or the enrolled individual's representative the address to which the enrolled individual or the enrolled individual's representative wants the drugs delivered, and
 - b. An individual's enrollment status;
 4. Dispense up to a 30-day supply of a drug to an enrolled individual:
 - a. Upon receipt of a:
 - i. Prescription order as specified in subsection (C)(2), or
 - ii. Request from the enrolled individual or the enrolled individual's representative for a refill of a drug;
 - b. To the address identified, as specified in subsection (C)(3)(a); and
 - c. So the drug is dispensed to the enrolled individual no later than three business days after the vendor pharmacy:
 - i. Receives a prescription order or request for refill, as specified in subsection (C)(4)(a);
 - ii. Has verified the address to which the drug is to be delivered, as specified in subsection (C)(3)(a); and
 - iii. Has verified the individual's enrollment status, as specified in subsection (C)(3)(b); and
 5. Notify the Department upon receiving a request for dispensing a drug for an individual who is not enrolled or provisionally enrolled in ADAP.
- D.** The Department may authorize replacement of a drug when:
1. The drug has been dispensed by the vendor pharmacy to an enrolled individual, and
 2. The enrolled individual or the enrolled individual's representative claims the dispensed drug was lost, stolen, or damaged.
- E.** The primary care provider of an enrolled individual may request approval of a restricted drug for the enrolled individual by:
1. Completing a Department-provided, drug-specific form that contains the following information:
 - a. The name, business address, and telephone number of the primary care provider;
 - b. The date of the request;
 - c. The enrolled individual's name and date of birth;
 - d. The indications for the use of the restricted drug;
 - e. The most recent results of laboratory analyses to support the request and the dates of the laboratory analyses;
 - f. A justification for use of the restricted drug by the enrolled individual;
 - g. An attestation by the primary care provider that:
 - i. To the best of the primary care provider's knowledge and belief, the information presented in the request is accurate and complete; and
 - ii. The primary care provider understands that the primary care provider is required to provide instructions to the enrolled individual regarding the use of the restricted drug and monitor the enrolled individual's use of the restricted drug;
 - h. The dated signature of the primary care provider;
 - i. An attestation by the enrolled individual or the enrolled individual's representative that the enrolled individual or the enrolled individual's representative understands that the enrolled individual is required to:
 - i. Follow the instructions of the enrolled individual's primary care provider regarding the use of the restricted drug; and

Notices of Proposed Rulemaking

- ii. Have periodic laboratory analyses performed to support continuing use of the restricted drug; and
 - j. The dated signature of the enrolled individual or the enrolled individual's representative;
 - 2. Issuing a written or oral prescription order for the restricted drug to the vendor pharmacy; and
 - 3. Submitting to the Department:
 - a. The completed drug-specific form specified in subsection (E)(1), and
 - b. Copies of the results of the most recent laboratory analyses to support the request for the restricted drug.
- F. If the restricted drug requested under subsection (E) is approved by the Department for an enrolled individual, the enrolled individual's primary care provider shall:
 - 1. Provide instructions to the enrolled individual regarding the use of the restricted drug; and
 - 2. Monitor the enrolled individual's use of and clinical response to the restricted drug.
- G. When the Department receives a drug-specific form requesting a restricted drug for an enrolled individual, the Department shall:
 - 1. Review the documents submitted according to subsection (E)(3);
 - 2. Determine whether the information submitted to the Department:
 - a. Is complete; and
 - b. Substantiates that the enrolled individual's use of the restricted drug is indicated; and
 - 3. Notify the following of the Department's decision within five business days after receiving the request:
 - a. The enrolled individual or the enrolled individual's representative;
 - b. The enrolled individual's primary care provider; and
 - c. The vendor pharmacy.
- H. If the Department denies a request for a restricted drug for an enrolled individual, the Department shall send to the enrolled individual or the enrolled individual's representative a written notice of denial setting forth the information required under A.R.S. § 41-1092.03.
- I. The Department shall only authorize the distribution of drugs that are included on the ADAP formulary.

~~R9-6-409~~**R9-6-410. Confidentiality**

The Department considers ADAP application materials and all information received or maintained by the Department in connection with ADAP application and subsequent actions to be confidential medical information, as defined in 9 A.A.C. 1, Article 3. The Department shall comply with 9 A.A.C. 1, Article 3 with regard to disclosing these materials and this information. The Department shall comply with all applicable federal and state laws relating to confidentiality of information.

