

NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES COMMUNICABLE DISEASES AND INFESTATIONS

[R07-391]

PREAMBLE

1. Sections Affected

R9-6-601
R9-6-601
R9-6-602
R9-6-603
R9-6-604
R9-6-701
R9-6-702
R9-6-706
R9-6-707
Table 1
Table 2
R9-6-1201
R9-6-1202
R9-6-1203
R9-6-1204

Rulemaking Action

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

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

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

Implementing statute: A.R.S. §§ 15-872, 15-873, 15-874, 36-135, 36-136(H)(1), 36-672, and 36-883(C)

3. The effective date of the rules:

January 5, 2008

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 2685, August 3, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 2736, August 10, 2007

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

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Notices of Final Rulemaking

or

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

The purpose of this rulemaking is to amend the rules for required immunizations for child care or school entry in Title 9, Chapter 6, Article 7 of the *Arizona Administrative Code*. The Arizona Department of Health Services (Department) is adding the meningococcal vaccine (MV) to the list of required immunizations for school entry. Meningococcal disease is a bacterial infection of the brain and spinal cord fluid, bloodstream, and other parts of the body. According to the Centers for Disease Control and Prevention (CDC)¹, approximately 10-15 percent of the people infected with meningococcal disease die as a result and an additional 10-19 percent suffer from permanent hearing loss, mental retardation, loss of limbs, nervous system problems, strokes and seizures. The CDC estimates that 2600 people in the United States are infected by meningococcal disease each year. Since 2000, Arizona has averaged 27 reported cases of meningococcal disease each year. The Department estimates that approximately three to four people die each year, while approximately another three to five people suffer severe complications from the disease. In 2005, the United States Department of Health and Human Services Advisory Committee on Immunization Practices (ACIP) recommended that MV be added to the list of required immunizations for school entry.

The Department will amend the definitions in R9-6-701 to reflect the changes made to the Article. In R9-6-702, the Department is changing the age at which a child is to receive the Hepatitis A vaccine (Hep A) from 2 years to 1 year because the Hep A is now allowed for use at 1 year. In R9-6-707, the Department is amending the electronic reporting requirements for child immunization information reporting to reflect changes in technology. The Department is also amending the tetanus and diphtheria requirements to include tetanus, diphtheria, and acellular pertussis vaccine (Tdap) for a child that is 11 years old or older. Currently, the requirement allows for three doses of DTP, DTaP, or any combination of DTP and Td for a child that is 11 years old or older. The amended rules are requiring that one dose of the three dose minimum of tetanus-diphtheria containing vaccines include a dose of Tdap for a child that is 11 years old or older. Tables 1 and 2 will be amended to reflect the changes that have been made to the Article. The Department is also renumbering the Tuberculosis Control rules in Article 6 to a new Article 12. Article 6 will now contain the post-exposure rabies prophylaxis reporting requirements that were in R9-6-707(I). The Department is adding electronic reporting of the post-exposure rabies prophylaxis to accommodate changes in technology. The amended rules will conform to current rulemaking format and style requirements, industry practice, and departmental policy.

1 National Immunization Program (NIP) vaccine information sheet "Meningococcal Vaccines: What You Need to Know" available at <http://www.cdc.gov/vaccines/pubs/vis/downloads/vis-mening.pdf>

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

The Department did not review, rely on, or not rely on any study for this rulemaking.

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

Not applicable

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

As used in this summary, "minimal" means less than \$100,000; "moderate" means \$100,000 to \$999,999; "substantial" means \$1,000,000 or more; and "significant" means meaningful or important, but not readily subject to quantification.

This summary describes only the most noteworthy economic impacts expected to result from this rulemaking.

This economic, small business, and consumer impact statement analyzes the costs and benefits of:

1. Adding MV to the list of required immunizations for school entry,
2. Changing the age at which a child is to receive the Hepatitis A vaccine (Hep A),
3. Amending the electronic reporting requirements for child immunization information reporting, and

4. Amending the tetanus and diphtheria requirements to include tetanus, diphtheria, and acellular pertussis vaccine (Tdap).

The Department estimates that the following parties will bear costs for this rulemaking: local health agencies, the Arizona Health Care Cost Containment System (AHCCCS), the Department of Education, the federal Vaccines for Children (VFC) program, the "317" federal funding program, other public vaccine providers, private health care providers, vaccine manufacturers, health insurance companies, schools, child care facilities, a child attending school, parents of a child attending school or child care, the public, and the Department. The Department estimates the following parties will benefit from this rulemaking: a child entering school or child care, parents of a child entering school or child care, vaccine manufacturers, the public, and the Department.

The Department, through the Arizona Immunization Program Office (AIPO), manages the federal Vaccines for Children Program (VFC) for the state of Arizona. Through the VFC, the Department provides free vaccines to enrolled public and private providers for eligible children. VFC-eligible children include children enrolled in the Arizona Health Care Cost Containment System (AHCCCS), uninsured children, Native American or Alaskan native children, and some underinsured children. VFC children compose approximately 53% of the number of children in Arizona between birth and age 18.

In R9-6-702, the Department is adding meningococcal disease to the list of diseases that a child is required to be immunized against before attending school or entry into child care. The Department is implementing the MV requirement in a graduated process beginning in 2008. By 2014, all children in grades sixth to 12th will have received MV.

During the first year of implementation, the Department is requiring all children 11 years old to have received MV. The Department estimates that approximately 85,000 MV doses will be needed during the first year of implementation. The Department, using VFC and state funds, will purchase approximately 53 percent or 45,050 doses of MV at an estimated cost of \$69.00 a dose for an estimated total of \$3,108,450.00. The Department estimates that private providers not enrolled in VFC will purchase the remaining 47 percent or 39,950 doses of MV at an estimated cost of \$90.00 per dose for an estimated total of \$3,595,500.00. Therefore, the estimated total to purchase the MV during the first year of implementation is \$6,703,950.00. The Department anticipates that by 2014, the number of MV doses needed may increase from 95,000 to 100,000 doses to accommodate the children that move to Arizona who have not received MV and the continued population growth of school age children in Arizona.

In R9-6-702, the Department is changing the age at which the child is to receive the Hep A but not the Hep A requirement. Currently, a child is to receive Hep A when the child is 2 through 5 years of age. The Department is changing the requirement and requiring a child to receive Hep A when the child is 1 to 5 years of age because Hep A is now licensed for use at 1 year. The Department does not anticipate that the change in the age at which a child is to receive the Hep A will have an economic impact.

In R9-6-707, the Department is amending the electronic reporting requirements for child immunization information reporting. Currently, if reporting electronically, the health care professional is to submit the required immunization information by modem, on a 3 1/2" diskette, or if using a software program that is not provided by the Arizona State Immunization Information System (ASIIS), provide all the required information in an American Standard Character Information Interchange delimited format. The Department is amending the electronic reporting requirements to require child immunization information to be reported in two ways:

1. By connecting to the ASIIS web page through a secure Internet connection and entering the information, or
2. Ensuring that the information is submitted in a format that can be entered through a fully automated process without electronic manipulation of the data into ASIIS, and
 - a. Providing a CD or DVD to the Department that contains the information, or
 - b. Transferring the information to the Department through a secure FTP transmission.

The Department anticipates that the changes in the electronic reporting requirements will have a zero to minimal impact because the changes that are being required are consistent with current technologies for electronic reporting.

In the rules, the Department is also amending the tetanus and diphtheria requirements to include tetanus, diphtheria, and acellular pertussis vaccine (Tdap) for a child that is 11 years old or older. Currently, the requirement allows for three doses of DTP, DTaP, or any combination of DTP and Td for a child that is 11 years old or older. The amended rules are requiring that one dose of the three dose minimum of tetanus-diphtheria containing vaccines include a dose of Tdap for a child that is 11 years old or older.

The cost to the Department for a dose of Tdap is an estimated \$31.00 per dose. The cost to a private provider not enrolled in VFC is an estimated \$37.00 per dose. Currently, the cost of a dose of DTP, DTaP, or any combination of DTP and Td for the Department is approximately \$17.00 and the cost to a private provider not enrolled in VFC is approximately \$19.00. The Department estimates that 85,000 doses of Tdap will be needed to administer Tdap to children entering school who are 11 years old or older during implementation of the amended rules. The Department, using VFC and state funds, will purchase approximately 53 percent or 45,050 doses of Tdap at an estimated additional cost of \$14.00 a dose for an estimated total of \$630,700.00. The Department estimates that private providers not enrolled in VFC will purchase approximately 47 percent or 39,950 doses of Tdap at an estimated additional cost of \$18.00 a dose for an estimated total of \$719,000.00. The Department anticipates that the number of Tdap doses

Notices of Final Rulemaking

needed may increase to 95,000 to 100,000 doses to accommodate the children that move to Arizona who have not received Tdap and the continued population growth of school age children in Arizona.

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

The Department has added a definition in R9-6-701 for “registered nurse practitioner” and amended R9-6-706(E) and (F) to implement Laws 2007, Ch. 97, effective September 19, 2007. The Department has made minor grammatical or formatting changes at the request of G.R.R.C. staff.

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

The Department held one oral proceeding on September 11, 2007 and received one oral comment at the oral proceeding. The commenter voiced her support of the addition of the MV because her 17-year-old son had died within 24 hours from meningococcal disease. The Department appreciates the support from the commenter.

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

Not applicable

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

None

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

No

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

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS

~~ARTICLE 6. TUBERCULOSIS CONTROL~~ **REPORTING POST-EXPOSURE RABIES PROPHYLAXIS**

Section

- ~~R9-6-601.~~ Definitions Reporting Requirements
- ~~R9-6-602.~~ Local Health Agency Reporting Requirements Renumbered
- ~~R9-6-603.~~ Tuberculosis Control in Correctional Facilities Renumbered
- ~~R9-6-604.~~ Standards of Medical Care Renumbered

~~ARTICLE 7. VACCINE PREVENTABLE DISEASES REQUIRED IMMUNIZATIONS FOR CHILD CARE OR SCHOOL ENTRY~~

Section

- R9-6-701. Definitions
- R9-6-702. Required Immunizations for Child Care or School Entry
- R9-6-706. Exemptions from Immunizations
- R9-6-707. ~~Required Reports~~ Reporting Requirements
- Table 1. Immunization Requirements for Child Care or School Entry
- Table 2. Catch-up Immunization Schedule for Child Care or School Entry

~~ARTICLE 6. ARTICLE 12. TUBERCULOSIS CONTROL~~

Section

- ~~R9-6-601-R9-6-1201.~~ Definitions
- ~~R9-6-602-R9-6-1202.~~ Local Health Agency Reporting Requirements
- ~~R9-6-603-R9-6-1203.~~ Tuberculosis Control in Correctional Facilities
- ~~R9-6-604-R9-6-1204.~~ Standards of Medical Care

~~ARTICLE 6. TUBERCULOSIS CONTROL~~ **REPORTING POST-EXPOSURE RABIES PROPHYLAXIS**

R9-6-601. Definitions Reporting Requirements

In addition to the definitions in A.R.S. § 36-711, the following definitions apply in this Article, unless otherwise specified:

1. “Inmate” means an individual who is incarcerated in a correctional facility.
2. “Latent tuberculosis infection” means the presence of Mycobacterium tuberculosis, as evidenced by a positive result from an approved test for tuberculosis, in an individual who:
 - a. Has no symptoms of active tuberculosis;

Notices of Final Rulemaking

- b. Has no clinical signs of tuberculosis other than the positive result from the approved test for tuberculosis, and
 - e. Is not infectious to others.
3. "Symptoms suggestive of tuberculosis" means any of the following that cannot be attributed to a disease or condition other than tuberculosis:
- a. A productive cough that has lasted for at least three weeks;
 - b. Coughing up blood; or
 - e. A combination of at least three of the following:
 - i. Fever;
 - ii. Chills;
 - iii. Night sweats;
 - iv. Fatigue;
 - v. Chest pain; and
 - vi. Weight loss.

A physician or an authorized designee, shall submit a written or electronic report to the Department of all patients who receive post-exposure rabies prophylaxis. The report shall include:

1. Name, age, address, and telephone number of the person exposed;
2. Date of report;
3. Reporting institution or physician;
4. Date of exposure;
5. Body part exposed;
6. Type of exposure: Bite or saliva contact (non-bite);
7. Species of animal;
8. Animal disposition: quarantined, euthanized, died, unable to locate;
9. Animal rabies test results if any: positive or negative;
10. Treatment regimen; and
11. Date treatment was initiated.

R9-6-602. Local Health Agency Reporting Requirements Renumbered

- A.** Within 30 days after receiving information, a local health agency shall report to the Department regarding:
1. Each individual in its jurisdiction who has been diagnosed with active tuberculosis;
 2. Each individual in its jurisdiction who is suspected of having active tuberculosis; and
 3. Each individual in its jurisdiction who is believed to have been exposed to an individual with infectious active tuberculosis.
- B.** Each report made under subsection (A) shall consist of completed Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, Form CDC 72.9A and B, "Report of Verified Case of Tuberculosis" (January 2003), which is incorporated by reference in R9-6-373, or a completed electronic equivalent to Form CDC 72.9A and B provided by the Department.

