

NOTICES OF PROPOSED RULEMAKING

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

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 7. BOARD CHIROPRACTIC EXAMINERS

Editor's Note: The following Notice of Proposed Rulemaking was exempt from Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 901.)

[R12-40]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action**

R4-7-404	Amend
R4-7-504	Amend
R4-7-601	Amend
- 2. Citations to the agencies statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 32-904(B)(2)
Implementing statute: A.R.S. §§ 32-921, 41-1072, 32-922.02, 32-925(3)(d)
- 3. Citations to all related notices published in the Register as specified R1-1-409(A) that pertain to the Record of the proposed rule:**

Notice of Rulemaking Docket Opening: 17 A.A.R 2343, November 18, 2011
- 4. The agency's contact person who can answer questions about the rulemaking:**

Name:	Patrice A. Pritzl, Executive Director
Address:	5060 N. 19th Ave., Suite 416 Phoenix, AZ 85015-3210
Telephone:	(602) 864-5088
Fax:	(602) 864-5099
E-mail:	generalinfo@azchiroboard.us
- 5. An agencies justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The rule amendments are consistent with those identified in the agency five-year rule review. The rule amendments will make rule consistent with statute for license application requirements, notice to applicants regarding denial of a license application, and the definition of acupuncture as applied to chiropractic.
- 6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely or not rely in its evaluation of or justification for the rules and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

Not applicable
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**

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The economic impact is minor for the agency and the Office of Secretary of State and will be limited to the cost of the promulgation of the rule. There is no anticipated financial impact for any other party.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement.

Name: Patrice A. Pritzl, Executive Director
Address: 5060 N. 19th Ave., Suite 416
Phoenix, AZ 85015-3210
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E-mail: generalinfo@azchiroboard.us

10. The time, place and nature of the proceedings to make, amend, repeal or renumber the rule, or, if no proceeding is scheduled where, when, or how persons may request an oral proceeding on the proposed rule:

Written comment will be accepted at the Board office, 5060 N. 19th Ave., #416, Phoenix, AZ, 85015 on a business day between the hours of 8:00 a.m. and 5:00 p.m. until 5:00 p.m. May 14, 2012. An oral proceeding is not scheduled but may be requested.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

Not applicable

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rule itself does not require a permit. However, the license required by statute arguably falls within the definition of general permit in A.R.S. § 41-1001.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

Not applicable

12. A list of any incorporation by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

Not applicable

13. The full text of the rules as follows:

TITLE 4. COMMERCE, PROFESSIONS AND OCCUPATIONS

CHAPTER 7. BOARD OF CHIROPRACTIC EXAMINERS

ARTICLE 4. EXAMNATIONS

Section
R4-7-404. Investigations

ARTICLE 5. LICENSES

Section
R4-7-504. License: Denial

ARTICLE 6. ACUPUNCTURE CERTIFICATION

Section
R4-7-601. Definition of Acupuncture as Applied to Chiropractic

ARTICLE 4. EXAMNATIONS

R4-7-404. Investigations

The Board may require an applicant or other person making an affidavit in support of an application to appear and supply to

would or would not qualify for continuing education credit. The passing years have made it clear that licensees require more clarity in law in order to determine when and if a course will qualify for continuing education credit.

In addition, while the statute allows the Board to approve an educational provider that is not an accredited educational institution, it does not identify what the qualifications for approval are or the application and approval requirements. Finally, the current law does not identify the steps to be taken when monitoring continuing education providers to confirm compliance with law, or steps to be taken when sufficient grounds have been established to rescind a continuing education provider's status in Arizona. There are some minor technical corrections included in the rule amendment as well, such as an amendment requiring a person who wishes to apply for an extension to complete continuing education to do so by December 1 of each year rather than December 31 so that the Board can make the decision before the due date for CE completion.

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

Not applicable

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

Not applicable

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

The economic impact is minor for the Office of the Secretary of State and will be limited to the cost of the publishing of the rule. There is no anticipated increase in financial impact for licensees because they are already required by statute to complete 12 hours of continuing education as a condition of license renewal. The rule does not change the number of hours required for continuing education for license renewal or substantially change providers of CE. The current cost to licensees varies from \$120.00 to \$495.00 for online or classroom courses. Fees for personal instruction may be more expensive, but would be at the choice of the licensee rather than as a requirement in law. Continuing education providers who are not accredited colleges or universities may save money because the rule amendment would allow them to apply directly to the Board for course approval rather than paying for course sponsorship from an accredited college or university. The cost of application for course approval through the Board is \$50.00. The cost to the Board will increase. Currently, the Board accepts courses that are sponsored by a college for university without review or approval. Unfortunately, over the past several months we have had several instances in which we found that the sponsoring college or university did not know what the content of the sponsored course was, or was providing instruction that does not qualify for continuing education in Arizona. Therefore, the Board is willing to absorb the additional burden on staff to review applications for course approval that had previously been allowed without approval through college sponsorship. The general cost to the Board is \$50.00 per hour for review of continuing education course applications. It is expected that licensees will have greater success in achieving the level of continuing education required by the law, which will save them the cost of needing to retake coursework if the hours they took did not qualify for renewal.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement.

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Phoenix, AZ 85015-3210
Telephone: (602) 864-5088
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10. The time, place and nature of the proceedings to make, amend, repeal or renumber the rule, or, if no proceeding is scheduled where, when, or how persons may request an oral proceeding on the proposed rule:

Written comment will be accepted at the Board office, 5060 N. 19th Ave., #416, Phoenix, AZ 85015 on a business day between the hours of 8:00 a.m. and 5:00 p.m. until 5:00 p.m. on May 21, 2012. An oral proceeding is not scheduled but may be requested. Written comment will not be accepted after May 21, 2012 and will not be read into the record in lieu of an oral presentation if an oral proceeding is held. Nor will written comment received after May 21, 2012 be addressed in the Board's consideration and response to comments.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general per-

mit is not used:

The rule itself does not require a permit. However, the approval required by statute to conduct a continuing education course may arguably fall within the definition of a general permit in A.R.S. § 41-1001.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

Not applicable

12. A list of any incorporation by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

Not applicable

13. The full text of the rules as follows:

TITLE 4. COMMERCE, PROFESSIONS AND OCCUPATIONS

CHAPTER 7. BOARD OF CHIROPRACTIC EXAMINERS

ARTICLE 8. CONTINUING EDUCATION

Section

R4-7-801. Continuing Education Requirements

R4-7-802. Documenting Compliance with Continuing Education Requirements

ARTICLE 8. CONTINUING EDUCATION

R4-7-801. Continuing Education Requirements

A. To be eligible to renew a license, a licensee shall complete 12 credits of continuing education between January 1 and December 31 of each year, and document compliance with continuing education requirements on the license renewal application as required by R4-7-503(C). ~~A credit of continuing education is defined as 60 minutes of education. Continuing education credit shall be given for a minimum of 50 minutes of continuous study for each class hour. No credit shall be allowed for breaks or for time expended for study outside of the classroom.~~

B. Basic requirements – The primary consideration in determining whether or not a specific course qualifies as acceptable continuing education is that it must be a formal program of learning which will contribute directly to the professional competence of a licensee in the practice of chiropractic. Each course shall be on subjects of clinical benefit to the consumer of chiropractic services.