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

[R07-140]

PREAMBLE

1. Sections Affected

R12-4-701
R12-4-702
R12-4-703
R12-4-704
R12-4-705
R12-4-706
R12-4-707
R12-4-708
R12-4-709
R12-4-710
R12-4-711
R12-4-712

Rulemaking Action

Amend
Amend

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

Authorizing statute: A.R.S. § 17-231

Implementing statutes: A.R.S. Title 17, Chapter 2, Article 6

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 1747, May 18, 2007 (*in this issue*)

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

Name: Carlos Ramírez, Rulewriter
Address: Arizona Game and Fish Department
2221 W. Greenway Rd. DORR
Phoenix, AZ 85023-4399
Telephone: (602) 789-3288
Fax: (602) 789-3677

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

The Arizona Game and Fish Department is amending rules in Title 12, Chapter 4, Article 7 in accordance with the preceding 2006 five-year review approved by the Governor's Regulatory Review Council earlier this year.

The Department proposes to amend R12-4-701 to add a definition for the term "extension." Although the term is used in this Article, no definition exists, which has affected the Article's clarity and understandability. A definition for "extension" is significant because special provisions apply to a Heritage Grant project and a grant recipient if the project's contract expiration date extends beyond the approved project period. The Department is also adding a definition for the term "term of public use." Additional amendments are being made in rule that necessitate the inclusion of a definition, particularly to clarify reporting requirements on Heritage Grant projects.

The Department also proposes to amend its definition for "eligible applicant." The definition will be amended to allow non-governmental nonprofit organizations to apply for Heritage Grants. Additional amendments will be made throughout the Article to make other rules consistent with the definition.

In the past, the Department has conflicted with the regulated community over a participant's ability to use the time committed to a project by a permanent employee for in-kind match. Some participants apply for and obtain Heritage Grant dollars as starter money for a project, and then apply for additional grants and revenue sources to match those grants. Contributions that qualify for matching funds may also include hours an employee spends working on a project. The intent of R12-4-702 and its authorizing statutes is not to limit the revenue that may be used to complete a project designed to conserve wildlife, but to ensure that Heritage Grants are used wisely and responsibly for a project and only for that project. Consequently, the Department is proposing to amend subsection (J) of the rule to authorize a participant to use a permanent employee's time as in-kind match, but only for the project for which the application was submitted. The proposed amendment would only allow a permanent employee's time to be used as a match so as to prevent a participant from inflating hours.

The Department is also proposing to amend R12-4-702 by adding a new subsection (M) that is identical to subsection (D) in R12-4-705. This subsection describes projects that are ineligible for Heritage Grants, and is more suited for the rule that prescribes general requirements for the application and issuance of grants.

The Department is proposing to amend R12-4-704 to remove outdated or inapplicable information. The Department proposes to delete the communities of Green Valley, Flowing Wells, Sun City, and Sun City West from subsection (B)(2) because at the time this rule was written these communities were, under A.R.S. § 17-296(6), "in close proximity to an urban area that [received] significant impact from human use." Due to expanding development, these communities are now incorporated into towns or incorporated into another city. An individual may still apply for Heritage Grants to support projects in these areas because they are "within the corporate limits of an incorporated city or town," under subsection (B)(1), or "within five miles, in straight distance, of the boundary of an incorporated area," under subsection (B)(3). The Department also proposes to amend subsection (C) to replace "in harmony with urban environments" with the more appropriate "consistent with urban environments."

The Department also proposes to amend R12-4-705 to clarify that public access grants issued by the Game and Fish Heritage Fund are intended for improving public access to recreational opportunities that are related to wildlife. The Department receives numerous grant proposals for bike trails, hiking trails, and other projects that are not directly related to wildlife. Alternative Heritage Fund Grants exist for these types of projects, such as those distributed through other agencies like the State Parks Department, but these projects are not consistent with the Department's responsibilities of wildlife management, watercraft recreation, and off-highway vehicle use. Also, as stated previously, subsection (D) will be deleted and moved to R12-4-702.

Under this rulemaking, the Department proposes to amend R12-4-706 to remove the \$10,000 limit on grants for Environmental Education projects. The Department recognizes the significance of these grants in establishing a sense of understanding and ownership in the state's wildlife and does not want to limit valid projects that would contribute to this.

The Department is proposing to amend R12-4-707 to prescribe additional eligibility requirements for schoolyard habitat grants. The Department also proposes to add items under subsection (B) to closely emulate applicable content in subsection (B) of R12-4-706. The Department will require that an eligible project shall develop awareness, appreciation, and understanding of the state's wildlife and its environment; use Arizona wildlife as its focus; and have an impact on Arizona schools and school children. The Department is deviating from the preceding five-year review by

Notices of Proposed Rulemaking

not proposing a grant ceiling. The Department believes that a ceiling is not necessary to preclude submission of impractical projects and that the regular application review process will eliminate them from consideration.