R9-6-603. Tuberculosis Control in Correctional Facilities Renumbered

- A.** An administrator of a correctional facility shall ensure that:
1. Each new inmate in the correctional facility undergoes a symptom screening for tuberculosis while processing into the correctional facility;
 2. An inmate in whom symptoms suggestive of tuberculosis are detected during screening:
 - a. Is immediately:
 - i. Placed in airborne infection isolation, or
 - ii. Required to wear a surgical mask and retained in an environment where exposure to the general inmate population is minimal and the inmate can be observed at all times to be wearing the mask;
 - b. If not immediately placed in airborne infection isolation, is within 24 hours after screening:
 - i. Given a medical evaluation for active tuberculosis; or
 - ii. Transported to a health care institution to be placed in airborne infection isolation; and
 - e. Is given a medical evaluation for active tuberculosis before being released from airborne infection isolation or permitted to stop wearing a surgical mask and released from the environment described in subsection (A)(2)(a)(ii).
 3. Except as provided in subsection (A)(6), each new inmate who does not have a documented history of a positive result from an approved test for tuberculosis or who has not received an approved test for tuberculosis within the previous 12 months is given an approved test for tuberculosis within seven days after processing into the correctional facility;
 4. Except as provided in subsection (A)(5), each new inmate who has a positive result from an approved test for tuberculosis or who has a documented history of a positive result from an approved test for tuberculosis is given a chest x-ray and a medical evaluation, within 14 days after processing into the correctional facility, to determine whether the

Notices of Final Rulemaking

- inmate has active tuberculosis;
- 5. If an inmate has had a documented negative chest x-ray after a positive result from an approved test for tuberculosis, the inmate is not required to have another chest x-ray unless the inmate has signs or symptoms of active tuberculosis;
- 6. Each new inmate who is HIV-positive, in addition to receiving an approved test for tuberculosis, is given a chest x-ray and a medical evaluation within seven days after processing into the correctional facility, to determine whether the inmate has active tuberculosis;
- 7. Each inmate who has a negative result from an approved test for tuberculosis when tested during processing has a repeat approved test for tuberculosis after 12 months of incarceration and every 12 months thereafter during the inmate's term of incarceration;
- 8. Each inmate with active tuberculosis is:
 - a. Provided medical treatment that meets accepted standards of medical practice, and
 - b. Placed in airborne infection isolation until no longer infectious; and
- 9. All applicable requirements in 9 A.A.C. 6, Articles 2 and 3 are complied with.
- B.** The requirements of subsection (A) apply to each correctional facility that houses inmates for 14 days or longer and to each inmate who will be incarcerated for 14 days or longer.
- C.** An administrator of a correctional facility, either personally or through a representative, shall:
 - 1. Unless unable to provide prior notification because of security concerns, notify the local health agency at least one working day before releasing a tuberculosis case or suspect case;
 - 2. If unable to provide prior notification because of security concerns, notify the local health agency within 24 hours after releasing a tuberculosis case or suspect case; and
 - 3. Provide a tuberculosis case or suspect case or an inmate being treated for latent tuberculosis infection the name and address of the local health agency before the case, suspect case, or inmate is released.

R9-6-604. Standards of Medical Care Renumbered

A health care provider caring for an afflicted person shall comply with the recommendations for treatment of tuberculosis in American Thoracic Society/Centers for Disease Control and Prevention/Infectious Diseases Society of America: Treatment of Tuberculosis (October 2002), published in 167 American Journal of Respiratory and Critical Care Medicine 603-662 (February 15, 2003), which is incorporated by reference, on file with the Department, and available from the American Thoracic Society, 61 Broadway, New York, NY 10006-2747 or at www.atsjournals.org, unless the health care provider believes, based on the health care provider's professional judgment, that deviation from the recommendations is medically necessary. If a health care provider caring for an afflicted person deviates from the recommendations for treatment of tuberculosis in American Thoracic Society/Centers for Disease Control and Prevention/Infectious Diseases Society of America: Treatment of Tuberculosis (October 2002), the health care provider shall, upon request, explain to the Department or a local health agency the rationale for the deviation. If the tuberculosis control officer determines that deviation from the recommendations for treatment of tuberculosis in American Thoracic Society/Centers for Disease Control and Prevention/Infectious Diseases Society of America: Treatment of Tuberculosis (October 2002), is inappropriate and that the public health and welfare require intervention, the tuberculosis control officer may take charge of the afflicted person's treatment as authorized under A.R.S. § 36-723(C).

ARTICLE 7. VACCINE PREVENTABLE DISEASES REQUIRED IMMUNIZATIONS FOR CHILD CARE OR SCHOOL ENTRY

R9-6-701. Definitions

In this Article, unless otherwise specified:

- 1. "AHCCCS" means the Arizona Health Care Cost Containment System. "Administration of vaccine" means the inoculation of a child with an immunizing agent by an individual authorized by federal or state law.
- 2. "Administration of vaccine" means the inoculation of a child with an immunizing agent by an individual authorized by federal or state law. "AHCCCS" means the Arizona Health Care Cost Containment System.
- 3. No change
- 4. No change
- 5. No change
- 6. No change
- 7. No change
- 8. No change
 - a. No change
 - b. No change
- 9. No change
 - a. No change
 - b. No change
- 10. No change
- 11. No change

Notices of Final Rulemaking

12. No change
13. No change
 - a. No change
 - b. No change
14. No change
15. No change
16. No change
17. No change
18. "Head Start program" means a federally funded program administered under 42 U.S.C. 9831 ~~et. Seq~~ to 42 U.S.C. 9852.
19. No change
20. No change
21. No change
22. No change
23. No change
24. No change
25. "Imported" means entered through a fully automated process without electronic manipulation of the data.
- ~~25-26.~~ 26. No change
- ~~26-27.~~ 27. No change
- ~~27-28.~~ 28. No change
- ~~28-29.~~ 29. No change
- ~~29-30.~~ 30. No change
- ~~30-31.~~ 31. No change
- ~~31-32.~~ 32. No change
- ~~32-33.~~ 33. No change
- ~~33-34.~~ 34. No change
35. "MV" means meningococcal vaccine.
- ~~34-36.~~ 36. No change
- ~~35-37.~~ 37. No change
- ~~36-38.~~ 38. No change
- ~~37-39.~~ 39. No change
- ~~38-40.~~ 40. No change
- ~~39-41.~~ 41. No change
- ~~40-42.~~ 42. No change
- ~~41-43.~~ 43. No change
44. "Registered nurse practitioner" has the same meaning as in A.R.S. § 32-1601.
- ~~42-45.~~ 45. No change
- ~~43-46.~~ 46. No change
- ~~44-47.~~ 47. No change
- ~~45-48.~~ 48. No change
- ~~46-49.~~ 49. No change
50. "Td" means tetanus and diphtheria vaccine.
- ~~47-51.~~ 51. "Temporary" means lasting for a limited time. "Tdap" means tetanus, diphtheria, and acellular pertussis vaccine.
- ~~48-52.~~ 52. "Td" means tetanus and diphtheria vaccine. "Temporary" means lasting for a limited time.
- ~~49-53.~~ 53. No change
- ~~50-54.~~ 54. No change
- ~~51-55.~~ 55. No change
- ~~52-56.~~ 56. No change
- ~~53-57.~~ 57. No change
- ~~54-58.~~ 58. No change
- ~~55-59.~~ 59. No change
- ~~56-60.~~ 60. No change

R9-6-702. Required Immunizations for Child Care or School Entry

- A. No change
1. Ensure that a child attending a school or child care has been immunized ~~against~~ for each of the following diseases according to Table 1 or Table 2:
 - a. No change
 - b. No change
 - c. Hepatitis A, for a child ~~two~~ 1 through ~~five~~ 5 years of age in child care in Maricopa County;

Notices of Final Rulemaking

- d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change
 - j. *Haemophilus influenzae* type b; ~~and~~
 - k. No change
 - l. Meningococcal; and
2. No change
- a. No change
 - b. No change
- B.** ~~Unless exempt according to R9-6-706, a child who has received a first dose of MMR but has not received a second dose of MMR shall:~~
- 1. ~~Receive the second dose according to Table 2 and the following:~~
 - a. ~~By September 1, 2002 for a child attending kindergarten through fourth grade or seventh through ninth grade;~~
 - b. ~~By September 1, 2003 for a child attending kindergarten through fifth grade or seventh through 10th grade;~~
 - e. ~~By September 1, 2004 for a child attending kindergarten through 11th grade; and~~
 - d. ~~By September 1, 2005 for a child attending kindergarten through 12th grade; and~~
 - 2. ~~Be excluded from school entry by a school administrator until the requirements in Table 2 are met.~~
- C.** ~~Unless exempt according to R9-6-706, a child who has not completed the three dose Hep B series specified in Table 1 or 2 shall:~~
- 1. ~~Receive the remaining doses according to Table 2 and the schedule in subsection (B)(1)(a) through (B)(1)(d); and~~
 - 2. ~~Be excluded from school entry by a school administrator until the requirements in Table 2 are met.~~
- ~~D.~~B.** ~~Unless exempt according to R9-6-706, a child who has not received the VAR specified in according to Table 1 or Table 2 shall:~~
- 1. ~~Receive the VAR dose according to Table 2 and the following:~~
 - a. ~~By September 1, 2005 for a child who is entering attending kindergarten, first grade, or seventh grade;~~
 - b. ~~By September 1, 2006 for a child who is entering attending kindergarten through second grade, seventh grade, or eighth grade;~~
 - c. ~~By September 1, 2007 for a child who is entering attending kindergarten through third grade, or seventh grade through ninth grade;~~
 - d. ~~By September 1, 2008 for a child who is entering attending kindergarten through fourth grade, or seventh grade through tenth grade;~~
 - e. ~~By September 1, 2009 for a child who is entering attending kindergarten through fifth grade, or seventh grade through 11th grade; and~~
 - f. ~~By September 1, 2010 for a child who is entering attending kindergarten through 12th grade; and~~
 - 2. ~~Be excluded from school entry by a school administrator until the child meets the requirements in Table 2 ~~are met.~~~~
- C.** ~~Unless exempt according to R9-6-706, a child, 11 years of age or older, who has not received MV according to Table 1 or Table 2 shall:~~
- 1. ~~Receive MV according to the following:~~
 - a. ~~By September 1, 2008 for a child entering sixth grade.~~
 - b. ~~By September 1, 2009 for a child entering sixth and seventh grade.~~
 - c. ~~By September 1, 2010 for a child entering sixth through eighth grade.~~
 - d. ~~By September 1, 2011 for a child entering sixth through ninth grade.~~
 - e. ~~By September 1, 2012 for a child entering sixth through 10th grade.~~
 - f. ~~By September 1, 2013 for a child entering sixth through 11th grade, and~~
 - g. ~~By September 1, 2014 for a child entering sixth through 12th grade, and~~
 - 2. ~~Be excluded from school entry by a school administrator until the child meets the requirements in this Section.~~
- D.** ~~Unless exempt according to R9-6-706, a child, 11 years of age or older, who has not received Tdap according to Table 1 or Table 2 shall:~~
- 1. ~~Receive the Tdap according to the following:~~
 - a. ~~By September 1, 2008 for a child entering sixth grade.~~
 - b. ~~By September 1, 2009 for a child entering sixth and seventh grade.~~
 - c. ~~By September 1, 2010 for a child entering sixth through eighth grade.~~
 - d. ~~By September 1, 2011 for a child entering sixth through ninth grade.~~
 - e. ~~By September 1, 2012 for a child entering sixth through 10th grade.~~
 - f. ~~By September 1, 2013 for a child entering sixth through 11th grade, and~~
 - g. ~~By September 1, 2014 for a child entering sixth through 12th grade, and~~

Notices of Final Rulemaking

2. Be excluded from school entry by a school administrator until the child meets the requirements in this Section.

- E. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - a. No change
 - b. No change
- F. No change
 - 1. No change
 - a. No change
 - b. No change
 - 2. No change

R9-6-706. Exemptions from Immunizations

- A. No change
- B. A child who ~~has reached a seventh birthday~~ is 7 through 10 years of age is exempt from the pertussis immunization requirement.
- C. No change
 - 1. No change
 - 2. No change
- D. No change
- E. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. The physician's or registered nurse practitioner's signature and the date signed, if applicable.
- F. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. The physician's or registered nurse practitioner's signature and the date signed, if applicable.
- G. No change
 - 1. No change
 - 2. No change
 - 3. No change

R9-6-707. ~~Required Reports~~ Reporting Requirements

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - 9. No change
- B. No change

Notices of Final Rulemaking

1. No change
 2. No change
 3. No change
- C. No change
1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
 - g. No change
 - h. No change
 2. No change
 - a. No change
 - b. No change
- D. No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
 7. No change
 8. No change
 9. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- E. No change
1. No change
 2. No change
 3. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
- F. No change
- G. No change
- H. As required by A.R.S. § 36-135, a health care professional licensed according to A.R.S. Title 32 shall report each vaccine administered to each child as follows submit for each vaccine administered to a child the information required in A.R.S. § 36-135(B), the IRMS number, and the VPC PIN number, if applicable, to the Department as follows:
1. ~~If reporting by mail or fax, the health care professional shall use a form supplied by the Department, and provide the following:~~
 - a. ~~All information required in A.R.S. § 36-135(B);~~
 - b. ~~IRMS number; and~~
 - e. ~~VFC PIN number, if applicable;~~
 1. If reporting by mail or fax, the health care professional shall use a form provided by the Department.
 2. If reporting by telephone, the health care professional shall report all information in subsection (H)(1) between 8:00 a.m. and 5:00 p.m., Monday through Friday, except state holidays, by calling a telephone number provided by the Department for this purpose; and