1. The content of the course, seminar or workshop must be recognized by reputable authorities as having validity, and must conform to the scope of practice for assessment, treatment and diagnosis as authorized under A.R.S. §§ 32-925 and 32-922.02.

2. Instructors shall be qualified by education and/or experience to provide instruction in the relevant subject matter.

3. Each licensee is responsible for determining in advance that the course which he or she attends qualifies for continuing education credit under this Chapter.

~~**C.** The Board shall award continuing education credit only for continuing education subjects listed in A.R.S. §§ 32-922(B) and 32-922.02. The Course subjects principles of chiropractic and public health and hygiene includes chiropractic record-keeping, ethics, and sexual boundaries.~~

~~**B.C.** A licensee shall only obtain continuing education credit in the following manner by:~~

~~1. By attending Attending or participating in a course, seminar, or workshop, (course), on subjects listed in A.R.S. §§ 32-922(B) or 32-922.02 that is taught at or sponsored by a college or university that meets the requirements in A.R.S. § 32-921(B)(2)(a) through a provider and on a subject(s) that have been pre-approved by the Board.~~

~~2. Participating in the development of, or proctoring the National Board of Chiropractic Examiners (NBCE) examinations. Continuing education credits earned in this manner are calculated as one credit hour for each hour of participation in the development of the NBCE examination for a maximum credit of eight hours per year, and one credit hour for each hour proctoring the NBCE exam for a total of eight hours per year. A licensee shall obtain a certificate of participation from the National Board of Chiropractic Examiners to verify compliance with this provision.~~

~~2-3. By teaching a post-graduate course that has been pre-approved by the Board for continuing education credit under this Section as a faculty member of a Council on Chiropractic Education accredited chiropractic college or university that is accredited by or has status with the Council on Chiropractic Education or is accredited by an accrediting agency recognized by the United States Department of Education or the Council on Postsecondary Education during~~

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the renewal year. Continuing education credits earned in this manner are calculated as ~~two credits~~ one credit of continuing education for each hour of post-graduate course instruction, ~~for the first course presentation, and one credit for each hour of instruction after the first course presentation.~~ A maximum of six credits of continuing education credit may be earned in this manner annually.

~~3-4.~~ By completing post-graduate mediated instruction or programmed learning ~~courses~~ course pre-approved by the Board through an accredited college or university that meets the requirements of A.R.S. § 32-921(B). Mediated instruction and programmed learning refers to learning transmitted by intermediate mechanisms such as ~~audio or visual tape or telephone~~ webinar or other internet delivered courses that are structured to confirm 50 minutes of continuous instruction for each credit hour received. A licensee shall obtain a certificate of program completion from the accredited college or university to verify compliance with this provision.

D. The following are predetermined to meet Board approval as a provider for continuing education. Additional approval is not required, nor should it be expected. An application submitted for a course that falls under this subsection shall be returned to the applicant without a review and subsection (E) will not apply. Coursework provided by these entities is approved as meeting continuing education requirements only for those subjects listed in subsections (J) and (K) of this Chapter. Preapproval does not include mediated instruction or programmed learning courses.

1. A college or university that meets the requirements of A.R.S. § 32-921(B)(2)(a), the American Chiropractic Association and the International Chiropractors Association, with qualified instructor(s) and that meet the subject requirements under subsections (J) and (K).
2. CPR training provided or sponsored by the American Heart Association or the American Red Cross. A maximum of four credits of continuing education credit may be earned in this manner annually.
3. Participation in the development of or proctoring the NBCE examinations.

E. Prior approval is required for all course providers not mentioned in subsection (D) and for all mediated instruction or programmed learning courses regardless of subsection (D). A provider applying for approval of a continuing education course shall submit a complete application to the Board at least 60 days prior to the anticipated initial date of the course if submitted by internet, or 75 days if provided in hard copy form. The Board shall notify the applicant in writing that the package is either complete or incomplete. If the package is incomplete, the notice shall specify the information that is missing. If the package is incomplete, the applicant must submit the missing information within 10 days of the notice. The Board will not approve a course if a complete application has not been submitted at least 15 business days prior to the initial date of the course identified in the initial application. If the applicant changes the initial date of the course or the course content or the instructor(s), it shall be considered a new application. A complete application shall include:

1. The name, dates, and location(s) of the course.
2. The number of hours requested for approval.
3. The subject(s) of the course, broken down by the specific time of instruction for each section.
4. A course description including the content, explicit written objectives identifying expected learner outcomes for each section of the course and teaching method (i.e. lecture, discussion, PowerPoint, internet, webinar).
5. A detailed, hour-by-hour syllabus identifying the subject of instruction for each hour, with the instructor for each section identified. If less than an hour is dedicated to a subject, the syllabus shall identify the number of minutes dedicated to instruction on that subject.
6. A resumé or curriculum vitae for each instructor, biographies will not be accepted, as well as attestation that each instructor license(s) is currently in good standing, has not been placed on probation within the past five years, and that the instructor(s) has never had a license suspended or surrendered for unprofessional conduct or revoked, had a license application or renewal denied for unprofessional conduct or been convicted of a felony in this or any other jurisdiction.
7. Documentation of license in good standing for each instructor for each state in which the instructor has or currently holds a license, if applicable.
8. One letter of reference for each course instructor from a person familiar with the instructor's qualifications as an instructor and education and/or experience in the relevant subject.
9. Identification of a sponsor, if applicable, and disclosure of any connection between the provider and/or instructor and/or sponsor of any commercial relationship and/or any external entity giving financial support to the course. If the course does have a sponsor, a completed sponsor/program provider agreement for continuing education, signed and notarized by a responsible party must be provided with the application.
10. Documentation of the method by which attendance will be monitored, confirmed and documented.
11. The name and contact information for the attendance certifying officer.
12. Attestation that each course hour consists of no less than 50 minutes of continuous instruction and that credit is not provided for breaks.
13. The non-refundable fee required under R4-7-1301 for each course, whether individual or included in a program of multiple courses.
14. The name, address, telephone number, fax number and e-mail of a contact person.
15. Any other information required or requested by the Board.