The Department proposes to amend R12-4-711(2) and (6) to remove a violation of state law as grounds for recovery of Heritage Funds. A violation of state law could be broadly interpreted to include violations that have no bearing or relevance to a grant participant's qualifications or required duties for completion. The Department's intent behind these provisions is not to exclude those individuals who violate state law in a manner unrelated to the grant agreement. Instead, "violation of state law" will be replaced with "material breach of contract" as grounds for recovery.

Finally, the Department proposes to amend R12-4-712 to ensure that a project participant finishes post-completion reporting after a project is done. During a project's development, the Department is not always aware if progress is being made. If a problem occurs that stalls or delays a project, it may result in a waste of Heritage dollars or the project's incompleteness. In either event, for the sake of the completion of the project, the Department proposes to amend the rule to state that during the project period, a participant shall submit a project status report within 30 days after the end of the mid-year reporting period (June 30) and within 30 days after the end of the end-of-the-year reporting period (December 31). The Department is also making a stronger effort to ensure that these projects are maintained after they are completed for the period of time for which they were intended to be used. The Department proposes to amend the rule to place a post-completion obligation on the participant, and require that the participant certify compliance with the participant agreement each year until the end of the term of public use stated in the grant application. To further facilitate compliance, the Department also proposes to amend the rule to require that a participant complete a post-completion report for each year until the end of the term of public use, and to amend subsection (D), formerly (C), to give the Department maximum flexibility to conduct audits to ensure post-completion reporting. Lastly, the Department proposes to amend this subsection to allow electronic copies to substitute for original records, rather than microfilm copies due to the obsolescence of the technology.

The Department is not substantively amending R12-4-703, R12-4-706, R12-4-708, R12-4-709, or R12-4-710. Additional amendments will be made to make rule language consistent with APA requirements.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule 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 agency did not rely on any study in its evaluation of or justification for the proposed rule.

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

Not applicable.

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

The proposed rulemaking will primarily affect applicants for Heritage Grants and the Department. The proposed rulemaking will not have a significant impact to other political subdivisions, businesses, or employees. The proposed rulemaking will not affect state revenues. The Department has determined that there are no alternative means of achieving the objectives of the proposed rulemaking.

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

Name: Carlos Ramírez, Rules Analyst
Address: Arizona Game and Fish Department
2221 W. Greenway Rd. DORR
Phoenix, AZ 85023
Telephone: (602) 789-3288
Fax: (602) 789-3677

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

Written comments will be accepted until 30 days after this notice is published. Public hearings to discuss this proposal will be held as follows:

Date: September 7-8, 2007
Time: To be determined
Location: Game and Fish Regional Office
2878 E. White Mountain Blvd.
Pinetop, AZ 85395

The Arizona Game and Fish Commission follows Title II of the Americans with Disabilities Act. The Commission does not discriminate against persons with disabilities who wish to make oral or written comments on proposed

rulemaking or otherwise participate in the public comment process. Individuals with disabilities who need a reasonable accommodation (including auxiliary aids or services) to participate in the public comment process, or who require this information in an alternate form, may contact Dustin McKissen at (602) 789-3288 (Voice); 1-800-367-8939 (TDD); 2221 W. Greenway Road, Phoenix, Arizona 85023-4399. Requests should be made as soon as possible so that the Arizona Game and Fish Department will have sufficient time to respond.

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

Not applicable

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

Not applicable

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 7. HERITAGE GRANTS

Sections

R12-4-701.	Heritage Grant Definitions
R12-4-702.	General Provisions
R12-4-703.	Review and Modification Proposals
R12-4-704.	Urban Wildlife and Urban Wildlife Habitat Grants
R12-4-705.	Public Access Grants
R12-4-706.	Environmental Education Grants
R12-4-707.	Schoolyard Habitat Grants
R12-4-708.	IIAPM: Grants for Identification, Inventory, Acquisition, Protection, and Management of Sensitive Habitat
R12-4-709.	Grant Applications
R12-4-710.	State Historic Preservation Office Certification
R12-4-711.	Grant-in-aid Participant Agreements
R12-4-712.	Reporting and Record Requirements