Notices of Final Rulemaking

2. If reporting by telephone, the health care professional shall call a telephone number provided by the Department for this purpose between 8:00 a.m. and 5:00 p.m., Monday through Friday, except state holidays.
3. If reporting electronically, the health care professional shall:
 - a. Confirm with ASHS that the computer system meets the technical specifications required by ASHS; Connect to the ASIIS web page through a secure Internet connection and enter the information; or
 - b. Connect to ASHS by modem or submit to the Department a 3 1/2" diskette with the required information in subsection (H)(1) Ensure that the information is submitted in a format that can be imported into ASIIS and:
 - e. If using a software program that is not provided by ASHS, provide all the required information in an American Standard Character Information Interchange delimited format.
 - i. Provide a compact disk or digital video disk that contains the information to the Department; or
 - ii. Transfer the information to the Department through a secure file transfer protocol.
4. ~~A physician or an authorized designee, shall submit a written report to the Department of all patients who receive post-exposure rabies prophylaxis. The report shall include:~~
 1. ~~Name, age, address, and telephone number of the person exposed;~~
 2. ~~Date of report;~~
 3. ~~Reporting institution or physician;~~
 4. ~~Date of exposure;~~
 5. ~~Body part exposed;~~
 6. ~~Type of exposure: Bite or saliva contact (non-bite);~~
 7. ~~Species of animal;~~
 8. ~~Animal disposition: quarantined, euthanized, died, unable to locate;~~
 9. ~~Animal rabies test results if any: positive or negative;~~
 10. ~~Treatment regimen; and~~
 11. ~~Date treatment was initiated.~~

Table 1. Immunization Requirements for Child Care or School Entry

Age at Entry <u>into a Child Care or School</u>	Number of Doses of Vaccine Required	Special Notes and Exceptions
<2 months	1 Hep B	(See Note 1)
2 through 3 months	1 DTP or DTaP 1 Polio 1 Hib 1 Hep B	(See Note 1)
4 through 5 months	2 DTP or DTaP 2 Polio 2 Hib 2 Hep B	(See Note 1)
6 through 11 months	3 DTP or DTaP 2 Polio 3 Hib 2 Hep B	(Hib exception - See Note 2 for a child 7 months through 59 months of age.) (See Note 1)
12 through 14 months	3 DTP or DTaP 3 Polio 1-4 Hib 1 MMR 3 Hep B 1 Varicella	(See Note 2) (See Note 3) (See Note 1) (See Note 6 & 8)
15 through 59 months	4 DTP or DTaP 3 Polio 1-4 Hib 1-2 MMR 3 Hep B 1 Varicella	(See Note 2) (See Note 3) (See Note 1) (See Note 6 & 8)

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

<p>≥ 1 through 5 years (Only required for Maricopa County child care)</p>	<p>2 Hep A</p>	<p>(See Note 4)</p>
<p>Kindergarten or 1st grade entry 4 through 6 years</p>	<p>5 DTP or DTaP 4 Polio 2 MMR 3 Hep B 1 Varicella</p>	<p>Exception – A 5th dose is not required if the 4th dose of diphtheria-tetanus containing vaccine was received after the 4th birthday. Exception – A 4th dose is not required if the 3rd dose of polio was received after the 4th birthday. (See Note 3) A child entering school shall receive a 2nd dose, 1 month or more after the date of the 1st dose. (See Note 6 & 8)</p>
<p><u>7 years or older through 10 years</u></p>	<p>5 DTP, DTaP, or any combination of DTP and Td 4 Tetanus-diphtheria containing vaccines (no pertussis) 4 Polio ± 2 MMR 3 Hep B 1 Varicella</p>	<p>Exception – A 5th dose is not required if the 4th dose of diphtheria-tetanus containing vaccine was received after the 4th birthday. A 4th dose is not required if the 1st dose of diphtheria-tetanus containing vaccine was received after 12 months of age. Exception – If started on or after the 7th birthday, a minimum of 3 doses of a tetanus diphtheria containing vaccine is required. Exception – A 4th dose is not required if the 3rd dose of polio was received after the 4th birthday. (See Note 5 & 7) (See Note 3) A child entering school shall receive the Hep B series according to Note 1. (See Note 6 & 8)</p>
<p><u>11 years</u></p>	<p><u>1 MV</u></p>	<p>(See Note 5)</p>

Notices of Final Rulemaking

<p><u>11 years or older</u></p>	<p>3 DTP, DTaP, or any combination of DTP and Td <u>4 Tetanus-diphtheria containing vaccines including 1 Tdap.</u></p> <p><u>1 Tdap, in addition to the 4 Tetanus-diphtheria containing vaccines, if 5 years have passed since the date of a child's last dose of tetanus-diphtheria containing vaccine and the child has not received Tdap.</u></p> <p><u>1 Tetanus-diphtheria containing vaccine, if 10 years or more have passed since the date of the child's last dose of Tdap or tetanus-diphtheria containing vaccine.</u></p> <p>4 Polio</p> <p>± 2 MMR</p> <p><u>3</u> Hep B</p> <p><u>1-2</u> Varicella</p>	<p>Exception—A 5th dose is not required if the 4th dose of diphtheria-tetanus containing vaccine was received after the 4th birthday (See Note 6) Exception – A 4th dose is not required if the 1st dose of diphtheria-tetanus containing vaccine was received after 12 months of age.</p> <p>Exception – If started on or after the 7th birthday, a minimum of 3 doses of a tetanus-diphtheria containing vaccine is required.</p> <p>A child shall receive a Td dose if 10 years or more have passed since the date of the last dose of tetanus-diphtheria containing vaccine.</p> <p>Exception – A 4th dose is not required if the 3rd dose of polio was received after the 4th birthday. (See Note 5 <u>7</u>)</p> <p>(See Note 3)</p> <p>A child entering school shall receive the Hep B series according to Note 1.</p> <p>(See Note 6 <u>8</u>)</p>
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1. A child shall receive the 1st dose of Hep B ~~according to R9-6-702(C),~~ or no later than 15 days following child care entry. A child shall receive the 2nd dose of Hep B 4 weeks or more after the date of the 1st dose. A child who is 6 months of age or older shall receive the 3rd dose 2-5 months after the date of the 2nd dose and 4 months or more after the date of the 1st dose. For a child 11-15 years of age who receives the optional Merck Recombivax HB Adult Formulation vaccine, only 2 doses are required 4 or more months apart.
2. The recommended schedule for 4 dose Hib vaccine is 2, 4, and 6 months of age with a booster dose at 12-15 months of age. The optimal schedule for 3 dose Hib vaccine is 2 and 4 months of age with a booster dose at 12-15 months of age. There shall be a minimum interval of 4 weeks between each of the first 3 doses. A child shall receive a booster dose no earlier than 12 months of age and no earlier than 8 weeks after the previous dose. A child who starts the Hib series after 7 months of age may be required to complete a full 3 or 4 dose series. A child who starts Hib at 15 months of age or older shall receive 1 dose at 15-59 months of age.
3. A child who is 12 months of age or older, shall receive measles, mumps, and rubella vaccines as individual antigens or as a combined MMR vaccine. A child shall receive the 1st dose of MMR before school entry, or no later than 15 days following child care entry. A child who is 4 years of age or older and who is entering school shall receive a 2nd dose of MMR ~~according to R9-6-702(B),~~ and 1 month or more after the date of the 1st dose.
4. A child who is ~~≥ 1~~ through 5 years of age shall receive the 1st dose of hepatitis A vaccine no later than 15 days following child care entry in Maricopa County. A child shall receive a 2nd dose 6 months following the date of the 1st dose.
5. A child shall receive MV according to R9-6-702(C) no later than 15 days following school entry.
6. A child shall receive a dose of Tdap before the 2 doses of tetanus-diphtheria containing vaccine.
- ~~5-7.~~ Polio vaccine is not required for individuals 18 years of age or older.
- ~~6-8.~~ A child shall receive the VAR according to ~~the schedule in R9-6-702(D)~~ R9-6-702(B) no later than 15 days following child care or school entry. A child who receives VAR at 12 months through 12 years of age shall receive one dose. A child who receives the 1st dose of VAR at 13 years of age or older shall receive the 2nd dose if 4 weeks or more have passed since the date of the 1st dose.

Notices of Final Rulemaking

Table 2. Catch-up Immunization Schedule for Child Care or School Entry

Vaccine	Dose	Time Intervals, Special Notes, and Exceptions
1. Diphtheria, Tetanus, and Pertussis a. For a Child Younger Than 7 Years of Age: DTP or any combination of DTP or DTaP	1st	A child shall receive the 1st dose before school entry, or no later than 15 days following child care entry.
	2nd	If 4 weeks or more have passed since the date of the 1st dose, a child shall receive the 2nd dose before school entry, or no later than 15 days following child care entry.
	3rd	If 4 weeks or more have passed since the date of the 2nd dose, a child shall receive the 3rd dose before continued attendance at school, or no later than 15 days following continued attendance at child care.
	4th	If 6 months or more have passed since the date of the 3rd dose, a child shall receive the 4th dose before continued attendance at school, or no later than 15 days following continued attendance at child care.
	5th or more	A child shall receive a 5th dose before continued attendance at school, or no later than 15 days following child care entry. Exception – A 5th dose is not required if the child received the 4th dose after the child’s 4th birthday.
b. For a Child 7 Years of Age and Older Tetanus and Diphtheria containing vaccine (Td) (pertussis not indicated) <u>through 10 Years of Age:</u> <u>Tetanus-diphtheria containing vaccines (no pertussis)</u>	1st	A child shall receive a 1st dose before school entry.
	2nd	If 4 weeks or more have passed since the date of the 1st dose, a child shall receive the 2nd dose before school entry.
	3rd	If 6 months or more have passed since the date of the 2nd dose, a child shall receive the 3rd dose before school entry.
	<u>4th</u>	<u>A 4th dose is not required if the 1st dose of diphtheria-tetanus containing vaccine was received after 12 months of age.</u>
c. <u>For a Child 11 Years of Age and Older:</u> <u>Tetanus-diphtheria containing vaccines including 1 Tdap</u>	<u>1st</u>	<u>(See Note 2 below) A child shall receive a 1st dose before school entry.</u>
	<u>2nd</u>	<u>If 4 weeks or more have passed since the date of the 1st dose, a child shall receive the 2nd dose before school entry.</u>
	<u>3rd</u>	<u>If 6 months or more have passed since the date of the 2nd dose, a child shall receive the 3rd dose before school entry.</u>

Notices of Final Rulemaking

	4th	<u>Exception – A 4th dose is not required if the 1st dose of diphtheria-tetanus containing vaccine was received after 12 months of age.</u>
2. Polio	1st	(See Note 4 <u>3</u> below.) A child shall receive the 1st dose before school entry, or no later than 15 days following child care entry.
	2nd	If 4 weeks or more have passed since the date of the 1st dose, a child shall receive the 2nd dose before school entry, or no later than 15 days following child care entry.
	3rd	If 4 weeks or more have passed since the date of the 2nd dose, the child shall receive the 3rd dose before school entry, or no later than 15 days following child care entry.
	4th	If 8 weeks or more have passed since the date of the 3rd dose, the child shall receive the 4th dose before school entry. Exception – A 4th dose is not required if the 3rd dose was received after the 4th birthday.
3. MMR Measles, Mumps, Rubella	1st	A child who is 12 months of age or older shall receive the 1st dose before school entry, or no later than 15 days following child care entry.
	2nd	(See Note 3 below.) If 1 month or more has passed since the date of the 1st dose, a child who is 4 years of age or older, <u>entering kindergarten through 12th grade</u> , shall receive the 2nd dose before school entry.
4. Hib Haemophilus influenzae type b (Not required for individuals aged 5 years of age and older.)	1st through 4th	A child who is younger than 5 years of age shall receive a dose no later than 15 days following child care entry. (See Note 2 <u>4</u> below.)
5. Hep B - Hepatitis B	1st	(See Note 4 below.) A child shall receive the 1st dose before school entry, or no later than 15 days following child care entry.
	2nd	If 4 weeks or more have passed since the date of the 1st dose, a child shall receive the 2nd dose before school entry, or no later than 15 days following child care entry.
	3rd	If 2 months or more have passed since the date of the 2nd dose, and 4 months or more have passed since the date of the 1st dose and the child is at least 6 months of age, a child shall receive the 3rd dose before school entry, or no later than 15 days following child care entry. Exception - A child who is 11 through 15 years of age who is receiving the Merck Recombivax HB Adult Formulation vaccine is not required to receive a 3rd dose.
6. Hep A - Hepatitis A Only required for Maricopa County child care	1st	A child who is 24 through 71 months <u>1 through 5 years</u> of age shall receive the 1st dose no later than 15 days following child care entry.
	2nd	If 6 months or more have passed since the date of the 1st dose, a child shall receive the 2nd dose no later than 15 days following child care entry.

Notices of Final Rulemaking

7. Varicella	1st	(See Note 5 below.) A child who is 12 months of age through 12 years shall receive one dose before school entry, or no later than 15 days following child care entry.
	2nd	If 1 month or more has passed since the date of the first dose, a child who is 13 years of age or older shall receive a 2nd dose.
8. Meningococcal	1st	(See Note 1 below) <u>A child who is 11 years old shall receive one dose of MV before school entry.</u>

1. A child shall receive MV according to R9-6-702(C) no later than 15 days following school entry.
2. A child shall receive a dose of Tdap before the 2 doses of tetanus-diphtheria containing vaccine.
- ~~1-3.~~ Polio vaccine is not required for individuals 18 years of age or older.
- ~~2-4.~~ A child who begins the Hib series at 7 months of age or older shall receive Hib according to the following schedule:

Current Age (months)	Prior Immunization History	Recommended Regimen
7-11	1 dose	1 dose at 7-11 months of age and a booster at least 2 months later at 12-15 months of age
7-11	2 doses	1 dose at 7-11 months of age and a booster at least 2 months later at 12-15 months of age
12-14	1 dose before 12 months	2 doses administered at least 2 months apart
12-14	2 doses before 12 months	1 dose
15-59	Any incomplete schedule	1 dose

- ~~3.~~ According to the schedule in R9-6-702(B), a child shall receive the 2nd MMR before entering school.
- ~~4.~~ According to the schedule in R9-6-702(B), a child shall receive the hepatitis B series before entering school or no later than 15 days following child care entry.
5. A child shall receive the VAR according to ~~the schedule in R9-6-702(D)~~ R9-6-702(B) no later than 15 days following child care entry.