16. If the course is a mediated instruction or programmed learning course, a detailed description of the method used to confirm that the participant was engaged in 50 minutes of continuous instruction for each credit hour awarded.
17. The Board may require that the applicant provide additional information in support of the application if the course qualifications are not clearly demonstrated through the materials provided.
- F.** The Board shall approve a continuing education course if the applicant has submitted a complete application to the Board's satisfaction within the time-frame required by this Chapter and has demonstrated the following:
 1. The course complies with this Chapter.
 2. The course instructor(s) is faculty with an accredited college or university that meets the requirements of A.R.S. § 32-921(B)(2)(a) or demonstrates equivalent qualifications through postgraduate study and experience teaching postgraduate coursework. An instructor must hold an applicable license in good standing and shall not have had a license placed on probation within the last five years, have ever had a license suspended, surrendered for unprofessional conduct or revoked or a license application or renewal denied for unprofessional conduct or been convicted of a felony in this or any other jurisdiction.
 3. The course instructor is qualified by education and experience to provide instruction in the relevant subject matter.
 4. The subject of the course qualifies under subsections (D), (J) and (K).
 5. The course demonstrates appropriate attendance and/monitoring procedures.
- G.** The Board shall not approve a continuing education course if the applicant fails to submit a complete application within the time-frame required by this Chapter and/or:
 1. The course does not qualify under this Chapter.
 2. The course subject does not qualify for continuing education credit as per subsections (D), (J) and (K).
 3. The instructor(s) does not qualify as per subsection (F).
 4. The instructor's references do not support the qualifications of the instructor as per subsection (F).
 5. The course primary focus is to promote a product or service.
 6. The course requires participants to purchase a product or service.
 7. The course has no significant relationship to the assessment, diagnosis and treatment of patients within the scope of practice of chiropractic as defined under A.R.S. §§ 32-925 and 32-922.02.
 8. The content cannot be verified.
 9. The course refutes generally accepted medical care and treatment and/or instructs participants to encourage patients to stop taking medication and/or stop participating in generally accepted medical care or fails to qualify under subsection (K).
- H.** A course approved by the Board pursuant to subsections (E) and (F) shall be issued an approval number. Once approved, a course provider shall:
 1. Provide course attendees with a certificate confirming course participation. The certificate shall include:
 - a. The name of the college or university through which the course was completed, or the course approval code issued by the Board, if applicable;
 - b. The name of the attendee;
 - c. The attendee's Arizona chiropractic license number;
 - d. The name of the course provider;
 - e. The course subject matter;
 - f. The name of the course if different than the subject matter listed;
 - g. The date and location of the course and the number of hours of continuing education completed.
 2. Maintain a list of all course attendees for a minimum of five years after each date that the course is held, and shall provide a copy of the list to the Board within 10 days of a written request to do so.
 3. Maintain a copy of the course syllabus and stated learning objectives, a list of instructors and documentation of the name, location and date of the course for a minimum of five years and shall provide the Board with a copy these materials within 10 days of a written request to do so.
 4. Monitor course attendance by each attendee in a manner that confirms that the attendee was directly participating in the course for a continuous 50 minutes for each hour of continuing education credited.
 5. Notify the Board immediately of concerns or problems that may arise regarding the approved course.
 6. Reapply for Board approval every two years no later than the first day of the month in which the course was initially approved, and every time the content of the course changes and/or there is a change in instructor(s) that does not include an instructor already approved by the Board. Failure to reapply as per this subsection shall disqualify the course for ongoing continuing education credit.
 7. Not represent that the course is sanctioned or promoted by the state of Arizona Board of Chiropractic Examiners. The provider may state that the course meets the continuing education requirements as per A.R.S. § 32-931. If the course has been directly approved by the Board, the provider may display the Board's course approval number.
- I.** The Board may monitor a CE provider's compliance with CE statute and rule as follows:
 1. The Board may request documentation from a Board-approved CE provider for any course registered for license renewal to ensure compliance with this rule.

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2. A representative of the Board may attend any approved CE course in order to verify the content of the program and ensure compliance with the Board's CE rules at no charge to the Board representative.
 3. If the Board finds that a course or provider is not compliant with the CE statute or rule, has misrepresented course content or instructors in an application, failed to obtain new approval for a course with a change in subject or instructor or failed to pay the course fee, the Board may withdraw its approval for CE credit for the course and/or the provider. The withdrawal shall be retroactive.
 4. The Board shall notify a provider that it will consider withdrawal of course approval and provide the date, time and location of the meeting.
 5. If approval is withdrawn, the Board shall notify the provider of the reasons for withdrawal of approval.
 6. The provider shall notify all Arizona licensees who attended the course that any course hours obtained through the course cannot be used for continuing education credit of license renewal in the state of Arizona. If a provider fails to provide appropriate notice to Arizona licensed attendees, that provider shall not be considered for approval of continuing education credit in the future.
- J.** Course subjects approved for continuing education for renewal of an Arizona chiropractic license are:
1. Adjusting techniques;
 2. Spinal analysis;
 3. Physical medicine modalities and therapeutic procedures as defined in A.R.S. § 32-900(7) and (8);
 4. Recordkeeping and documentation;
 5. Ethics;
 6. CPR;
 7. Public health;
 8. Communicable diseases;
 9. Sexual boundaries;
 10. Emergency procedures;
 11. Acupuncture;
 12. Nutrition;
 13. Examination;
 14. Assessment and diagnostic procedures to include physical, orthopedic, neurological procedures;
 15. Radiographic technique;
 16. Diagnostic imaging and interpretation;
 17. Laser as permitted by law;
 18. Clinical laboratory procedures limited to urine collection, fingerpicks and venipuncture (not to be confused with evaluation of lab reports);
 19. Anatomy
 20. Physiology;
 21. Bacteriology;
 22. Chiropractic orthopedics and neurology;
 23. Chemistry;
 24. Pathology;
 25. Patient management;
 26. Evidence based clinical interventions models;
 27. Symptomatology;
 28. Arizona jurisprudence; and
 29. Participation in National Board of Chiropractic Examiners examination development or administration of examinations.
- K.** In addition to the subsections (A), (C), (D) and (J), courses for the purpose of recognizing, assessing and determining appropriate referral or collaborative treatment of complex conditions, including but not limited to cancer, autism, multiple sclerosis, diabetes, thyroid disease and developmental disorders, for the purpose of co-management of the patient's condition with qualified medical providers shall qualify for continuing education credit.
- L.** The following subjects shall not qualify for continuing education for the purpose of license renewal and shall not be approved by the Board:
1. Billing, coding;
 2. Malpractice defense;
 3. Practice management;
 4. Risk management;
 5. Promotion of a product or a service or a requirement that attendees purchase a product or service;
 6. Strategies to increase insurance payments;
 7. Administrative or economic aspects of a practice;
 8. Motivational courses;

9. Legal courses other than pre-approved Board jurisprudence;
10. Anti-aging;
11. Hormone treatment;
12. Aroma therapy;
13. Stress management;
14. Psychological treatment;
15. HIPAA;
16. Homeopathic practice that exceeds A.R.S. § 32-925;
17. Professional or business meetings, speeches at luncheons, banquets, etc.;
18. Subject matter that exceeds the assessment, diagnosis and treatment of patients within the scope of practice of chiropractic as defined in this Chapter;
19. Any course without a significant relationship to the safe and effective practice of chiropractic under A.R.S. §§ 32-925 and 32-922.02; and
20. Any course that involves a distance learning format or materials if the course has not been pre-approved by the Board and issued a Board approval number.