ARTICLE 7. HERITAGE GRANTS

R12-4-701. Heritage Grant Definitions

In addition to the definitions provided in A.R.S. §§ 17-101 and 17-296, the following definitions apply to this Article:

1. "Administrative subunit" means the branch, department, division, section, school, or other similar divisional entity of ~~a public agency~~ an eligible applicant where a participant contact is directly employed, for example, an individual school, but not the entire school district; an individual field office or project office, but not the entire agency; or an individual administrative department, but not the entire city government.
2. "Approved application" means a participant's application including any changes, exceptions, deletions, or additions made by the Department before approval.
3. "Commission" means the Game and Fish Commission.
4. "Department" means the Game and Fish Department.
5. "Eligible applicant" means any public agency or non-profit organization exempt from federal income taxation under Section 501(c) of the Internal Revenue Code that has met the requirements of this Article and not obtained an extension of the project period under R12-4-905(6).
6. "Extension" means a contract expiration date extended beyond the approved project period.
7. "Facilities" means capital improvements.
- ~~6-8.~~ "Fund" means a granting source from the Game and Fish Heritage Fund, under A.R.S. § 17-297.
- ~~7-9.~~ "Grant effective date" means the date the Director of the Arizona Game and Fish Department signs the Grant-in-Aid Participant Agreement.
- ~~8-10.~~ "Grant Prioritization Process" means a document approved by the ~~Game and Fish~~ Commission based upon the Department mission statement, strategic plans, and current guiding statements that defines the Department's priorities. This document is also used for prioritizing grant applications.
- ~~9-11.~~ "Heritage Grant" means ~~an Arizona Game and Fish~~ a Commission Heritage Fund Grant.
- ~~10-12.~~ "Participant" means an eligible applicant that has been awarded a grant from the fund.
- ~~11-13.~~ "Participant contact" means an eligible applicant's employee who is responsible for administering a Heritage Grant

funded project.

~~12-14.~~ “Project” means an activity, or series of related activities, which is described in the specific project scope of work and which results in specific products or services.

~~13-15.~~ “Project period” means the time during which all approved work and related expenditures associated with an approved project are to be accomplished by the participant.

~~14-16.~~ “Public agency” means the federal government or any federal department or agency, an Indian tribe, this state, all departments, agencies, boards, and commissions of this state, counties, school districts, cities, towns, all municipal corporations, and any other political subdivision of this state.

~~15-17.~~ “Specific scope of work” means the units of work to be accomplished by an approved project.

~~18.~~ “Term of Public Use” means the time the project or facility is expected to be maintained for public use.

R12-4-702. General Provisions

- A. The application deadline is the last working day of November each year and funds become available July 1 of the following year. The Department shall ensure that the exact time and date for the application deadline and the exact application submission location are designated in the ~~Arizona Game and Fish~~ Department’s “Grant Application Manual.” The Department shall ensure that the “Heritage Grant Application Manual,” all application forms and instructions, the Grant Prioritization Process, and any annualized information on project emphasis for each fund are available from the Department’s Funds Planning Section within the Phoenix office.
- B. ~~Applicants~~ Eligible applicants shall be public agencies as defined in R12-4-701 or a non-profit organization exempt from federal income taxation under Section 501(c) of the Internal Revenue Code. ~~and~~ An eligible applicant shall apply for Heritage grants in accordance with A.R.S. §§ 17-296, 17-297, 17-298, and Commission rules within 12 A.A.C. 4, Article 7, to be eligible for consideration. An eligible applicant who has failed to comply with the rules or conditions of a Grant-in-Aid Participant Agreement is not eligible for further grants until the eligible applicant’s project is brought into compliance.
- C. The Department shall notify eligible applicants in writing of the results of their applications and announce ~~grant~~ Heritage Grant awards at a regularly scheduled open meeting of the ~~Game and Fish~~ Commission. An unsuccessful eligible applicant may submit an appeal regarding a grant award within 30 calendar days of the Commission meeting in accordance with A.R.S. Title 41, Chapter 6, Article 10, Uniform Administrative Appeals Procedures.
- D. Participants shall not begin projects described in an application until the grant effective date as defined in R12-4-701. A participant shall complete projects as specified in the Grant-in-Aid Participant Agreement. A participant shall submit records that substantiate the expenditure of Heritage Grant funds.
- E. A participant shall operate and maintain properties, facilities, equipment, and services funded by a Heritage grant for the benefit of the public for the useful life of the project.
- F. The participant shall control land or waters on which capital improvements are to be made, through fee title, lease, easement, or agreement. To be eligible for a Heritage Grant, the ~~applicant’s~~ participant’s management or control rights to the proposed site shall be ~~equivalent~~ proportional to the proposed investment in at least one of the following three respects:
 - 1. The time remaining on the use agreement is a term sufficient, in the ~~judgment~~ sole discretion of the Department, to ensure a period of public use equal in value to the expenditure of awarded funds.
 - 2. The use agreement is not revocable at will by the property owner and provides for the option to renew by the managing agency.
 - 3. The eligible applicant ~~shows evidence~~ demonstrates that public access exists to the actual site where the project is proposed, unless the purpose of the project proposal is to specifically create access or limit access.
- G. A participant shall give public acknowledgment of grant assistance for the life of a project. If a project involves acquisition of property, development of public access, or renovation of a habitat site, the participant shall install a permanent sign describing the funding sources and dollar amounts of all funds. The participant may include the cost of this signage as part of the original project, but is responsible for maintenance or replacement of the sign as required. For other project types, the participant shall include funding acknowledgment on any publicly available or accessible products resulting from the project.
- H. The Department shall not accept project proposals for less than \$1000.
- I. A participant shall pay operation and maintenance costs for the project, including costs for reprinting of publications or other media.
- J. A participant shall not use ~~grant~~ Heritage Grant funds to pay compensation in excess of the legally established salary for any permanent public employee. A participant may use a permanent employee’s time as in-kind match, but only for the project for which the application was submitted.
- K. If specified in the Grant-in-Aid Participant Agreement, including the Special Conditions attachment, the participant shall provide evidence of compliance with local, state, and federal law to the Department before the release of the initial ~~grant~~ Heritage Grant funds and before project implementation.
- L. If a participant contact has a Heritage Grant funded project in extension, the participant contact and the administrative subunit employing the participant contact are not eligible for further Heritage Grants until the project under extension is completed. This restriction does not apply to the participant contact’s public agency as a whole, or to any other participant