~~ARTICLE 6.~~ **ARTICLE 12. TUBERCULOSIS CONTROL**

~~R9-6-601.~~ **R9-6-1201. Definitions**

No change

1. No change
2. No change
 - a. No change
 - b. No change
 - c. No change
3. No change
 - a. No change
 - b. No change
 - c. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change

~~R9-6-602.~~ **R9-6-1202. Local Health Agency Reporting Requirements**

- A. No change
 1. No change
 2. No change
 3. No change
- B. No change

~~R9-6-603.~~ **R9-6-1203. Tuberculosis Control in Correctional Facilities**

- A. No change

Notices of Final Rulemaking

1. No change
2. No change
 - a. No change
 - i. No change
 - ii. No change
 - b. No change
 - i. No change
 - ii. No change
 - c. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
 - a. No change
 - b. No change
9. No change
- B.** No change
- C.** No change
 1. No change
 2. No change
 3. No change

~~R9-6-604~~**R9-6-1204. Standards of Medical Care**

No change

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ADMINISTRATION**

[R07-387]

PREAMBLE

- 1. Sections Affected** **Rulemaking Action**
R9-22-216 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. § 36-2903.01(F)
Implementing statute: A.R.S. § 36-2907
- 3. The effective date of the rules:**
November 6, 2007
An immediate effective date is authorized under A.R.S. § 41-1032(A)(4) because the rule provides a benefit to the public and a penalty is not associated with a violation of the rule. The rule provides a benefit to the public by clarifying that personal care services which may not be billed separately are not limited to bathing and grooming. The public benefits from eliminating ambiguity regarding these billing matters.
- 4. A list of all previous notices appearing in the Register addressing the final rules:**
Notice of Rulemaking Docket Opening: 13 A.A.R. 2170, June 22, 2007
Notice of Proposed Rulemaking: 13 A.A.R. 2255, June 29, 2007
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Mariaelena Ugarte
Address: AHCCCS

Notices of Final Rulemaking

Office of Administrative Legal Services
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034

Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSRules@azahcccs.gov

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

The rule is intended to clarify that personal care services, which cannot be itemized for separate billing, are not limited to assistance with bathing and grooming.

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

No study was reviewed during this rulemaking and the Agency does not anticipate reviewing any studies.

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

Not applicable

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

The rule change removes terms that limit the scope of personal care services that are not permitted to be itemized for separate billing. By removing these terms the scope of this service is clarified, that cannot be itemized for separate billing, and is not limited to bathing and grooming. The change is anticipated to have a minimal economic impact to the Administration and its Contractors.

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

Minor technical and grammatical changes were made at the suggestion of G.R.R.C. staff.

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

The Administration did not receive any comments regarding the rules.

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

Not applicable

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

Not applicable

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION**

ARTICLE 2. SCOPE OF SERVICES

Section

R9-22-216. NF, Alternative HCBS Setting, or HCBS

ARTICLE 2. SCOPE OF SERVICES

R9-22-216. NF, Alternative HCBS Setting, or HCBS

- A.** Services provided in a NF, including room and board, an alternative HCBS setting as defined in R9-28-101, or a HCBS as defined in A.R.S. § 36-2939 are covered for a maximum of 90 days per contract year if the member's medical condition would otherwise require hospitalization.
- B.** Except as otherwise provided in 9 A.A.C. 28, the following services are not itemized for separate billing if provided in a NF, alternative HCBS setting, or HCBS:
1. Nursing services, including:

Notices of Final Rulemaking

- a. Administering medication,
- b. Tube feedings,
- c. Personal care ~~service (assistance with bathing and grooming)~~ services, including but not limited to assistance with bathing and grooming,
- d. Routine testing of vital signs, and
- e. Maintenance of a catheter;
- 2. Basic patient care equipment and sickroom supplies, including:
 - a. First aid supplies such as bandages, tape, ointments, peroxide, alcohol, and over-the-counter remedies;
 - b. Bathing and grooming supplies;
 - c. Identification device;
 - d. Skin lotion;
 - e. Medication cup;
 - f. Alcohol wipes, cotton balls, and cotton rolls;
 - g. Rubber gloves (non-sterile);
 - h. Laxatives;
 - i. Bed and accessories;
 - j. Thermometer;
 - k. Ice bags;
 - l. Rubber sheeting;
 - m. Passive restraints;
 - n. Glycerin swabs;
 - o. Facial tissue;
 - p. Enemas;
 - q. Heating pad; and
 - r. Incontinence briefs.
- 3. Dietary services including preparation and administration of special diets, and adaptive tools for eating;
- 4. Any service that is included in a NF's room and board charge or a service that is required of the NF to meet a federal or state licensure standard or county certification requirement;
- 5. Physician visits made solely for the purpose of meeting state licensure standards or county certification requirements;
- 6. Physical therapy prescribed only as a maintenance regimen; and
- 7. Assistive devices and non-customized durable medical equipment.
- C. A provider shall obtain prior authorization from the Administration for a NF admission for a FFS member.

NOTICE OF FINAL RULEMAKING

TITLE 10. LAW

CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

[R07-392]

PREAMBLE

1. Sections Affected

Rulemaking Action

R10-4-101	Amend
R10-4-102	Amend
R10-4-103	Amend
R10-4-104	Amend
R10-4-105	Amend
R10-4-106	Re-number
R10-4-106	New Section
R10-4-107	Re-number
R10-4-107	New Section
R10-4-108	Re-number
R10-4-108	Amend
R10-4-109	Re-number
R10-4-109	Amend
R10-4-110	Re-number
R10-4-110	Amend
R10-4-201	Amend

Notices of Final Rulemaking

R10-4-202 Amend
R10-4-203 Amend
R10-4-204 Amend

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

Authorizing statute: A.R.S. § 41-2405(A)(8)

Implementing statute: A.R.S. § 41-2407

3. The effective date for the rules:

January 5, 2008

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 3382, September 15, 2006

Notice of Proposed Rulemaking: 13 A.A.R. 2836, August 17, 2007

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

Name: Tony Vidale
Address: Arizona Criminal Justice Commission
1110 W. Washington St., Suite 230
Phoenix, AZ 85007
Telephone: (602) 364-1155
Fax: (602) 364-1175
E-mail: tvidale@azcjc.gov

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

The Commission is amending its rules to make them more clear, concise, and understandable and consistent with current agency practice. The Commission is also completing the plan of action contained in a five-year-review report approved by the Council in December 2003.

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

None

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

Not applicable

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

The funds available to provide compensation awards to claimants will not change as a result of this rulemaking. However, the distribution of the funds will change because the rulemaking:

1. Adds crime scene cleanup expenses as a compensable cost;
2. Clarifies that a victim and derivative victim may submit separate claims and each may receive a compensation award; and
3. Expands the list of relatives who may submit a claim relating to loss of support.

The rulemaking also clarifies that:

1. A Native American ceremony is included within the definition of funeral expense; and
2. A gift, devise, or bequest made to cover a compensable cost is a collateral source.

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

In addition to minor, non-substantive changes made between the proposed and final rules, the Commission:

1. Added a subsection to R10-4-104 to specify the criteria the Commission will use designate an agency as an operational unit for a jurisdiction if more than one agency requests designation. This change is not substantial under the standards at A.R.S. § 41-1025(B) because it simply specifies information that was implied.
2. Deleted incorporating by reference 18 U.S.C. 2331, which defines "international terrorism." The material is still referenced to define "international terrorism" but is not incorporated. This change is consistent with current standards regarding incorporation of materials.

Notices of Final Rulemaking

3. To ensure that an emergency compensation award can be made timely, changed R10-4-110 to allow an operational unit to make the original decision regarding an emergency compensation award while maintaining the Board's authority to make the final decision regarding a compensation award. This change is not substantial under the standards provided at A.R.S. § 41-1025(B) because:
 - The persons affected by the rule, the Board and operational units, understood the rule would affect their interests;
 - The subject matter of the rule, emergency compensation awards, remains the same; and
 - The effect of the rule, enabling an eligible claimant to receive an emergency compensation award and ensuring that the Board makes the final decision regarding a compensation award, remains the same.

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

No comments were made regarding the proposed rules.

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

None

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

None

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 10. LAW

CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

ARTICLE 1. CRIME VICTIM COMPENSATION PROGRAM

Section

- R10-4-101. Definitions
- R10-4-102. Administration of the Fund
- R10-4-103. Statewide Operation
- R10-4-104. Operational Unit Requirements
- R10-4-105. Crime Victim Compensation Board
- R10-4-106. Prerequisites for a Compensation Award
- R10-4-107. Submitting a Claim
- ~~R10-4-106.~~ R10-4-108. Compensation Award Criteria
- ~~R10-4-109. Renumbered~~
- ~~R10-4-107.~~ R10-4-109. Hearings and Appeals Hearing; Request for Rehearing or Review
- ~~R10-4-110. Renumbered~~
- ~~R10-4-108.~~ R10-4-110. Emergency Awards Compensation Award

ARTICLE 2. CRIME VICTIM ASSISTANCE PROGRAM

Section

- R10-4-201. Definitions
- R10-4-202. Administration of the Fund
- R10-4-203. ~~Program~~ Grant Eligibility Requirements
- R10-4-204. Services

ARTICLE 1. CRIME VICTIM COMPENSATION PROGRAM

R10-4-101. Definitions

In these rules ~~this Article:~~

1. ~~“Allowable expense” means an amount authorized under these rules to be paid as a compensation award by the Board to a victim, a derivative victim, or both for economic loss.~~
- ~~2.~~ 1. ~~“Board” means the Crime Victim Compensation Board of an operational unit.~~
2. ~~“Claim” means an application for compensation submitted under this Article.~~
3. ~~“Claimant” means any a natural person, filing who files a claim under these rules and authorized to receive a compensation award for economic loss because the person is:~~

Notices of Final Rulemaking

- a- ~~A victim of criminally injurious conduct;~~
 - b- ~~A resident of this state who is injured by an act of international terrorism;~~
 - e- ~~A derivative victim;~~
 - d- ~~A person authorized to act on a victim's behalf, or a person authorized to act on behalf of a deceased victim's dependent if the victim died as a direct result of criminally injurious conduct or an act of international terrorism;~~
~~or~~
 - e- ~~A person who assumes an obligation or pays an expense directly related to a victim's economic loss incurred as a direct result of criminally injurious conduct or an act of international terrorism.~~
 - f. Claimant does not mean:
 - i. ~~An offender, an accomplice of the offender, or a person who encouraged or in any way participated in or facilitated criminally injurious conduct or an act of international terrorism;~~
 - ii. ~~A person serving a sentence of imprisonment in any detention facility, home arrest program, work furlough, or a person who has escaped from serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough at the time of the criminally injurious conduct or act of international terrorism; or~~
 - iii. ~~A person convicted of a federal crime who is delinquent in paying a fine, monetary penalty, or restitution imposed for the offense only if the U.S. Attorney General and the Director of the Administrative Office of the U.S. Courts have issued a written determination that the entities administering federal victim programs have access to an accurate and efficient criminal debt payment tracking system.~~
4. "Collateral source" means a source of compensation for economic loss that a claimant ~~has received; or that is available to a~~ the claimant or that is payable to or on behalf of the victim. ~~including~~ Collateral source includes the following sources of compensation:
- a. ~~The offender perpetrator or a 3rd third party responsible for the offender's perpetrator's actions;~~
 - b. The United States government or any of its agencies, a state or any of its political subdivisions, or an instrumentality of ~~2 two~~ or more states, unless:
 - i. ~~The law providing for the compensation makes the compensation excess or secondary to benefits under this rule Article, or; specifically excluding those~~
 - ii. The compensation is made with federal funds granted under 42 U.S.C. 10602;
 - c. Social Security, Medicare, or Arizona Health Care Cost Containment System payments;
 - d. ~~State-required, temporary, nonoccupational disability insurance for a temporary, nonoccupational disability;~~
 - e. Worker's compensation insurance;
 - f. Wage continuation program of any employer;
 - g. Insurance proceeds payable ~~to the victim or claimant for loss sustained due to the~~ criminally injurious conduct or an act of international terrorism; ~~or~~
 - h. A contract providing for prepaid hospital and other health-care services or disability benefits; and
 - i. A gift, devise, or bequest to cover a specific compensable cost.
5. "Commission" means the Arizona Criminal Justice Commission; as established by A.R.S. § 41-2404.
6. "Compensable cost" means an economic loss for which a compensation award is allowed under this Article.
7. "Compensation award" means a payment made to a claimant under the standards at R10-4-108.
8. "Crime scene cleanup expense" means the reasonable and customary cost for a professional service to remove or attempt to remove blood, dirt, stains, and other debris that result from criminally injurious conduct occurring in a residence.
- 6-9. "Criminally injurious conduct" means conduct that:
- a. Constitutes a crime as defined by ~~the laws of this state or federal law regardless of~~ whether or not the perpetrator of the ~~act~~ conduct is convicted;
 - b. Poses a substantial threat of physical injury, extreme mental distress, or death; and
 - c. Is punishable by fine, imprisonment, or death, or would be punishable but the ~~person engaging in~~ perpetrator of the conduct lacked the capacity to commit the crime under applicable laws.
- 7-10. "Derivative victim" means:
- a. The spouse, child, parent, stepparent, stepchild, sibling, grandparent, grandchild, or guardian of a victim who died as a result of criminally injurious conduct or an act of international terrorism ~~and includes a child born after the victim's death;~~
 - b. A child born to a victim after the victim's death;
 - ~~b-c.~~ A person living in the household of a victim who died as a result of criminally injurious conduct, in a relationship determined by the Board to be substantially similar to a relationship listed in subsection (7)(a); ~~(10)(a);~~
 - ~~e-d.~~ A member of the victim's family who witnessed the criminally injurious conduct; or act of international terrorism or who discovered the scene of the criminally injurious conduct;
 - ~~d-e.~~ A ~~nonfamily member~~ natural person who is not related to the victim but who witnessed a violent crime the criminally injurious conduct or discovered the scene of the criminally injurious conduct; or
 - ~~e-f.~~ A natural person whose mental health counseling and care or presence during the victim's mental health counsel-