M. A licensee's compliance with subsections (A) and (C), shall include the following coursework in order to renew a license.

1. Each licensee shall complete a minimum of two hours of continuing education in recordkeeping for every even numbered year.
2. Each person who is issued a new license to practice chiropractic in Arizona on or after January 1, 2013 is required to attend three hours of a regularly scheduled Board meeting within the first year of residence in Arizona. The licensee shall notify the Board in writing within 10 days of moving to Arizona. The meeting attendance must be pre-scheduled and pre-approved by Board staff. The three hours of Board meeting attendance as per this Section shall qualify for continuing education credit for a single meeting. Continuing education credit will not be awarded if the licensee is attending the meeting as a subject of an investigation or other Board review or if the licensee fails to properly schedule attendance as per this Section. This subsection does not pertain to any person who has had a license to practice chiropractic in Arizona issued prior to January 1, 2013.

~~**D.N.**~~ The Board shall grant an extension of 90 days to comply with the continuing education requirements to a qualified licensee. To qualify for an extension, a licensee shall:

1. Timely file a license renewal application and renewal fee; and
2. Submit a written request for an extension no later than December 1 of the current renewal year, including evidence of good cause why the continuing education requirements ~~were not~~ cannot be met by December 31 of the current renewal year.

~~**E.O.**~~ The following reasons constitute good cause for the Board to grant an extension of time to comply with the continuing education requirements:

- ~~1. The licensee graduated from an accredited chiropractic college, or a college that meets the requirements of R4-7-702, during the year that the continuing education requirements are to be met;~~
- ~~2.1.~~ The licensee lived in a country where there was no accredited chiropractic college, or a college that meets the requirements of R4-7-702, for at least seven months during the year that the continuing education requirements are to be met;
- ~~3.2.~~ The licensee was in active military service for at least seven months during the year that the continuing education requirements are to be met; or
- ~~4.3.~~ The licensee was not able to complete the continuing education requirements because of a documented disability of the licensee or the licensee's spouse, child, or parent.

~~**F.P.**~~ If the Board grants an extension of time in which to complete the continuing education requirements, the continuing education credits obtained during the 90-day extension shall be applied to meet only the requirements for which the extension is granted. A licensee shall not report continuing education credit earned during a 90-day extension for a subsequent renewal year.

R4-7-802. Documenting Compliance with Continuing Education Requirements

- A.** A licensee shall retain documents to verify compliance with the continuing education requirements for at least five years from the date the continuing education credit is used to qualify the licensee for renewal. The Board may audit continuing education compliance at any time during those five years by requiring submission of documentation of course completion.
- B.** With each license renewal application, a licensee shall attest by providing the licensee's signature, that the licensee has met the continuing education requirements, and complied with R4-7-503(C)(8) and subsection (A). A licensee's documentation of compliance on the license renewal application shall include the name of the approved course provider.
- C.** The Board may require a licensee to provide documentation to verify compliance with continuing education requirements, including:
 1. Each continuing education credit was for ~~60~~ 50 minutes of education;₂
 2. The requirements of subsections (A) and (B) were satisfied;₂

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- 3. Continuing education credit was earned between the immediately preceding January 1 and the date that the license renewal application was filed or the date on which an extension of time expired; and
 - 4. No continuing education credit earned between the immediately preceding January 1 and the date that the license renewal application was filed was earned under an extension of time to comply with the continuing education requirements of a previous year; and
 - 5. The provision of A.R.S. § 32-931 and ~~R4-7-801(B) and (C)~~ R4-7-801 were met.
- D. Documentation shall be in the form of a certificate of completion issued by a Board approved provider course sponsor or instructor and the Board may require submission of a time sheet demonstrating that the licensee was in attendance for a continuous 50 minutes for every hour of continuing education credit awarded.
- E. The Board shall suspend a license upon notification to the licensee that the licensee has failed to demonstrate compliance with continuing education requirements as per by A.R.S. § 32-931, R4-7-801 and ~~R4-7-802~~ this Section.

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 901.) The Governor's Office authorized the notice to proceed through the rulemaking process on June 24, 2011.

[R12-42]

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|--|--------------------------|
| R20-4-102 | Amend |
| Table A | Amend |
| R20-4-927 | New Section |
| R20-4-928 | New Section |
| R20-4-1813 | New Section |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. § 6-123(2)
Implementing statute: A.R.S. §§ 6-949, 6-912, and 6-913
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
Notice of Rulemaking Docket Opening: 17 A.A.R. 1361, July 22, 2011
- 4. The agency's contact person who can answer questions about the rulemaking:**
Name: Richard Fergus
Address: 2910 N. 44th St., Suite 310
Phoenix, AZ 85018
Telephone: (602) 771-2783
Fax: (602) 381-1225
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Web site: www.azdfi.gov
- 5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**
The purpose for initiating these rules is to implement legislative changes over the past three years. One of those legislative changes was the passage of HB2318 (mortgage bankers; loan originators; fees), which was signed by Governor Brewer on July 13, 2009. The bill amended A.R.S. § 6-949 to require that the Department establish the application process for converting a mortgage banker license to a mortgage broker license. R20-4-1813 is intended to provide this conversion process.

A second legislative change was the passage of HB2004 (commercial mortgage brokers; license conversion), which was signed by Governor Brewer on April 6, 2011. The bill added A.R.S. § 6-913, requiring that the Department establish a process in rule that allows for mortgage brokers to convert their license to a commercial mortgage broker license. R20-4-927 is intended to provide this conversion process.

A third legislative change occurred with the passage of HB2296 (national banks; mortgage loan originators), which was signed by Governor Brewer on April 19, 2011. The Department is now authorized in A.R.S. § 6-912 to "...charge a fee for processing the original or renewal application for a certificate of exemption and for other costs incurred by the Department." The purpose of R20-4-928 is to implement the fees that the Department will charge in response to this statute, as well as provide the process for applying for and renewing a certificate of exemption. Further, R20-4-102 is being amended to define "exclusive contract" as it is used in A.R.S. §§ 6-912 and 6-991.02.