Notices of Proposed Rulemaking

contact employed by the same public agency in any other administrative subunit, so long as the other participant contact does not have a Heritage Grant funded project in extension. For the purposes of this restriction, the Department shall determine what constitutes an administrative subunit.

- M. Ineligible projects are those projects not in compliance with this Article and those project types listed as ineligible in the Heritage Grant Application Manual or other materials available from the Department's Funds Planning Section in the Phoenix Office.

R12-4-703. Review of Proposals

- A. Heritage Grant proposals are competitive and the Department shall make awards based on a proposed project's compatibility with the priorities of the ~~Game and Fish~~ Department and the project's feasibility, merit, and usefulness. The Department shall evaluate and rank all eligible proposals under the criteria established in this Section and the Department's Grant Prioritization Process as approved by the Commission and available from the Department's Funds Planning Section in the Phoenix office.
- B. The Department shall make funding of an awarded project contingent upon revision of the application if the Department determines that substantive changes are necessary for the successful completion of the project.

R12-4-704. Urban Wildlife and Urban Wildlife Habitat Grants

- A. "Urban wildlife" means the wildlife that occurs within the limits of an incorporated area or in close proximity to an urban area that receives significant impact from human use. (A.R.S. § 17-296(6)).
- B. ~~In order to~~ To be eligible for a grant award, an applicant shall ensure that a proposed project location meets one of the following criteria:
1. It is within the corporate limits of an incorporated city or town; or
 2. ~~It is within the communities of Green Valley, Flowing Wells, Sun City, or Sun City West;~~
 - 3- It is within five miles, in straight distance, of the boundary of an incorporated area ~~or one of the communities listed above.~~
- C. ~~In order to~~ To be eligible for an urban wildlife or urban wildlife habitat grant award, applicants shall ensure that proposed projects are designed to conserve, enhance, and establish wildlife habitats and populations ~~in harmony~~ consistent with urban environments, and increase public awareness of and support for urban wildlife resources.