Notices of Final Rulemaking

- ing and care is required for the successful treatment of the victim.
11. “Durable medical equipment” means an appliance, apparatus, device, or product that:
 - a. Is medically necessary to treat an injury or condition resulting from criminally injurious conduct or an act of international terrorism;
 - b. Improves the function of an injured body part or delays deterioration of a patient’s physical condition;
 - c. Is primarily and customarily used to serve a medical purpose rather than primarily for transportation, comfort, or convenience; and
 - d. Provides the medically appropriate level of performance and quality for the medical injury or condition present.
 - ~~8-12.~~ “Economic loss” means financial detriment ~~consisting only of~~ resulting from medical expenses ~~expense~~, mental health counseling and care ~~expenses~~, ~~work loss~~ ~~expense~~, ~~crime scene cleanup~~ ~~expense~~, and ~~funeral expenses~~ ~~expense~~, or ~~work loss~~.
 - ~~9-13.~~ “Extreme mental distress” means a substantial ~~personal~~ disorder of emotional processes, thought, or cognition that impairs judgment, behavior, or ability to cope with the ordinary demands of life.
 - ~~10-14.~~ “Fund” means the ~~Crime~~ Victim Compensation and Assistance Fund established by A.R.S. § 41-2407.
 - ~~11-15.~~ “Funeral expense” means a reasonable and customary cost, such as those listed on the Statement of Funeral Goods and Services Selected required under A.A.C. R4-12-307, incurred as a direct result of a victim’s funeral, cremation, Native American ceremony, or burial.
 16. “Good cause” means a reason that the Board determines is substantial enough to afford a legal excuse.
 17. “Inactive claim” means a claim for which no compensation award is made for 12 consecutive months.
 18. “Incident of criminally injurious conduct” means all criminal actions that are related to or dependent upon each other regardless of the time involved in perpetrating the actions, number of persons perpetrating the actions, or the number of crimes with which the perpetrator is or could be charged.
 - ~~12-19.~~ “International terrorism” means an act as defined ~~has the meaning prescribed in 18 U.S.C. 2331 (October 29, 1992), incorporated by reference and on file with the Commission and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments;~~
 - ~~13-20.~~ “Jurisdiction” means any county in this state.
 - ~~14-21.~~ “Medical expense” means a reasonable and customary cost ~~related to~~ for medical care provided to a victim due to a physical injury or medical condition ~~resulting from that is a direct result of~~ criminally injurious conduct or an act of international terrorism. ~~Medical expense includes a cost resulting from damage to a prosthetic device or a dental device. Medical expense does not include a charge for a private room in a hospital, clinic, convalescent home, nursing home, or any other institution engaged in providing nursing care and related services, unless private accommodations are medically required.~~
 - ~~15-22.~~ “Mental health counseling and care expense” means a reasonable and customary cost ~~related to the assessment, diagnosis, and treatment of~~ ~~assess, diagnose, and treat~~ a victim’s or derivative victim’s ~~mental and emotional health that is required to alleviate~~ extreme mental distress resulting from criminally injurious conduct or an act of international terrorism. ~~Mental health counseling and care expense does not include the cost for a private room in a hospital, clinic, convalescent home, nursing home, or any other institution engaged in providing nursing care and related services, unless private accommodations are medically required.~~
 23. “Minimum wage standard” means the uniform minimum wage payable in Arizona under federal or state law, whichever is greater.
 - ~~16-24.~~ “Operational unit” means a public or private agency authorized by the Commission to receive, evaluate, and present to the Board ~~a claim~~ compensation claims from a claimant under these rules and state law.
 - ~~17-25.~~ “Program” means the Crime Victim Compensation Program.
 26. “Reasonable and customary” means the normal charge within a specific geographic area for a specific service by a provider of a particular level of experience or expertise.
 27. “Resident” means a natural person who is domiciled in Arizona or is in Arizona for other than a temporary or transitory purpose.
 - ~~18-28.~~ “Subrogation” means the substitution of the state ~~and or~~ an operational unit, ~~to the extent that the operational unit used the operational unit’s funds,~~ in place of the ~~a~~ claimant to enforce a lawful claim against a collateral source to recover any part of a compensation award ~~made to the claimant using funds of the state or operational unit.~~
 19. “Work loss” means a reduction in income from work that a victim would have performed if the victim had not been injured or killed. ~~Work loss does not include any income earned from substitute work or income available to the victim from appropriate substitute work that the victim was capable of performing but unreasonably failed to perform.~~
 - ~~20-29.~~ “Victim” means a ~~natural~~ person who suffers ~~a~~ physical injury, ~~or medical condition~~, extreme mental distress, or death as a direct result of ~~any of the following~~:
 - a. Criminally injurious conduct,
 - b. An act of international terrorism,
 - c. ~~A~~ The person’s good faith effort to prevent criminally injurious conduct or an act of international terrorism, or
 - d. ~~A~~ The person’s good faith effort to apprehend a person suspected of engaging in criminally injurious conduct or

Notices of Final Rulemaking

an act of international terrorism.

30. “Work loss” means a reduction in income from:

- a. Work that a victim or derivative victim would have performed if the victim had not been a victim; and
- b. Social Security or Supplemental Security Income that a victim would have received or from which a derivative victim would have benefitted if the victim had not been killed.

R10-4-102. Administration of the Fund

- A. The Commission shall deposit in the Fund all funds received under A.R.S. § 12-116.01 and any other funds received for compensating a ~~crime victim in the Fund~~ claimant.
- B. The Commission shall designate ~~± one~~ one operational unit in a jurisdiction to receive an allocation from the Fund each state fiscal year.
- C. The Commission shall distribute a portion of the Fund to each ~~designated~~ operational unit for expenditure by the Board. ~~Funds shall be distributed by a formula determined annually by the Commission. The formula shall be derived~~ The Commission shall distribute the funds using a formula that the Commission determines annually using:
 1. A uniform base amount for each operational unit.
 - ~~±2.~~ An analysis of the prior year’s expenditure history, and
 - ~~2-3.~~ A uniform base amount with the remaining funds divided among jurisdictions based on The population of each jurisdiction.
- D. The Commission shall reserve the lesser of \$50,000 or 10% percent of the Fund to be used in the event of an unforeseen increase of victimization ~~by criminally injurious conduct or an act of international terrorism, when compensation cannot be provided by an~~ that causes the operational unit in a particular jurisdiction to lack the funds needed to provide compensation.
- E. If there is an unforeseen increase in victimization ~~by criminally injurious conduct or an act of international terrorism in a particular jurisdiction,~~ the Commission shall allow a claimant ~~from that jurisdiction~~ to apply directly to the Commission for a compensation award. The Commission will determine whether to make a compensation award based on the criteria established by R10-4-106 R10-4-108.
- F. If, ~~at the end of a fiscal year, an operational unit has any unexpended funds received from the Commission remain unexpended by the Board at the end of a fiscal year,~~ the operational unit shall return the funds shall be returned to the Commission within ~~45~~ 90 days after the end of the fiscal year. The Commission shall deposit the returned funds and redeposit in the Fund for use in the next fiscal year.
- G. Funds collected by an operational unit through subrogation ~~and or~~ and or restitution may be retained by the operational unit to the extent authorized by the Commission and shall be used to pay compensation awards based on the criteria established by ~~R10-4-106~~ R10-4-108.
- H. An operational unit that receives additional funds for victim compensation shall submit a quarterly, written report to the Commission. The operational unit shall include in the report shall contain the amount of additional funds received and distributed to compensate ~~crime victims or claimants~~. The Commission shall use the information in the written report to apply for federal matching funds ~~from the Victims of Crime Act Fund (42 U.S.C. 10601 et seq. [November 26, 1997]).~~ If matching funds are received, the Commission shall forward the matching funds to the appropriate operational unit.
- I. ~~The An~~ An operational unit ~~may shall~~ shall use funds to pay administrative costs only to the extent authorized by the Commission.

R10-4-103. Statewide Operation

For any portion of the state not served by an operational unit, the Commission ~~may shall~~ shall operate a ~~compensation~~ program in accordance with ~~these rules~~ this Article or ~~may~~ provide for a program by contract.

R10-4-104. Operational Unit Requirements

- A. ~~A public or private agency seeking designation as an operational unit shall submit a letter to the Commission requesting designation~~ To be designated by the Commission as an operational unit for a jurisdiction, a public or private agency shall submit to the Commission a written request for designation.
- B. ~~To be eligible to receive designation and funding by the~~ The Commission shall designate a public or private agency as the operational unit for a jurisdiction;:
 1. Only if the public or private agency shall agree agrees not to:
 - ~~1-a.~~ Not use Use Commission funds or federal funds to supplant funds otherwise available to ~~the program for crime victim compensation~~ compensate a victim or claimant;
 - ~~2-b.~~ Make no a distinction between ~~residents a resident and non-residents a non-resident~~ a resident and non-resident in evaluating ~~claims a claim made by or on behalf of victims and derivative victims of criminally injurious conduct occurring in the public or private agency’s jurisdiction; and~~ claims a claim made by or on behalf of victims and derivative victims of criminally injurious conduct occurring in the public or private agency’s jurisdiction; and
 - ~~c.~~ Make a distinction in evaluating a claim relating to a federal crime that occurs in Arizona and one relating to a state crime; and
 - ~~3.~~ Forward to the Board compensation claims of victims and derivative victims of criminally injurious conduct occurring in this state;
 2. Only if the public or private agency agrees to:

Notices of Final Rulemaking

- 4-a. Forward to the Board ~~compensation claims of victims and derivative victims of a claim relating to an incident of~~ criminally injurious conduct or an act of international terrorism occurring in the public or private agency's jurisdiction;
 - 5-b. Forward to the Board a ~~compensation claim of~~ made by or on behalf of a resident of the public or private agency's jurisdiction who is a victim or derivative victim of an incident of criminally injurious conduct or an act of international terrorism occurring in another state, the District of Columbia, Puerto Rico, or any other possession or territory of the United States that does not have a crime victim compensation program that meets the requirements of 42 U.S.C. 10602(b)(1)-(6);
 - 6-c. Notify the Commission of any ~~changes~~ change in the public or private agency's program procedures before the ~~changes take~~ change takes effect. ~~If the changes are and if the change is~~ material, ~~the public or private agency shall receive prior~~ obtain written approval from the Commission before instituting the ~~changes~~ change;
 - 7-d. Submit a written quarterly financial report to the Commission, on a form provided by the Commission, ~~that and~~ provide detailed information regarding the expenditure of funds received from the Commission and those required as a match for funds received from the Commission ~~describes in detail the public or private agency's activities under this rule. The report shall include:~~
 - a. The impact that Commission funds had on the public or private agency;
 - b. The amount and source of revenue available for victim compensation;
 - c. The total number of claims, awards, denials, pending claims, total amount of awards; and the ethnic background, disability, age, and sex of each victim;
 - d. The total number of claims for state resident and nonresident victims; the number and award amount by type of crime; and the number and award amount by type of expense, including medical, mental health counseling, work loss, and funeral;
 - e. The type of provider for mental health counseling and care awards including psychiatrist, psychologist, rape crisis center, and community mental health center; the number, amount, and duration of mental health counseling and care awards; and
 - f. Referral sources;
 - 8-e. Provide an application forms form to all persons who claim an award as a result of a claimant; ~~eriminally injuri-~~ous conduct or an act of international terrorism that occurred in the public or private agency's jurisdiction. The application form shall contain the following information:
 - a. The name, address, ethnic background, age, and sex of the victim or derivative victim of the criminally injurious conduct or act of international terrorism;
 - b. The claimant's name, address and relationship to the victim;
 - c. If the victim is deceased, the name and address of each derivative victim, and the extent to which each was dependent on the victim for financial support;
 - d. The nature of the criminally injurious conduct or act of international terrorism and the date the conduct occurred;
 - e. The law enforcement agency or officer to whom the criminally injurious conduct or act of international terrorism was reported;
 - f. The nature and extent of the injuries the victim sustained from the criminally injurious conduct or act of international terrorism;
 - g. The name and address of any person providing medical treatment to the victim and the name and address of any hospital or similar institution where the victim received medical treatment for the injuries;
 - h. The economic loss sustained as a result of the criminally injurious conduct or act of international terrorism;
 - i. The name and amount of any collateral source the victim, a derivative victim, or a claimant has received or is entitled to receive for economic loss as a result of the criminally injurious conduct or act of international terrorism;
 - j. An affirmation that the claimant is not:
 - i. An offender, accomplice, or facilitator of the criminally injurious conduct or an act of international terrorism;
 - ii. Serving or was not serving a sentence of imprisonment in any detention facility, home arrest program, work furlough and has not escaped from serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough at the time of the criminally injurious conduct or act of international terrorism;
 - k. A release authorizing the unit's investigative agent to obtain any report, document, or information that relates to the determination of a compensation claim.
 - 9-f. Comply with all civil rights requirements; ~~and~~
 - 10-g. Ensure that each ~~compensation claim is~~ monitored; investigated; and substantiated before forwarding the claim to the Board for ~~an a compensation award;~~ and
 - h. Monitor a compensation award to ensure that amounts paid are consistent with this Article.
- C. If more than one agency requests to be designated by the Commission as an operational unit for a jurisdiction, the Commission shall designate the agency that it determines is better able to evaluate claims and manage the expenditure of pub-

Notices of Final Rulemaking

lic funds. The Commission shall give preference to a public agency if both a public and private agency request designation.