Finally, with these legislative changes, as well as the sunset of the deferred presentment company ("payday lender") statutes in 2010, and the addition of the loan originator statutes in 2009, it was necessary to amend R20-4-107 to include new license type time-frames, and delete those which no longer exist.

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

The Department has not reviewed, and does not propose to rely on, any study as an evaluation or justification for the proposed rules.

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

Not applicable

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

The Department's current projection is that there will be less than five entities that apply and qualify for the certificate of exemption to supervise loan originators; therefore it is unlikely that the addition of this registration will result in an increase to state revenues. However, even one applicant for the certificate of exemption, opens up the possibility for at least 200 individuals to obtain their loan originator license. This will have a minimal, yet notable impact on private employment in Arizona, and could potentially raise the revenues generated from loan originator licensing.

The ability for a mortgage broker to be able to convert to a commercial mortgage broker license and only pay the applicable renewal fees for the newly acquired license type will be a substantial savings for the private business, not only financially but also with regard to time. Rather than having to start as an original applicant for a commercial mortgage broker license and pay the original application and licensing fees, mortgage brokers will be permitted to pay only the renewal fees upon converting the license. This could result in an individual savings for each entity of \$800 for the application fee, the applicable prorated licensing fee, and \$250 for each branch. Further, there will be an additional savings by not having to pay for and attend continuing education courses every year. The overall economic impact of these rules on private and public business is projected to be minimal.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Richard Fergus
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Phoenix, AZ 85018
Telephone: (602) 771-2783
Fax: (602) 381-1225
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Web site: www.azdfi.gov

10. The time, place, and nature of the proceedings to make, amend, repeal or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

No oral proceeding is scheduled. The Department will schedule an oral proceeding on the proposed rule if it receives a written request for a proceeding within 30 days after the publication date of this notice, under the provisions of A.R.S. § 41-1023(C). Send requests for an oral proceeding to the Department personnel listed in item 4. The Department invites and will accept written comments on the proposed rule or the preliminary economic, small business, and consumer impact statement. Submit comments during regular business hours, at the address listed in item 4, until the close of the record for this proposed rulemaking. The record will close on the 31st day following publication of this notice, unless the Department schedules an oral proceeding.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used;

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law;

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states;

Not applicable

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules;

There is no material incorporated by reference in these rules.

13. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

ARTICLE 1. GENERAL

Section

R20-4-102. Definitions

Table A. Licensing Time-frames

ARTICLE 9. MORTGAGE BROKERS

Section

R20-4-927. Conversion to Commercial Mortgage Broker License

R20-4-928. Certificate of Exemption Application and Renewal

ARTICLE 18. MORTGAGE BANKERS

Section

R20-4-1813. Conversion to Mortgage Broker License

ARTICLE 1. GENERAL

R20-4-102. Definitions

In this Chapter, unless otherwise specified:

1. "Active management" means directing a licensee's activities by a responsible individual, who:
 - a. Is knowledgeable about the licensee's Arizona activities;
 - b. Supervises compliance with:
 - i. The laws enforced by the Department of Financial Institutions as they relate to the licensee, and
 - ii. Other applicable laws and rules; and
 - c. Has sufficient authority to ensure compliance.
2. "Affiliate" has the meaning stated at A.R.S. § 6-901.
3. "Attorney General" means the Attorney General or an assistant Attorney General of the state of Arizona.
4. "Branch office" means any location within or outside Arizona, including a personal residence, but not including a licensee's principal place of business in Arizona, where the licensee holds out to the public that the licensee acts as a licensee.
5. "Business of a savings and loan association or savings bank" means receiving money on deposit subject to payment by check or any other form of order or request or on presentation of a certificate of deposit or other evidence of debt.
6. "Compensation" means, in applying that term's definition in A.R.S. §§ 6-901, 6-941, and 6-971, anything received in advance, after repayment, or at any time during a loan's life. This subsection expressly excludes the following items from those definitions of compensation:
 - a. Charges or fees customarily received after a loan's closing including prepayment penalties, termination fees, reinvestment fees, late fees, default interest, transfer fees, impound account interest and fees, extension fees, and modification fees. However, extension fees and modification fees are compensation if the lender advances additional funds or increases the credit limit on an open-end mortgage as part of the extension or modification;
 - b. Out-of-pocket expenses paid to independent third parties including appraisal fees, credit report fees, legal fees,

- document preparation fees, title insurance premiums, recording, filing, and statutory fees, collection fees, servicing fees, escrow fees, and trustee's fees;
- c. Insurance commissions;
 - d. Contingent or additional interest, including interest based on net operating income; or
 - e. Equity participation.
7. "Commercial finance transaction," as that term is used in this Section's definitions of the terms "Engaged in the business of making mortgage loans" and "Engaged in the business of making mortgage loans or mortgage banking loans," means a loan made primarily for other than personal, family, or household purposes.
8. "Control of a licensee," as used in A.R.S. §§ 6-903, 6-944, or 6-978, does not include acquiring additional fractional equity interests in a licensee by any person who already has the power to vote 51% or more of the licensee's outstanding voting equity interests.
9. "Correspondent contract," as that term is used in A.R.S. §§ 6-941, 6-943, 6-971, or 6-973, means an agreement between a lender and a funding source under which the funding source may fund, or is required to fund, loans originated by the lender.
10. "Cushion," as that term is used in R20-4-1811 or R20-4-1908, means funds that a servicer or lender may require a borrower to pay into an escrow or impound account before the borrower's periodic payments are available in the account to cover unanticipated disbursements.
11. "Directly or indirectly makes, negotiates, or offers to make or negotiate" and "Directly or indirectly making, negotiating, or offering to make or negotiate," as those phrases are used in A.R.S. §§ 6-901, 6-941, or 6-971, mean:
- a. Providing consulting or advisory services in connection with a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage loan transaction;
 - i. To an investor, concerning the location or identity of potential borrowers, regardless of whether the person providing consulting or advisory services directly contacts any potential borrowers; or
 - ii. To a borrower, concerning the location or identity of potential investors or lenders; or
 - b. Providing assistance in preparing an application for a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage banking loan transaction, regardless of whether the person providing assistance directly contacts any potential investor or lender; and
 - c. Processing a loan; but
 - d. "Directly or indirectly makes, negotiates, or offers to make or negotiate" and "Directly or indirectly making, negotiating, or offering to make or negotiate" do not include:
 - i. Providing clerical, mechanical, or word processing services to prepare papers or documents associated with a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage banking loan transaction;
 - ii. Purchasing, selling, negotiating to purchase or sell, or offering to purchase or sell a mortgage loan, mortgage banking loan, or commercial mortgage banking loan already funded;
 - iii. Making, negotiating, or offering to make additional advances on an existing open-ended mortgage loan, mortgage banking loan, or commercial mortgage loan including revolving credit lines;
 - iv. Modifying, renewing, or replacing a mortgage loan, a mortgage banking loan, or a commercial mortgage loan already funded, if the parties to and security for the loan are the same as the original loan immediately before the modification, renewal, or replacement, and if no additional funds are advanced and no increase is made in the credit limit on an open-ended loan. Replacing a loan means making a new loan simultaneously with terminating an existing loan.
12. "Electronic record" has the meaning stated at A.R.S. § 44-7002(7).
13. "Employee" means a natural person who has an employment relationship with a licensee that is acknowledged by both the person and the licensee, and:
- a. The person is entitled to payment, or is paid, by the licensee;
 - b. The licensee withholds and remits, or is liable for withholding and remitting, payroll deductions for all applicable federal and state payroll taxes;
 - c. The licensee has the right to hire and fire the employee and the employee's assistants;
 - d. The licensee directs the methods and procedures for performing the employee's job;
 - e. The licensee supervises the employee's business conduct and the employee's compliance with applicable laws and rules; and
 - f. The rights and duties under subsections ~~(a)~~ (13)(a) through (e) belong to the licensee regardless of whether another person also shares those rights and duties.
14. "Engaged in the business of making mortgage loans," as that phrase is used in A.R.S. § 6-902, and "engaged in the business of making mortgage loans or mortgage banking loans," as that phrase is used in A.R.S. § 6-942, mean the direct or indirect making of a total of more than five mortgage banking loans or mortgage loans, or both in a calendar year. Each loan counts only once as of its closing date. A person is not "engaged in the business of making mortgage loans or mortgage banking loans" if the person makes loans solely in commercial finance transactions in which no