R12-4-705. Public Access Grants

- A. "Public access" has the meaning prescribed in A.R.S. § 17-296(1).
- B. "Publicly held lands" means federal, public, and reserved lands, State Trust Lands, and other lands within Arizona that are owned, controlled, or managed by the United States, the state of Arizona, agencies, or political subdivisions of the state.
- C. ~~To be eligible for a public access grant award~~ In addition to the eligibility requirements prescribed in R12-4-702, an eligible applicant shall ensure that a proposed project is designed to increase or maintain public access for recreational use that is related to wildlife, and is in cooperation with federal land managers, local and state governments, private landowners, and public users. An eligible applicant shall also ensure that a proposed project is consistent with the Department's mission, and is designed to inform and educate the public about recreational use of publicly held lands and public access to those lands. To be eligible for Heritage access grant funding, an An eligible applicant's potential project shall provide for substantive wildlife-related recreational access opportunities. Examples include providing new access into an area where no access currently exists; re-establishing access into an area where access existed historically; maintaining, relocating, or enhancing existing access routes to better serve a specific segment of the population; or relocating an existing access corridor to avoid biologically sensitive areas.
- ~~D. Ineligible projects are those projects not in compliance with this Section and those project types listed as ineligible in the Heritage Grant Application Manual or other materials available from the Department's Funds Planning Section in the Phoenix office.~~

R12-4-706. Environmental Education Grants

- A. "Environmental education" has the meaning prescribed in A.R.S. § 17-296(7).
- B. To be eligible for an environmental education grant, an applicant shall ensure that a project proposal is for no less than \$1,000 ~~and no more than \$10,000~~; and that a proposed project is designed to:
1. Develop awareness, appreciation, and understanding of Arizona's wildlife and its environment and increase responsible actions toward wildlife;
 2. Use Arizona wildlife as its focus and present wildlife issues in a balanced and fair manner; and
 3. Have impact on Arizona schools and school children.

R12-4-707. Schoolyard Habitat Grants

- A. ~~In order to~~ To be eligible for a schoolyard habitat grant, the applicant must be a public school ~~within in~~ in Arizona.
- B. ~~In order to~~ To be eligible for a schoolyard habitat grant, applicants shall ensure that proposed projects are designed to:
1. Develop awareness, appreciation, and understanding of the state's wildlife and its environment;
 2. Encourage wildlife education on school sites or adjacent areas that allow wildlife education activities and encourage

Notices of Proposed Rulemaking

- use by urban wildlife species;
- 3. Use Arizona wildlife as its focus;
- ~~2-4.~~ Encourage native wildlife species, utilize a majority of native plant materials, and demonstrate water conservation techniques;
- ~~3-5.~~ Actively use school children in the planning, development, and construction process, demonstrate long-term sustainability, and be fully integrated into the school curriculum; and
- 6. Have an impact on Arizona schools and school children.

R12-4-708. IAPM: Grants for Identification, Inventory, Acquisition, Protection, and Management of Sensitive Habitat

- A. "Habitat protection" has the meaning prescribed in A.R.S. § 17-296(9).
- B. "Sensitive habitat" has the meaning prescribed in A.R.S. § 17-296(2).
- C. To be eligible for an IAPM grant, an applicant shall ensure that the proposed project is designed to:
 - 1. Preserve and enhance Arizona's natural biological diversity, and
 - 2. Incorporate at least one of the following elements:
 - a. Identification, inventory, acquisition, protection, or management of sensitive habitat listed by the Department in accordance with subsection (D); or
 - b. Inventory, identification, protection, or management of species ~~as addressed within A.R.S. § 17-296 in accordance with subsection (D).~~
- D. ~~Each year the Department shall provide a listing of habitat and species as defined within A.R.S. § 17-296 that it will consider in~~ In accordance with biological, conservation, and management status changes, the Department shall publish each year a list of sensitive habitat and species that are eligible for IAPM grants.