R10-4-105. Crime Victim Compensation Board

- A.** Each operational unit shall establish a Crime Victim Compensation Board. ~~The Board shall consist~~ that consists of an odd number of ~~members~~ with at least ~~3~~ three members. ~~The Board shall be appointed by the Commission Chairman from a list submitted by the operational unit.~~ Members of the Board shall not receive ~~no~~ compensation for their services but are eligible for travel reimbursement under A.R.S. § 38-621.
- B.** ~~Each appointed member's term shall be 3 years, except those members first appointed. Approximately~~ When a Board is first established, approximately one-third of the members shall be appointed for a 3 ~~three~~-year term, one-third for a 2 ~~two~~-year term, and one-third for a 1 ~~one~~-year term. All vacancies, except through the expiration of term, shall be filled If a Board member is unable to complete the term of the Board member's appointment, the Commission Chairman shall appoint a new Board member for the unexpired term only.
- C.** ~~The~~ When a Board is first established and when a new member is appointed to an existing Board, the Commission Chairman shall ~~appoint a member to complete a vacated term~~ choose the individual to be appointed from a list submitted by the operational unit.
- ~~C-D.~~** The ~~A~~ majority of the Board membership constitutes a quorum ~~for the transaction of that may transact the~~ business of the Board.
- E.** The Board shall elect from its membership a chairman and other necessary officers ~~as necessary~~, to serve terms determined by the Board.
- ~~D-E.~~** The Board shall make a compensation award according to ~~these rules~~ this Article and perform other acts necessary for the operation of the program.
- G.** As required by A.R.S. Title 38, Chapter 3, Article 8, a Board member shall not participate in making any decision regarding a claim or compensation award if the Board member or a relative of the Board member, as defined at A.R.S. § 38-502, has a substantial interest in the decision.

R10-4-106. Prerequisites for a Compensation Award

- A.** The Board shall make a compensation award only if it determines that:
1. Criminally injurious conduct or an act of international terrorism:
 - a. Occurred in Arizona; or
 - b. Occurred outside of Arizona in an area without a crime compensation program and affected a resident;
 2. The criminally injurious conduct or act of international terrorism directly resulted in the victim's physical injury, extreme mental distress, medical condition, or death;
 3. The victim of the criminally injurious conduct or act of international terrorism was not:
 - a. The perpetrator, an accomplice of the perpetrator, or a person who encouraged or in any way participated in or facilitated the criminally injurious conduct or act of international terrorism that directly resulted in the victim's physical injury, extreme mental distress, medical condition, or death;
 - b. Serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough at the time of the criminally injurious conduct or act of international terrorism that directly resulted in the victim's physical injury, extreme mental distress, medical condition, or death;
 - c. Escaped from serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough at the time of the criminally injurious conduct or act of international terrorism that directly resulted in the victim's physical injury, extreme mental distress, medical condition, or death;
 - d. Convicted of a federal crime and delinquent in paying a fine, monetary penalty, or restitution imposed for the offense if the U.S. Attorney General and the Director of the Administrative Office of the U.S. Courts have issued a written determination that the entities administering federal victim compensation programs have access to an accurate and efficient criminal debt payment tracking system; or
 - e. Convicted of a state crime and delinquent in paying a fine, monetary penalty, or restitution imposed for the crime if the delinquency is identified by the Arizona Administrative Office of the Courts or the Clerk of the Superior Court.
 4. The criminally injurious conduct or act of international terrorism was reported to an appropriate law enforcement authority within 72 hours after its discovery;
 5. The victim, derivative victim, or claimant cooperated with law enforcement agencies;
 6. The victim, derivative victim, or claimant incurred economic loss as a direct result of the criminally injurious conduct or act of international terrorism that is not compensable by a collateral source; and
 7. A claim, as described in R10-4-107, was submitted to the operational unit within two years after discovery of the criminally injurious conduct or act of international terrorism.
- B.** The Board shall extend the time limits under subsections (A)(4) and (A)(7) if the Board determines there is good cause for a delay.

R10-4-107. Submitting a Claim

- A.** If the prerequisites in R10-4-106 are met, a natural person is eligible to submit a claim if the person is:
1. A victim;
 2. A derivative victim;
 3. A person authorized to act on behalf of a victim or a deceased victim's dependent; or
 4. A person who assumed an obligation for or paid an expense directly related to a victim's economic loss.
- B.** An operational unit shall not accept a claim from a person who is:
1. The perpetrator, an accomplice of the perpetrator, or a person who encouraged or in any way participated in or facilitated the criminally injurious conduct or act of international terrorism that directly resulted in the victim's physical injury, extreme mental distress, medical condition, or death;
 2. Serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough at the time of the criminally injurious conduct or act of international terrorism that directly resulted in the victim's physical injury, extreme mental distress, medical condition, or death;
 3. Escaped from serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough at the time of the criminally injurious conduct or act of international terrorism that directly resulted in the victim's physical injury, extreme mental distress, medical condition, or death;
 4. Convicted of a federal crime and delinquent in paying a fine, monetary penalty, or restitution imposed for the offense if the U.S. Attorney General and the Director of the Administrative Office of the U.S. Courts have issued a written determination that the entities administering federal victim compensation programs have access to an accurate and efficient criminal debt payment tracking system; or
 5. Convicted of a state crime and delinquent in paying a fine, monetary penalty, or restitution imposed for the crime if identified by the Arizona Administrative Office of the Courts or the Clerk of the Superior Court.
- C.** If a person is eligible under subsection (A) to submit a claim regarding more than one incident of criminally injurious conduct or act of international terrorism, the person shall submit a separate claim regarding each incident of criminally injurious conduct or act of international terrorism.
- D.** If more than one person is eligible under subsection (A) to submit a claim regarding an incident of criminally injurious conduct or act of international terrorism, each person shall submit a separate claim.
- E.** To apply for a compensation award, a person who is eligible under subsection (A) shall submit a claim, using a form that is available from the Commission, to the operational unit in the jurisdiction in which the incident of criminally injurious conduct occurred or in the county and state in which a victim of international terrorism lives. The claimant shall provide the following:
1. About the victim:
 - a. Full name.
 - b. Residential address.
 - c. Gender.
 - d. Date of birth.
 - e. Residential and work telephone numbers.
 - f. Social Security number.
 - g. Statement of whether the victim is deceased.
 - h. Ethnicity.
 - i. Statement of whether the victim is a resident, and
 - j. Statement of whether the victim is disabled.
 2. About the claimant if the claimant is not the victim:
 - a. Full name;
 - b. Residential address;
 - c. Gender;
 - d. Date of birth;
 - e. Residential and work telephone numbers;
 - f. Social Security number;
 - g. Relationship to the victim; and
 - h. If there are multiple victims or derivative victims of an incident of criminally injurious conduct or act of international terrorism, the name, residential address, Social Security number, and date of birth of each, and for derivative victims, the relationship to the victim;
 3. About the crime:
 - a. Type of crime;
 - b. Statement of whether the crime was related to domestic violence;
 - c. Statement of whether the crime was a federal crime;
 - d. Date on which crime was committed;
 - e. Date on which crime was reported to law enforcement authorities;

Notices of Final Rulemaking

- f. Name of law enforcement agency to which the crime was reported;
- g. Name of law enforcement officer to whom the crime was reported;
- h. Law enforcement report number;
- i. Location of crime;
- j. Name of perpetrator, if known; and
- k. Brief description of the crime and resulting injuries;
- 4. About a civil lawsuit:
 - a. Statement of whether the claimant has or will file a civil lawsuit related to the crime; and
 - b. If the answer to subsection (E)(4)(a) is yes, the name, address, and telephone number of the claimant's attorney;
- 5. About benefits from collateral sources:
 - a. List of the benefits the claimant has received since the incident of criminally injurious conduct or act of international terrorism or is entitled to receive; and
 - b. For each benefit identified:
 - i. Type of benefit;
 - ii. Contact address and telephone number; and
 - iii. Claimant's identification or policy number;
- 6. About the economic loss for which compensation is requested:
 - a. Medical expenses. A statement of whether the claim includes medical expenses and if so, the name, address, telephone number, account number, and date of service for each provider, and if mileage is claimed for medical care, the date and mileage of each trip;
 - b. Mental health counseling and care expenses. A statement of whether the claim includes mental health counseling and care expenses and if so, the name, address, telephone number, account number, and date of service for each provider, and if mileage is claimed for mental health counseling and care, the date and mileage of each trip;
 - c. Work loss expenses. A statement of whether the claim includes work loss expenses and if so, the date on which the claimant was first unable to work, date on which the claimant returned to work, total time lost from work, hourly rate of pay, number of hours worked each week, number of hours worked each day, name, address, and telephone number of employer, and name of supervisor;
 - d. Funeral expenses. A statement of whether the claim includes funeral expenses and if so, the name, address, and telephone number of the provider and the amount paid; and
 - e. Crime scene cleanup expenses. A statement of whether the claim includes crime scene cleanup expenses and if so, the name, address, and telephone number of the provider and the amount paid; and
- 7. The claimant's dated signature:
 - a. Certifying that the claimant is eligible to submit a claim and that the information provided is true and correct to the best of the claimant's knowledge;
 - b. Subrogating to the state and operational unit the claimant's right to receive benefits from a collateral source;
 - c. Authorizing the release of confidential information necessary to administer the claim; and
 - d. Authorizing the release to the Program of protected health information that relates to care provided as a result of the criminally injurious conduct or act of international terrorism and is necessary to verify the claim.
- F. A claimant shall attach the following to the claim form submitted under subsection (E):
 - 1. A copy of all bills, contracts, receipts, and insurance statements relating to each expense claimed under subsection (E)(6); and
 - 2. If work loss expenses are claimed, a signed statement on official letterhead:
 - a. From the claimant's employer verifying the information provided under subsection (E)(6)(c); and
 - b. If applicable, from the physician or mental health care provider indicating that the claimant was unable to work as a result of being a victim or derivative victim, the length of time the claimant was unable to work, and the date on which the claimant was or will be able to return to work.

R10-4-106, R10-4-108. Compensation Award Criteria

- A. The Board shall meet at least every 60 days to decide, based on the ~~investigative agent's~~ findings ~~made by the operational unit~~, whether to make ~~an a~~ a compensation award ~~and if so, the terms of the award, and the amount of the compensation award. The Board shall ~~render~~ make a decision within 60 days of receipt of an application by~~ after the operational unit receives a claim under R10-4-107 ~~except where unless good cause exists. The Board shall inform the applicant claimant in writing within five days of the Board's decision in writing within 5 days of the decision.~~
- B. The Board shall not make a compensation award unless it determines that:
 - 1. Criminally injurious conduct or an act of international terrorism was committed;
 - 2. The criminally injurious conduct or act of international terrorism directly resulted in physical injury to, extreme mental distress to, or death of the victim;
 - 3. The criminally injurious conduct or act of international terrorism was reported to the appropriate law enforcement authority within 72 hours after its discovery unless good cause is shown to justify a delay; and
 - 4. The compensation application was submitted to the operational unit within 2 years of the discovery of the criminally

Notices of Final Rulemaking

~~injuriously conduct or act of international terrorism unless good cause is shown to justify a delay the prerequisites in R10-4-106 are met.~~