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more than 35% of the aggregate value of all security taken by the investor on the closing date is a lien, or liens, on real property.

15. “Exclusive contract.” as that term is used in A.R.S. §§ 6-912 and 6-991.02, means a written agreement in which a loan originator agrees to perform services as a loan originator subject to supervision and control of a person holding a certificate of exemption issued under A.R.S. § 6-912 on an exclusive basis, the agreement providing that the loan originator is expressly prohibited from performing loan origination or modification services for any other person during the time the agreement is in effect.
16. “Generally accepted accounting principles” has the meaning used by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants.
17. “Holds out to the public,” as used in this Section’s definition of “branch office,” means advertising or otherwise informing the public that mortgage banking loans, commercial mortgage loans, or mortgage loans are made or negotiated at a location. “Holds out to the public” includes listing a location on business cards, stationery, brochures, rate lists, or other promotional items. “Holds out to the public” does not include a clearly identified home or mobile telephone number on a business card or stationery.
18. “Loan,” as that term is used in A.R.S. §§ 6-126(C)(6) and ~~6-126(C)(8)~~ (8), means all loans negotiated or closed, without regard to the location of the real property collateral or type of loan.
19. “Loan Processing” means obtaining a loan application’s supporting documents for use in underwriting.
20. “Person” means a natural person or any legal or commercial entity including a corporation, business trust, estate, trust, partnership, limited partnership, joint venture, association, limited liability company, limited liability partnership, or limited liability limited partnership.
21. “Property insurance,” as that term is used in A.R.S. §§ 6-909 and 6-947, does not include flood insurance as that term is used in the Flood Disaster Protection Act of 1973, as modified by the National Flood Insurance Reform Act of 1994. 42 U.S.C. 4001, et seq.
22. “Reasonable investigation of the background,” as that term is used in A.R.S. §§ 6-903, 6-943, or 6-976 means a licensee, at a minimum:
 - a. Collects and reviews all the documents authorized by the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324a;
 - b. Obtains a completed Employment Eligibility Verification (Form I-9);
 - c. Obtains a completed and signed employment application;
 - d. Obtains a signed statement attesting to all of an applicant’s felony convictions, including detailed information regarding each conviction;
 - e. Consults with the applicant’s most recent or next most recent employer, if any;
 - f. Inquiries regarding the applicant’s qualifications and competence for the position;
 - g. If for a loan officer, loan originator, loan processor, branch manager, supervisor, or similar position, obtains a current credit report from a credit reporting agency; and
 - h. Investigates further if any information received in the above inquiries raises questions as to the applicant’s honesty, truthfulness, integrity, or competence. An inquiry is sufficient after two attempts to contact a person, including at least one written inquiry.
23. “Record” has the meaning stated at A.R.S. § 44-7002(13).
24. “Registered to do business in this state” means:
 - a. If an Arizona corporation, it is incorporated under A.R.S. Title 10, Chapter 2, Article 1;
 - b. If a foreign corporation, it either transfers its domicile under A.R.S. Title 10, Chapter 2, Article 2, or obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 15, Article 1;
 - c. If a business trust, it obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 18, Article 4;
 - d. If an estate, it acts through a personal representative duly appointed by this state’s Superior Court, under the provisions of A.R.S. Title 14, Chapter 3 or 4;
 - e. If a trust, it delivers to the Superintendent an executed copy of the trust instrument creating the trust together with:
 - i. All the current amendments, or
 - ii. A true copy of the trust instrument certified accurate and complete by a trustee of the trust before a notary public;
 - f. If a general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it is organized under A.R.S. Title 29;
 - g. If a foreign general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it is registered with the Arizona Secretary of State’s office under A.R.S. Title 29;
 - h. If a joint venture, association, or any entity not specified in this subsection, it is organized and conducts its business in compliance with Arizona law; or

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- i. The entity is exempt from registration.
- 25. “Registered Exempt Person” means a person who is exempt from licensure pursuant to A.R.S. § 6-912 and A.R.S. Title 6, Chapter 9, Articles 1, 2 and 3 as a federally chartered savings bank that is registered with the nationwide mortgage licensing system and registry and holds a certificate of exemption.
- 26. “Resident of this state” means a natural person domiciled in Arizona.
- 27. “Responsible individual” or “responsible person” as those terms are used in A.R.S. §§ 6-903, 6-943, 6-973, and 6-976, means a resident of this state who:
 - a. Lives in Arizona during the entire period of designation as the responsible individual on a license;
 - b. Is in active management of a licensee’s affairs;
 - c. Meets the qualifications listed in A.R.S. §§ 6-903, 6-943, or 6-973; and
 - d. Is an officer, director, member, partner, employee, or trustee of a licensed entity.