R12-4-709. Grant Applications

- A. To be eligible for a Heritage ~~grant~~ Grant, an applicant shall submit a grant application in accordance with the schedule established by R12-4-702.
- B. The eligible applicant shall submit a separate application for each funding source.
- C. The eligible applicant shall submit the original plus two copies of each application on paper sized 8 1/2" x 11" and shall ensure that the original and the copies are legible.
- D. The Department shall not accept facsimile or "faxed" copies of a grant application.
- E. The eligible applicant shall ensure that the "Application Checklist" lists all items included within the application. The eligible applicant shall check off an item if it is included within the application, and initial each item that is not applicable.
- F. The eligible applicant shall provide the following information on the grant application form:
 - 1. Name of the eligible applicant;
 - 2. Any county and legislative district where the project will be developed or upon which the project will have impact;
 - 3. The official mailing address of the eligible applicant;
 - 4. The name, title, and telephone number of the individual who will have the day-to-day responsibility for the proposed project;
 - 5. Identification of the particular grant fund from which assistance is being requested, under R12-4-704, R12-4-705, R12-4-706, R12-4-707, or R12-4-708;
 - 6. The proposed project title incorporating the name of the site, if any, and the type of work to be accomplished;
 - 7. A clear and concise description of the scope and objective of the proposed project, the nature of what is to be accomplished, the methods to be used, and the desired result from the project;
 - 8. The beginning and ending dates for the project; ~~and~~
 - 9. The funding amounts that will be needed to accomplish the project, including the Heritage Grant funds requested, and evidence of secured matching funds or contributions; and
 - 10. If the eligible applicant is a non-profit organization exempt from federal income taxation under Section 501(c) of the Internal Revenue Code, documentation or other evidence of its exemption.
- G. ~~The person who on behalf of the applicant has~~ Only a person with authority to bind the eligible applicant to the terms of the Grant-in-Aid Participant Agreement shall sign the grant application form. The person signing the grant application form represents that the eligible applicant has authority to enter into agreements, accept funding, and fulfill the terms of the Grant-in-Aid Participant Agreement.
- H. The eligible applicant shall submit a map clearly identifying project locations or project proposal areas, and, if applicable, ~~the applicant shall also submit~~ a site plan and floor plan.
- I. The eligible applicant shall submit with the grant application the following information to provide evidence of control and tenure at the project site. The Department shall determine the appropriateness of the evidence of control and tenure as a part of the grant application review process:
 - 1. If the project site is owned by the eligible applicant, a copy of the legal document showing title in the name of the eligible applicant and the legal description of the property;

Notices of Proposed Rulemaking

2. If the project site will be managed by the eligible applicant, a copy of the lease, special use permit, intergovernmental agreement, or other official instrument or documentation; or
 3. For research project proposals relating to sites not controlled by the eligible applicant, a copy of the permit or agreement allowing the research or, at a minimum, evidence of permission from the land manager allowing the research.
- J. The eligible applicant shall submit an estimated project cost sheet form with the following information:
1. Project title as designated on the application form;
 2. If applicable, pre-agreement costs requested;
 3. If applicable, all estimated development costs in order of priority of need, facilities to be constructed, unit measurements, number of items, and total costs;
 4. All land parcels to be acquired listed in priority order, with acreage involved and anticipated dates of acquisition;
 5. The cost, title, and name of personnel who would accomplish the project objectives and who would receive benefit from the grant; and
 6. The total cost for the entire project proposal with each of the following amounts listed separately:
 - a. ~~Heritage grant~~ Grant funds requested;
 - b. ~~Applicant~~ Eligible applicant contribution to the project, if applicable; and
 - c. Any other sources of funding.
- K. The eligible applicant shall answer all questions relevant to the grant applied for and to the Grant Prioritization Process by which the Department evaluates and ranks proposals.

R12-4-710. State Historic Preservation Office Certification

The Department shall not release ~~grant~~ Heritage Grant funds until certification is received from the State Historic Preservation Officer in accordance with A.R.S. §§ 41-861 through 41-864, the State Preservation Act, which mandates that all state agencies consider the potential of activities or projects to impact significant cultural resources.

R12-4-711. Grant-in-Aid Participant Agreements

Before any transfer of funds, a participant shall agree to and sign a Grant-in-Aid Participant Agreement that includes the following minimum stipulations:

1. The participant shall use awarded ~~grant~~ Heritage Grant funds solely for eligible purposes of the funding program as defined by law and as approved by the Department. The participant shall not exceed the ~~grant~~ Heritage Grant allocation unless the parties amend the Grant-in-Aid Participant Agreement.
2. If both parties agree that all project costs shall be expended within the first quarter of the project period, the Department shall transfer the total amount of awarded grant funds to the participant within the first quarter of the project period. In all other cases, the Department shall transfer awarded grant funds, less 10 percent, to the participant within one year of the grant effective date. The Department shall transfer the final 10 percent less any adjustment for actual expenditures upon receipt of a written request and a certification of project completion from the participant, unless the participant ~~violates state law or~~ materially breaches the Grant-in-Aid Participant Agreement. The Department has the authority under the Grant-in-Aid Participant Agreement to perform completion inspections and reviews before release of final payment.
3. The participant shall deposit transferred ~~grant~~ Heritage Grant funds in a separate project account carrying the name and number of the project. The participant shall expend funds from the account only as authorized under the terms of the Grant-in-Aid Participant Agreement.
4. The participant may request changes to the terms, scope, conditions, or provisions of the Grant-in-Aid Participant Agreement by writing to the Department. Requests for extension beyond the approved project period shall be submitted by the participant no later than 30 days before the contract expiration date. The Department shall prepare in writing any approved amendments, which must be signed by both the participant and the Department to be valid.
5. Notwithstanding subsection (4), the Department shall issue an administrative extension to unilaterally extend the project period by no more than 90 days to perform completion inspections or to complete administrative work if completion inspections or administrative work cannot be completed within the time-frame of the existing Grant-in-Aid Participant Agreement.
6. If the participant ~~violates state law or~~ materially breaches the Grant-in-Aid Participant Agreement, the Department shall seek recovery of all funds granted and classify the participant as ineligible for ~~Heritage Funds grants~~ Grants for a period not to exceed five years.
7. The participant shall operate and maintain ~~grant-assisted~~ all Heritage Grant funded capital improvements and provide reasonable protection of any project improvements.
8. The participant sponsoring a third party or subcontractor is responsible for compliance with the Grant-in-Aid Participant Agreement provisions if the third party or subcontractor defaults.
9. The participant shall use awarded ~~grant~~ Heritage Grant funds solely for costs associated with approved project work incurred during the project period.
10. The project period is designated to be three years from the grant effective date unless otherwise agreed upon by the