- C. The Board shall make a compensation award ~~from the Fund~~ only for the following:
1. ~~Medical~~ Reasonable and customary medical expenses due to a the victim's physical injury, medical condition, or death resulting from criminally injurious conduct or an act of international terrorism;
 - a. The Board shall include the following as a medical expense:
 - i. Repair of damage to a prosthetic device, eyeglasses or other corrective lenses, or a dental device;
 - ii. Durable medical equipment; and
 - iii. Reasonable transportation costs related to obtaining medical care.
 - b. The Board shall not include as a medical expense a charge for a private room in a hospital, clinic, convalescent home, nursing care facility, or other institution that provides medical services unless the Board determines that the private room is medically necessary;
 2. ~~Work~~ Reasonable and customary work loss expenses for:
 - a. A victim's ~~victim~~ whose ability to work is reduced due to physical injury, extreme mental distress, or ~~medical condition~~ death resulting from the criminally injurious conduct or an act of international terrorism. ~~The compensation award for work loss, after deducting any collateral source for work loss, shall not exceed an amount equal to 40 hours per week at the current federal minimum wage standard for each week of work loss to the maximum allowable under subsection (D)(1).~~
 - b. A victim or derivative victim to make a medical or mental health counseling and care visit or attend a court proceeding directly related to the criminally injurious conduct or act of international terrorism;
 - ~~b-c.~~ A deceased victim's spouse, child, sibling, ~~or~~ parent, stepparent, stepchild, grandparent, or grandchild if the Board determines the death resulted in a loss of support from the victim to the spouse, child, sibling, ~~or~~ parent, stepparent, stepchild, grandparent, or grandchild. ~~The compensation award for work loss, after deducting any collateral source for work loss, shall not exceed an amount equal to 40 hours per week at the current federal minimum wage standard for each week of work loss to the maximum allowable under subsection (D)(1).~~
 - ~~e-d.~~ A parent or guardian of a minor victim to transport or accompany the minor victim to a medical, ~~or~~ mental health counseling and care visit; or court proceeding directly related to the criminally injurious conduct or act of international terrorism. ~~The compensation award for work loss, after deducting any collateral source for work loss, shall not exceed an amount equal to 40 hours per month at the current federal minimum wage standard for each month of work loss to the maximum allowable under subsection (D)(1); ~~or~~~~
 - ~~d-c.~~ A victim or derivative victim to attend court proceedings. ~~The compensation award for work loss, after deducting any collateral source for work loss, shall not exceed an amount equal to 40 hours per month at the current federal minimum wage standard for each month of work loss to the maximum allowable under subsection (D)(1).~~ make funeral arrangements or tend to the affairs of a deceased victim if the derivative victim made the funeral arrangements or tended to the affairs of the deceased victim; or
 - f. A family member or guardian or a person living in the victim's household in a relationship similar to those listed in R10-4-101(10)(a) to provide non-skilled nursing care for the victim that is required as a result of the criminally injurious conduct or act of international terrorism;
 3. ~~Funeral~~ Reasonable and customary funeral expenses. ~~Expenses for clothing, travel, lodging, food, or per diem to attend a victim's funeral, Native American ceremony, or burial are not reasonable and customary funeral expenses and shall not be included in a claim for a compensation award due to a victim's death resulting from criminally injurious conduct or an act of international terrorism. The compensation award for funeral expense shall not exceed \$5,000; and~~
 4. ~~Mental~~ Reasonable and customary mental health counseling and care expenses due to a victim's or derivative victim's extreme mental distress resulting from the criminally injurious conduct or an act of international terrorism. ~~Mental health counseling and care expenses cannot exceed a 36 month period starting with the 1st treatment. Mental health counseling and care for derivative victims shall be included as a portion of the maximum award. if:~~
 - a. The mental health counseling and care is provided by an individual who:
 - i. Is licensed for independent practice by the Board of Behavioral Health Examiners,
 - ii. Is a behavioral health professional as defined at A.A.C. R9-20-101,
 - iii. Is a behavioral health technician as defined at A.A.C. R9-20-101 and employed by an agency licensed by the Department of Health Services, or
 - iv. Is authorized to perform mental health counseling and care by the laws of a federally recognized tribe; and
 - b. The mental health counseling and care expenses:
 - i. Include only reasonable costs of transportation related to obtaining the mental health counseling and care; and
 - ii. Do not include a charge for a private room in a hospital, clinic, convalescent home, nursing care facility, or any other institution that provides medical services unless the Board determines that the private room is medically necessary; and

Notices of Final Rulemaking

5. Reasonable and customary crime scene cleanup expenses due to a victim's death from criminally injurious conduct in a residence.
- D. The Board shall not make a compensation award to a claimant that exceeds:
1. Twenty thousand dollars in the aggregate for all economic loss sustained by a victim and any derivative victim the claimant as a result of an incident of criminally injurious conduct or act of international terrorism, and;
 2. The amount existing in the Fund available to the operational unit and not committed to other compensation awards at the time the Board makes the compensation award determination;
 3. For work loss expenses:
 - a. Work loss expenses under subsections (C)(2)(a) and (C)(2)(c) are limited to 40 hours per week at the current minimum wage and the maximum amount specified in subsections (D)(1) and (D)(2).
 - b. Work loss expenses under subsections (C)(2)(b) and (C)(2)(d) are limited to 40 hours per month at the current minimum wage and the maximum amount specified in subsections (D)(1) and (D)(2).
 - c. Work loss expenses under subsection (C)(2)(e) are limited to 24 hours at the current minimum wage, and
 - d. Work loss expenses under subsection (C)(2)(f) are limited to 40 hours per week at the current minimum wage to a maximum of 160 hours;
 4. For mental health counseling and care expenses, \$5,000 per victim or derivative victim;
 5. For funeral expenses, \$5,000; and
 6. For crime scene cleanup expenses, \$1,000.
- E. The Board shall deny or reduce a compensation award to a claimant if:
1. The economic loss victim or claimant has been recouped or is eligible to recoup the economic loss from a collateral source except if the Board determines that use of a collateral source, excluding benefits from a federal or federally financed program, to pay for mental health counseling and care expenses is not in the best interest of the victim or derivative victim, the Board shall not deny or reduce a compensation award for the mental health counseling and care expenses;
 2. The Board determines that the victim or claimant earned income from substitute work or unreasonably failed to perform available substitute work; or
 - 2-3. The degree of responsibility for the cause of the Board determines that the victim's physical injury, medical condition, extreme mental distress, or death was due in part to the victim's: negligence or
 - a. Negligence,
 - b. through intentional Intentional unlawful conduct that occurred at the time of the incident of criminally injurious conduct, or
 - c. substantially Conduct that intentionally provoked or aggravated the incident causing the injury criminally injurious conduct.
- F. The Board shall deny or reduce a compensation award under subsection (E)(3) in proportion to the degree to which the Board determines the victim is responsible for the victim's physical injury, medical condition, extreme mental distress, or death.
- G. The Board shall deny a compensation award to a claimant if:
- 3-1. The Board determines that the victim or claimant has did not cooperate fully eoperated with the appropriate law enforcement agency and the failure to cooperate fully was not due to a substantial health or safety risk. In determining the extent of non-cooperation, The Board shall use the following criteria shall be used to determine whether failure to cooperate fully with law enforcement warrants that a claim be denied:
 - a. The victim or claimant failed to assist in the prosecution of a person who engaged in the criminally injurious conduct or an act of international terrorism or failed to appear as a witness; the claim for a compensation award shall be denied for the prosecution;
 - b. The victim or claimant initially decided not to assist delayed assisting in the prosecution of a suspect and later decided to assist in the prosecution and this causes as a result, the suspect of the criminally injurious conduct or an act of international terrorism to escape escaped prosecution or directly negatively affects the prosecution of the suspect was negatively affected; the claim for a compensation award shall be denied; or
 - c. The A law enforcement authority indicates to the Board that the victim or claimant was reluctant to give delayed giving information pertaining to the criminally injurious conduct or act of international terrorism, failed to appear when requested without good cause, gave false or misleading information, or attempted to avoid law enforcement authorities; the award shall be reduced or denied; or
 - d. If the claimant demonstrates that failure to cooperate was due to a compelling health or safety risk, the Board shall make a full award within the constraints in subsection (D).
 2. The Board determines that the victim or claimant knowingly made a false or misleading statement on the claim or in writing on supporting documents submitted to the Board or operational unit.
- F.H. If there are insufficient funds to make a compensation award, the Board may:
1. Deny the claim;
 2. Make a partial award and reconsider the claim later during the current fiscal year; or

Notices of Final Rulemaking

3. Extend a ~~valid~~ the claim into ~~the next~~ a subsequent fiscal year.

~~G-I.~~ The operational unit ~~Board~~ shall not ~~provide funds~~ make a compensation award to pay attorney's fees incurred by the a victim or claimant.

~~H-J.~~ The operational unit, in its discretion, may pay a compensation award directly ~~pay the~~ to a claimant, ~~the~~ or to a provider; or both.

~~K.~~ The operational unit may close an inactive claim:

1. Five years after the claim is submitted for an adult victim or derivative victim except in a homicide case;
2. Ten years after the claim is submitted for a minor victim or derivative victim except in a homicide case; and
3. Fifteen years after the claim is submitted for a homicide victim or derivative victim.

~~R10-4-109.~~ **Renumbered**

~~R10-4-107-R10-4-109.~~ **Hearing and Appeals Hearing; Request for Rehearing or Review**

~~A.~~ The Board, ~~in its discretion, may shall~~ conduct a hearing upon any application in accordance with A.R.S. § 41-1092 et seq. regarding a claim submitted under this Article if:

1. The Board determines that a hearing will enable it to evaluate the claim and make a proper decision; or
2. A claimant appeals a decision made by the Board without a hearing. A claimant who wishes to have a hearing shall submit to the Board a written request within 30 days after receiving notice of the Board's decision stating the basis for the request.

~~B.~~ The Board shall provide a claimant with at least 30 days notice of a hearing and due process.

~~C.~~ The Board shall serve any notice required under this Section by personal delivery or certified mail to the last known residence or place of business of the person being served. Service is complete upon personal service or within five days after mailing by certified mail.

~~D.~~ The Board shall provide written notice of its decision to the claimant within 20 days after a hearing.

~~E.~~ A claimant, ~~who is aggrieved by a decision of the Board made after a hearing may request a hearing rehearing or review of the decision~~ within 30 days after ~~service~~ the Board serves notice of the decision. A written claimant shall request for a hearing rehearing or review of a Board decision shall in writing and specify the grounds for the request. For purposes of this subsection, a Board decision shall be served when personally delivered or mailed by certified mail to the party at the last known residence or place of business.

~~F.~~ A claimant may amend a request for a hearing, under this rule, may be amended rehearing or review of a Board decision at any time before it is ruled on by the Board.

~~G.~~ The Board may require additional written explanation of ~~the an~~ issue raised in ~~the a~~ request for rehearing or review of a Board decision and may provide for oral argument.

~~3-H.~~ ~~A~~ The Board may grant a hearing rehearing or review of the decision may be granted for any of the following ~~causes~~ reasons materially affecting a claimant's rights:

- ~~a.1.~~ Irregularity in the administrative proceedings of the Board or its operational unit, or any order of or abuse of discretion, depriving that deprived the requesting party claimant of a fair Board decision;
- ~~b.2.~~ Misconduct of the Board misconduct, the operational unit, or staff of the operational unit;
- ~~e.3.~~ Newly discovered material evidence which that could not, with reasonable diligence, have been discovered and produced at the original Board meeting;
- ~~d.4.~~ Error in the admission or rejection of evidence or other error of law occurring at the Board meeting; and
- ~~e.5.~~ The decision is not justified by the evidence or is contrary to the rules law.

~~4-I.~~ The Board may affirm or modify ~~the a~~ decision or grant a hearing rehearing to all or any of the parties claimant and on all or part of the issues for any of the reasons set forth listed in subsection (3) (H). An order granting a hearing rehearing or modifying a decision shall specify with particularity the grounds for the order, on which the hearing If a rehearing is granted, and the rehearing shall cover only those grounds the matters specified in the order.

~~5-J.~~ Within Not later than 30 days after the date of a decision is rendered and after giving the claimant notice and an opportunity to be heard, the Board may, on its own initiative, order a hearing rehearing or review of its decision for any reason for which it might have granted a hearing on a motion of a party request by a claimant. After giving a party or parties notice and an opportunity to be heard on the matter, the The Board may grant a request for a hearing rehearing or review for a reason not stated in the request. In either case, the grounds for the request shall be specified An order granting a rehearing or review shall specify with particularity the grounds on which the hearing or review is granted.

6. For purposes of this Section, the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.

7. If the provisions of this rule are in conflict with the provisions of any statute providing for hearings or decisions of the Board, the statutory provisions govern.

~~R10-4-110.~~ **Renumbered**

~~R10-4-108-R10-4-110.~~ **Emergency Awards Compensation Award**

~~A.~~ After receiving a claim submitted under R10-4-107, ~~An an~~ operational unit may grant an emergency compensation award; if the operational unit determines there is a reasonable likelihood that;

Notices of Final Rulemaking

1. ~~the~~ The person to whom the emergency compensation award is made is or will be an eligible claimant, and
 2. ~~serious~~ Serious hardship will result to the person if an immediate payment compensation award is not made, ~~provided that:~~
- B.** An operational unit that makes an emergency compensation award shall ensure that
1. ~~The the~~ emergency compensation award amount shall does not exceed \$500; and,
- 2.C.** If the Board decides under R10-4-108 to make a compensation award to the claimant, the Board shall ensure that the amount of the emergency compensation award amount shall be is deducted from the final compensation award made to the claimant.