Table A. Licensing Time-frames

No.	License Type	Legal Authority	Administrative Completeness Review (Days)	Substantive Review (Days)	Overall Time-Frame (Days)
1	<i>Bank</i>	A.R.S. § 6-203, et seq.			
	Initial Application	R20-4-211	45	45	90
2	<i>Bank Trust Dept.</i>	A.R.S. § 6-381			
	Initial Application	A.R.S. § 6-203, A.R.S. § 6-204(C)	45	45	90
3	<i>Savings & Loan</i>	A.R.S. § 6-401, et seq.			
	Initial Application	A.R.S. § 6-408, R20-4-327	75	75	150
4	<i>Credit Union</i>	A.R.S. § 6-501, et seq.			
	Initial Application	A.R.S. § 6-506(A)	60	60	120
5	<i>Trust Company</i>	A.R.S. § 6-851, et seq.			
	Initial Application	A.R.S. § 6-854(A)	75	75	150
6	<i>Consumer Lender</i>	A.R.S. § 6-601, et seq.			
	Initial Application	A.R.S. § 6-603(C)	60	60	120
7	<i>Debt Management</i>	A.R.S. § 6-701, et seq.			
	Initial Application	A.R.S. § 6-704(A), R20-4-602(A), R20-4-620(A)	30	30	60
8	<i>Escrow Agent</i>	A.R.S. § 6-801, et seq.			
	Initial Application	A.R.S. § 6-814	60	60	120
9	<i>Mortgage Broker or Commercial Mortgage Broker</i>	A.R.S. § 6-901, et seq.			
	Initial Application	A.R.S. § 6-903(C) & (D)	60	60	120
10	<i>Mortgage Banker</i>	A.R.S. § 6-941, et seq.			
	Initial Application	A.R.S. § 6-943(D)	60	60	120
11	<i>Commercial Mortgage Banker</i>	A.R.S. § 6-971, et seq.			
	Initial Application	A.R.S. § 6-974(A)	60	60	120
12	<i>Acquisition of Control of Financial Institution</i>	R20-4-1602, R20-4-1702			
	Initial Application	A.R.S. § 6-1104	30	30	60
13	<i>Money Transmitter</i>	A.R.S. § 6-1201, et seq.			
	Initial Application	A.R.S. § 6-1204(A)	60	60	120
14	<i>Advance Fee Loan Broker</i>	A.R.S. § 6-1301, et seq.			
	Initial Application	A.R.S. § 6-1303(A)	30	30	60
15	<i>Premium Finance Co.</i>	A.R.S. § 6-1401, et seq.			
	Initial Application	A.R.S. § 6-1402(C)	60	60	120
16	<i>Collection Agency</i>	A.R.S. § 32-1001, et seq.			

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	Initial Application		30	15	45
17	<i>Motor Vehicle Dealer</i>				
	Dealer Initial Application	A.R.S. § 44-282(B)	30	15	45
45	<i>Sales Finance Co.</i>	A.R.S. § 44-281, et seq.			
	Sales Finance Initial Application	A.R.S. § 44-282(B)	30	15	45
49	<i>Deferred Presentment Company</i>	A.R.S. § 6-1259			
	Initial Application	A.R.S. § 6-1253	60	60	120
19	<i>Certificate of Exemption</i>	A.R.S. § 6-912			
	Initial Application	A.R.S. § 6-912(B)	45	45	90
20	<i>Loan Originators</i>	A.R.S. § 6-991, et seq.			
	Initial Application	A.R.S. § 6-991.04(A)	60	60	120

ARTICLE 9. MORTGAGE BROKERS

R20-4-927. Conversion to Commercial Mortgage Broker License

- A.** Under A.R.S. § 6-913, a mortgage broker licensee shall only be permitted to convert his or her license to a commercial mortgage broker license during the renewal period pursuant to A.R.S. § 6-904.
- B.** At the time of conversion, the licensee seeking conversion shall not be subject to the 12 continuing education units as prescribed by A.R.S. § 6-903(V).
- C.** The licensee seeking conversion shall submit:
 1. The renewal fees required by A.R.S. § 6-126 for commercial mortgage brokers, and
 2. The information and documents required by A.R.S. § 6-903.

R20-4-928. Certificate of Exemption Application and Renewal

- A.** Under A.R.S. § 6-912(C), upon application for a certificate of exemption, an applicant shall pay a nonrefundable fee of \$300.
- B.** A person holding a certificate of exemption shall pay a renewal fee of \$150.00 on or before December 31 of each year. Certificates of exemption not renewed by December 31 are automatically suspended, and the certificate holder shall not act as a registered exempt person until the certificate is renewed or a new certificate is issued pursuant to A.R.S. § 6-912. When the certificate is suspended, the licensed loan originators sponsored by the registered exempt person may not transact business. A registered exempt person may renew an automatically suspended certificate by paying the renewal fee plus \$25.00 for each day after December 31 that a renewal fee is not received by the Superintendent and applying for renewal as prescribed by the Superintendent. A certificate of exemption that is not renewed by January 31 expires. A certificate of exemption shall not be granted to the holder of an expired certificate of exemption except as provided in A.R.S. § 6-912 for the issuance of an original certificate of exemption. Each licensed loan originator that is sponsored by a registered exempt person whose certificate has expired shall have his or her license placed on inactive status and shall not transact business in Arizona as a loan originator pursuant to A.R.S. § 6-991.02(M).
- C.** In addition to the application fee, on issuance of the certificate of exemption, the Superintendent shall collect the first year's renewal fee prorated according to the number of quarters remaining until the date of the next annual renewal, as required by A.R.S. § 6-126(B).
- D.** The following fees are payable to the Department:
 1. To change the name of the federally chartered savings bank on a certificate of exemption: \$250.00.
 2. To change the responsible individual for the exempt entity: \$250.00.
 3. To issue a duplicate or replace a lost certificate of exemption: \$100.00.
 4. To change the address of the federally chartered savings bank on a certificate of exemption: \$50.00.

ARTICLE 18. MORTGAGE BANKERS

R20-4-1813. Conversion to Mortgage Broker License

- A.** Under A.R.S. § 6-949 to apply for a conversion from a mortgage banker license to a mortgage broker license, the applicant shall submit during the renewal period all applicable renewal documents and renewal fees required by A.R.S. §§ 6-126 and 6-903 for mortgage brokers.
- B.** The licensee seeking conversion shall submit:
 1. The renewal fees required by A.R.S. § 6-126 for mortgage brokers, and
 2. The information and documents required by A.R.S. § 6-903.

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 901.) The Governor's Office authorized the notice to proceed through the rulemaking process on September 19, 2011.