Notices of Proposed Rulemaking

Department and the participant.

11. If a balance of awarded ~~grant~~ Heritage Grant funds is available upon completion of approved project elements, the participant may, with Department approval, develop additional scope elements.
12. The participant shall request amendments to accommodate additions or changes to the Grant-in-Aid Participant Agreement in writing, stating the need and rationale for the amendments.
13. The participant shall use equipment purchased with ~~grant~~ Heritage Grant funds for an approved public purpose for the useful life of the equipment, or surrender the equipment to the Department upon completion of the project, whichever comes first, if the equipment has an acquisition cost of more than \$500. If the equipment is sold, the participant shall pay the Department the amount of any resulting proceeds in the ratio equivalent to the funds provided for the purchase.
14. The participant shall ensure that the value of real property purchased with ~~grant~~ Heritage Grant Funds assistance is appraised by an Arizona certified appraiser within one year before the purchase or lease according to the Uniform Standards of Professional Appraisal Practice. The Department has the authority to select an appraiser for independent evaluation if the Department has evidence that the appraised value of real property is not accurate as submitted by the participant. The Department's acceptance of land conveyance documents is contingent upon approval by the ~~Game and Fish~~ Commission and the ~~governor~~ Governor.
15. The Department shall delay ~~grant~~ payment of Heritage Grant funds to a participant who fails to submit project-status reports as required in R12-4-712 until the participant has submitted all past due project-status reports.
16. The Department has the authority under the Grant-in-Aid Participant Agreement to conduct inspections to ensure compliance with all terms of the contract.
17. The participant shall not use ~~grant~~ Heritage Grant funds for the purpose of producing income. However, the participant may engage in income-producing activities incidental to the accomplishment of approved purposes if the participant uses the activities to further the purposes of the approved project or returns the income to the original funding source designated in the Grant-in-Aid Participant Agreement. The participant shall return funds remaining at the end of the project period to the Department.

R12-4-712. Reporting and Record Requirements

- A. A participant shall submit ~~biannual project status~~ project status reports to the Department covering activities for the project period within 30 days following the mid-year reporting period (June 30) and the end-of-the-year reporting period (December 31), unless otherwise specified in the Grant-in-Aid Participant Agreement, including the Special Conditions attachment. The exact timing of the submission of reports to the Department will be as specified in the Grant-in-Aid Participant Agreement and the Special Conditions attachment. A participant shall include a separate section in each report covering all of the following subjects:
 1. Progress in completing approved work;
 2. Itemized, cumulative project expenditures; and
 3. Anticipated delays and problems preventing on-time completion of the project.
- B. A participant shall account for income or interest derived from project funds in the participant's report.
- C. After a project is completed and for each year until the end of the term of public use, a participant shall certify compliance with the Grant-in-Aid Participant Agreement and shall complete a post-completion report form.
- D. Each participant shall retain ~~and~~ shall contractually require each subcontractor to retain all books, accounts, reports, files, and other records relating to the acquisition and performance of the contract for a period of five years after the completion of the contract. The Department may inspect and audit participant and subcontractor records ~~based on verified complaints or evidence that indicates the need for an inspection or audit~~ at any time during the contract period or within five years after the completion of the contract upon reasonable notice. Upon the Department's request, a participant or subcontractor shall produce a legible copy of these records. The participant shall bear full responsibility for acceptable performance by a subcontractor under each subcontract. The participant may substitute ~~microfilm~~ electronic copies in place of the original records after project costs have been verified.