ARTICLE 2. CRIME VICTIM ASSISTANCE PROGRAM

R10-4-201. Definitions

In these rules this Article:

1. "Commission" means the Arizona Criminal Justice Commission, established by A.R.S. § 41-2404.
2. "Crime" means conduct, completed or preparatory, committed in ~~this state~~ Arizona, that ~~constitutes a crime as defined by the laws of this state~~ is a misdemeanor or felony under state law regardless of whether or not the perpetrator of the act conduct is convicted. "Crime" is not an act Conduct arising out of the ownership, maintenance, or operation of owning, maintaining, or operating a motor vehicle, aircraft, or water vehicle is not a crime unless except when a the person engaged in the conduct acts intentionally, knowingly, recklessly, or with criminal negligence, to cause physical injury, threat of physical injury, or death.
3. "Financial support from other sources" means that at least one-fourth of the ~~applicant's program~~ budget for a victim assistance program is from sources, including in-kind contributions, other than the Fund, ~~including in-kind contributions.~~
4. "Fund" means the ~~Arizona Crime~~ Victim Compensation and Assistance Fund established by A.R.S. § 41-2407.
5. "Immediate family" means ~~the victim's~~ the victim's spouse, child, stepchild, parent, stepparent, sibling, stepbrother, stepsister, grandparent, grandchild, or guardian.
6. "In-kind contribution" means ~~the value of something received or provided that does not have a monetary cost associated with it~~ a non-cash donation to which a cash value can be given.
7. "Qualified program" means ~~a victim assistance program, approved by or affiliated with a prosecuting attorney's office or law enforcement agency, that meets the requirements of R10-4-203.~~
8. "Subrogation" means the substitution of the state, ~~and or a qualified victim assistance program to the extent that the qualified program used financial support from other sources,~~ in the place of ~~the a~~ a victim to enforce a lawful claim against a third party to recover the cost of ~~the services to the victim provided paid for with financial support from the Fund or other sources.~~
- 9.8. "Substantial financial support from other sources" means that at least half of the financial support to a qualified victim assistance program is from sources other than the Fund.
- 10.9. "Victim" means a natural person against whom a crime is perpetrated. ~~For the purposes of the Crime Victim Assistance Program "victim" includes and the victim's immediate family.~~

R10-4-202. Administration of the Fund

- A.** The Commission shall deposit in the Fund all funds received under A.R.S. §§ 31-466(A) and 31-411(F) and any other funds received for victim assistance ~~in the Fund.~~
- B.** The Commission shall make distributions from the Fund through a competitive grant process that complies with A.R.S. § 41-2701 et seq. and ensures statewide distribution and effective and efficient use of the funds.
- C.** At least two months before an application for a grant from the Fund is due, the Commission shall make a grant application form and instructions available on its web site, which is www.azcjc.gov.
- B.D.** An application for funds shall be on a form provided by the Commission and shall include:
1. ~~The amount of funds requested;~~
 2. ~~A detailed description of how the funds will be spent;~~
 3. ~~Certification that the program will comply with R10-4-203; and~~
 4. ~~Whether the program will charge for services and how much the charges are for each service.~~
 5. ~~If the applicant is a private nonprofit organization, the applicant shall include:~~
 - a. ~~Evidence of nonprofit status; and~~
 - b. ~~Approval letter from a prosecuting attorney's office or law enforcement agency.~~ To apply for a grant from the Fund, an authorized official of a public agency or private nonprofit organization that operates a program that meets the standards in R10-4-203 shall complete and submit to the Commission the application form referenced in subsection (C).
- C.** ~~The Commission shall establish a policy that promotes statewide distribution and effective and efficient use of the funds.~~
- D.E.** The Commission's grant period coincides with the state's fiscal year. If any funds received from the Commission remain are unexpended by a qualified program at the end of the contract grant period, the public agency or private nonprofit organization that received the funds shall be returned return them to the Commission within 45 30 days after the end of the

Notices of Final Rulemaking

~~contract and redeposited~~ receiving a written request from the Commission. The Commission shall redeposit the unexpended funds in the Fund for use in the next fiscal year.

R10-4-203. Program Grant Eligibility Requirements

A. ~~A non-criminal justice governmental agency or private nonprofit organization may apply for and receive a grant from the Commission only if the non-criminal justice governmental agency or private nonprofit organization is approved by a prosecuting attorney's office or law enforcement agency.~~

~~**A-B.** A public agency or private nonprofit organization qualified under subsection (A) may apply for and receive a grant qualified program may receive funds from the Commission if, in addition to the other requirements in this Section, the public agency or private nonprofit organization operates a program that:~~

~~1. Provides services described in R10-4-204 to victims;~~

~~2. Does not use Commission funds or federal funds to supplant funds otherwise available to the program for victim assistance;~~

~~3. Is operated by a public agency or private nonprofit organization, or a combination of public agency and private nonprofit organization, and provides services to victims;~~

~~4. Uses volunteers to effectively and efficiently to provide victim services;~~

~~5. Promotes coordinated public and private efforts to assist victims within the community served;~~

~~6. Assists a victim in seeking available victim compensation benefits; and~~

~~7. Complies with all applicable civil rights laws.~~

C. ~~To receive a grant from the Commission, a public agency or private nonprofit organization that operates a program that has existed for at least three years shall demonstrate to the Commission that the program:~~

~~1. Has substantial financial support from a source other than the Fund; and~~

~~2. Has a history of providing effective services to victims. The Commission shall determine whether the program's victim services are effective based on:~~

~~a. The length of time the program has provided victim services, and~~

~~b. Whether data indicate program results are achieved in a cost-effective manner.~~

D. ~~To receive a grant from the Commission, a public agency or private nonprofit organization that operates a program that has existed for fewer than three years shall demonstrate to the Commission that the program:~~

~~1. Has financial support from a source other than the Fund; and~~

~~2. Is designed to meet a currently unmet need for a specific victim service.~~

E. ~~To receive a grant from the Commission, a public agency or private nonprofit organization shall agree to:~~

~~1. Submits Submit to the Commission quarterly financial reports, on a form provided by the Commission, containing detailed expenditures of funds received from the Commission and detailed expenditures of matching funds;~~

~~2. Submits Submit an annual report to the Commission, on a form provided by the Commission. The report shall contain, and provide the following information:~~

~~a. Number of victims served by type of crime during the reporting period;~~

~~b. Type of services provided;~~

~~c. Number of times each service was provided;~~

~~d. Ethnic background, age, and sex of each victim served;~~

~~e. Number and type of assistance provided to victims in obtaining victim compensation; and~~

~~f. A narrative assessment of the impact of Commission funds on the program.~~

B. ~~An existing program shall:~~

~~1. Have substantial financial support from a source other than the Fund; and~~

~~2. Have a history of providing effective services to crime victims. The Commission shall determine if the services are effective based on the following:~~

~~a. The length of operation; and~~

~~b. An assessment of the program's services that shows the results are achieved in a cost effective manner.~~

C. ~~A new programs shall:~~

~~1. Have financial support from a source other than the Fund, and~~

~~2. Demonstrate a specific need for victim services that is currently not being met.~~

R10-4-204. Services

A. ~~Funding may be provided to a qualified program for any of A public agency or private nonprofit organization that receives a grant from the Commission shall ensure that the funds are used to provide only the following victim services:~~

~~1. Crisis intervention services for to meet the urgent emotional or physical needs of a victim, which, Crisis intervention services may include a 24-hour hotline for counseling or referrals for a victim;~~

~~2. Emergency services including:~~

~~a. Temporary shelter for a victim who cannot safely remain in current lodgings;~~

~~b. Petty cash for immediate needs related to transportation, food, shelter, and other necessities; or and~~

~~c. Temporary repairs such as locks and windows damaged as a result of a crime- to prevent the immediate rebur-~~

Notices of Final Rulemaking

- glarization of a home or apartment-;
- 3. Support services, including:
 - a. ~~Follow-up counseling~~ Counseling dealing with the effects of victimization;
 - b. Assistance dealing with other social services and criminal justice agencies;
 - c. Assistance in obtaining the return of property kept as evidence;
 - d. Assistance in dealing with the victim's landlord or employer; and
 - e. Referral to other sources of assistance as needed-;
- 4. Court-related services, including:
 - a. Direct services or petty cash that ~~help victims~~ helps a victim participate in criminal justice proceedings, including transportation to court, child care, meals, and parking expenses; and
 - b. Advocate services including escorting ~~victims~~ a victim to criminal justice-related interviews, court proceedings, and assistance in accessing temporary protection services; and
- 5. Notification services, including notifying a victim:
 - a. ~~Notification of~~ Of significant developments in the investigation or adjudication of the case;
 - b. ~~Notification that~~ That a court proceeding, for which the victim has been subpoenaed, has been canceled or rescheduled; and
 - c. ~~Notification of~~ Of the final disposition of the case.
- B.** A public agency or private nonprofit organization that receives a grant from the Commission may use the funds to provide:
 - ~~6.1.~~ Training for salaried or volunteer staff of criminal justice, social services, mental health, or related agencies, who provide direct services to victims-; and
 - ~~7.2.~~ Printing and ~~distribution of~~ distributing brochures or similar announcements describing the direct services available, how to obtain program assistance, and volunteer opportunities.
- B.C.** The qualified program A public agency or private nonprofit organization that receives a grant from the Commission shall not use Crime Victim Assistance ensure that funds are not used for the following:
 - 1. Crime prevention efforts, other than those aimed at providing specific emergency help after a victimization;
 - 2. General public relations programs;
 - 3. Advocacy for a particular legislative or administrative reform;
 - 4. General criminal justice agency improvement;
 - 5. A program in which victims are not the primary beneficiaries;
 - 6. Management training and or training for persons who do not provide direct services to a victim; or
 - 7. Victim Compensation provided under R10-4-101 et seq.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R07-389]

PREAMBLE

- 1. Sections Affected** **Rulemaking Action**
R20-5-121 Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. §§ 41-1003; 23-107(A)(1)
Implementing statute: A.R.S. § 23-1067
- 3. The effective date of the rules:**
November 6, 2007
The Commission requests that the rule become effective immediately upon filing with the Secretary of State. An immediate effective date is allowed under A.R.S. § 41-1032(A)(4), which allows a rule to become effective immediately when it provides a benefit to the public and a penalty is not associated with a violation of the rule. It is a benefit to the public to have a fair, accurate and current calculation for determining the present value of an award. These rules do not impose any additional requirements upon the public, and there is no penalty associated with the violation of the rule.

Notices of Final Rulemaking

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 2452, July 6, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 2525, July 13, 2007

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

Name: Nancy O. Johnson

Address: 800 W. Washington St., Suite 303
Phoenix, AZ 85007

Telephone: (602) 542-5948

Fax: (602) 542-6783

E-mail: njohnson@ica.state.az.us

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

Under A.R.S. § 23-1067 the Industrial Commission of Arizona ("Commission") is directed to promulgate rules for determining the present value of any award that is commuted to a lump sum payment. In calculating the present value, the current rule determines the interest rate from a formula that is based on an average of U.S. Treasury interest rates at five points in time:

- a. Close of business on May 15,
- b. Close of business on the day before May 15,
- c. Close of business on May 15 of the prior year,
- d. The 12 month high interest rate, and
- e. The 12 month low interest rate.

The Commission has determined that the current interest rate calculation is too heavily weighted to the "close of business" on and the day before May 15. By substituting the current formula with the formula that uses the mean average of the three-month Treasury Bill interest rate over the past five years, the resultant rate is a more accurate and fair calculation. The rule will determine the interest rate by calculating the mean average of the three-month Treasury Bill interest rate on December 31 of each of the five years prior to July 1st of the current year.

The rule will also update the life expectancy table in the United States Life Tables, National Vital Statistics Report to reflect the most current table.

Finally, the rule will allow the Commission to establish a new interest rate at least once a year. This change to the rule will effectively allow the Commission to implement the new interest rate calculation immediately instead of waiting until July 1, 2008.

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

None

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

Not applicable

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

Annual costs/revenues changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues.

The Commission will bear minimal to moderate costs for promulgating and enforcing the rules. Costs for promulgating the rules include staff time to write, review, and direct the rules through the rulemaking process.

Assuming the lump sum computation is below the statutory cap of \$25,000 for scheduled injuries and \$150,000 for unscheduled injuries, employers (insurance carriers, self insured employers, and the No Insurance Section of the Industrial Commission) may bear minimal to substantial costs per employee if the new calculation increases the lump sum amount to the employee, compared to the present calculation. Employees may bear minimal to substantial costs if the new calculation reduces the lump sum amount to the employee, compared to the present calculation.

As an example, a 50-year-old employee who is receiving a benefit of \$250 per month for an unscheduled injury would receive, if approved by the employer, a lump sum benefit of \$48,037.50 under the current rule, using the current life table. Under the amended rule (but using the current life table) that same employee would receive \$62,645.00. Finally, under the amended rule with the new life table, the employee would receive \$62,870.00. The effect the new life table has on the lump sum payment varies, depending on the age of the employee, but in general is

Notices of Final Rulemaking

about .4%. The effect of the new calculation on the employee's lump sum amount in this example is approximately 30%, but will vary depending on the financial market at the time of the calculation.

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

Minor technical and grammatical changes were made at the suggestion of G.R.R.C. staff.

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

No comments were received regarding the rule.

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

None

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

United States Life Tables, 2003, National Vital Statistics Reports, Vol. 54, Number 14, April 19, 2006, revised March 28, 2007, Table 1, located in R20-5-121(A).

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

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 1. WORKERS' COMPENSATION PRACTICE AND PROCEDURE

Section

R20-5-121. Present Value and Basis of Calculation of Lump Sum Commutation Awards

ARTICLE 1. WORKERS' COMPENSATION PRACTICE AND PROCEDURE

R20-5-121. Present Value and Basis of Calculation of Lump Sum Commutation Awards

- A.** The Commission shall calculate the present value of an award that is commuted to a lump sum under R20-5-122. The Commission shall not include in the present value calculation compensation paid before the filing of a lump sum commutation petition. The Commission shall use the filing date of a lump sum commutation petition to compute the present value of an award.
- B.** The Commission shall calculate the present value of an award at least annually, whether payable for a period of months or based upon the life of the employee, using the United States ~~Abridged~~ Life Tables, ~~2002~~ 2003, National Vital Statistics Reports, Vol. ~~53~~ 54, Number ~~6~~ 14, ~~April 19, 2006, revised March 28, 2007~~, Table 1 incorporated by reference, and discounted at the rate established by the Commission. This incorporation does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Commission and may be obtained from the U.S. Department of Health and Human Services, Centers for Disease Control. The rate established by the Commission is based on a the following formula: The mean average of the three-month Treasury Bill rate average at five points in time: for close of business on May 15, for close of business the day before May 15, for the close of business on May 15 of the prior year, a 12 month high, and a 12 month low, as shown in the Wall Street Journal for May 15 of the current year and the prior year, and the daily web site quotes of the Treasury Bill secondary market rates on December 31st of each of the five years prior to July 1st of the current year. The rate, once calculated, ~~becomes~~ is effective ~~for one year starting the first day of July, of the current year until the Commission calculates a new rate under this subsection.~~ The discount rate is published in the minutes of the Commission meeting establishing the rate and is available upon request from the Commission.