[R12-41]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action**

Article 23	New Article
R20-6-2301	New Section
R20-6-2302	New Section
R20-6-2303	New Section
R20-6-2304	New Section
R20-6-2305	New Section

- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statutes: A.R.S. §§ 20-142 and 20-143(A)
Implementing statutes: A.R.S. §§ 20-1342.02 and 20-1054(A)(2)

- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 17 A.A.R. 2103, October 21, 2011
Notice of Formal Rulemaking Advisory Committee: 17 A.A.R. 2388, November 25, 2011
Notice of Public Meeting on Open Rulemaking Docket: 18 A.A.R. 25, January 6, 2012
Notice of Public Meeting on Open Rulemaking Docket: 18 A.A.R. 899, April 13, 2012 (*in this issue*)

- 4. The agency's contact person who can answer questions about the rulemaking:**

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Web site:	http://www.id.state.az.us/

- 5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The Arizona Department of Insurance (Department) proposes this rulemaking to meet requirements established under the Patient Protection and Affordable Care Act (Pub. L. 111-148) (Affordable Care Act) so that Arizona can be designated by the federal Centers for Medicare & Medicaid Services (CMS) as a state that conducts effective review of individual health insurance rate increases. This designation would allow Arizona, rather than the federal government, to have oversight of proposed health insurance rate increases.

The Affordable Care Act, enacted on March 23, 2010, amends, and adds to the provisions of Part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets. Section 1003 of the Affordable Care Act adds a new section 2794 of the PHS Act which directs the Secretary of the Department of Health and Human Services (the Secretary), in conjunction with the states, to establish a process for the annual review of "unreasonable increases in premiums for health insurance coverage." The statute provides that this process shall require health insurance issuers to submit to the Secretary and the applicable state justifications for unreasonable premium increases prior to the implementation of the increases. This provision is intended to help to moderate premium increases to individuals, families, and businesses who buy health insurance in these markets and to furnish information to consumers about why their premiums have increased.

On May 23, 2011, CMS issued a final regulation for Rate Increase Disclosure and Review, codified at 45 CFR 154.101-154.301 (the federal regulations), under which a proposed rate increase of 10 percent or more, known as a threshold rate increase, is subject to the effective rate review disclosure requirements specified in the federal regulations. The federal regulations provide that, as of September 1, 2011 CMS, will conduct the review of threshold rate increases, except that CMS may defer to the results of review conducted by a state, if the state process and standards meet the effective rate review requirements established in the federal regulations.

On June 24, 2011, CMS and the Center for Consumer Information and Insurance Oversight (CCIIO) determined that Arizona does not meet the effective rate requirements in either the individual or small group health insurance markets. As a result, since September 1, 2011 CMS has reviewed threshold rate increases in Arizona and will continue to review threshold rate increases for as long as Arizona does not meet the effective rate review requirements.

In August 2010, the Department received a \$1 million rate review grant from the U.S. Department of Health and Human Services (HHS). Such grants were made available to all states to help states create or enhance their premium rate review programs by ensuring that proposed rate hikes are comprehensively reviewed, bringing greater transparency and openness to the rating process. Under the grant, the Department held nine public meetings around the state with insurance industry and consumer group representatives to educate them on state rate review processes and to update them on the Department's progress under the grant. The Department explored issues involving transparency, technology, and compliance related to regulation of individual and small group health insurance rates. The Department also gathered information about what would be helpful in improving the Department's procedures and processes for regulating health insurance rates.

In September 2011, the Department received an extension of the federal grant to gain additional time to complete the activities initiated under the 2010 rate review grant and to explore options for meeting the federal effective rate review standards. The Department then focused on completing the tasks initiated during the original grant period and completing a rulemaking necessary for Arizona to become an effective rate review state, beginning with individual health insurance and, later, small group health insurance.

In preparation for proposal of this rulemaking, the Department held two stakeholder meetings attended by representatives of the regulated industry and consumer organizations. A formal advisory committee was established and the committee participated in the rule drafting process. The Department held publicly noticed meetings to discuss the draft rulemaking and received both oral and written comments on the draft rules during this informal rulemaking process. The Department incorporated feedback received on the rulemaking to the extent possible without making this rulemaking more stringent than the federal regulations. Consequently, these rules closely mirror the requirements established in 45 CFR 154 regarding disclosure and review of health insurer rate increases with minor adjustments made to tailor the rulemaking to requirements in the Administrative Procedure Act in A.R.S. Title 41, Chapter 6 and rule drafting requirements in 1 A.A.C. 1, Article 4. See cross-reference Table A below.

This proposed rulemaking is supported by both the regulated industry and consumer groups who participated in the rule drafting process. The regulated industry supports state-level regulation by the Department, as opposed to regulation by the federal government. This will allow for communication with state regulators to address issues and concerns at the state level. The consistency of the proposed state rules with the federal regulations will provide for consistency with state-to-state requirements with which the companies must comply, easing their compliance burden. Consumer groups also support the provisions in the rules for transparency that will provide more information to consumers about the rates that they are paying for health insurance premiums and accountability by insurers to local regulators. Consumers also will continue to have access at the state level, through the Department, for information and redress of issues and concerns regarding health insurance rates. A draft of this rulemaking has been reviewed by CMS and the Department has received feedback indicating support for the rulemaking and the Department's efforts to become an effective rate review state.

The Department continues to enforce Arizona's laws regarding rate increases that are not threshold rate increases under the federal regulation. Consequently, both the Department and CMS regulate specific aspects of certain rate increases in Arizona. If Arizona is designated as an effective rate review state as a result of this rulemaking, Arizona will have regulatory authority to regulate threshold rate increases in Arizona.

To date, at least 44 states, the District of Columbia and three territories have been determined by CMS to have met the requirements of the federal regulations for effective rate review and are the regulators for threshold rate increases in their jurisdictions. In order to be allowed to review threshold rate increases in Arizona, it is necessary that the Department promulgate this rulemaking so that Arizona can be designated by CMS as an effective rate review state for individual health insurance.

Arizona Administrative Register / Secretary of State

Notices of Proposed Rulemaking

Table A
Effective Rate Review – Article 23
Cross-Reference to Federal Regulations

20 A.A.C. 6, Article 23	45 CFR §
R20-6-2301(A)	154-101(b)
R20-6-2301(A)(1)	154-101(b)
R20-6-2301(B)(3)	154-102
R20-6-2301(B)(4)	154-102
R20-6-2301(B)(9)	154-102
R20-6-2301(B)(10)	154-215(b)
R20-6-2301(B)(11)	154-102
R20-6-2301(B)(12)	154-102
R20-6-2301(B)(13)	154-200
R20-6-2301(B)(15)	154-102, 154-205
R20-6-2301(B)(15)(a)	154-205(b)(1)
R20-6-2301(B)(15)(b)	154-205(b)(2)
R20-6-2301(B)(15)(c)	154-205(b)(3)
R20-6-2301(B)(15)(d)	154-205(c)
R20-6-2301(B)(15)(e)	154-205(d)
R20-6-2302(A)	154-215(b)
R20-6-2302(A)(1)	154-215(e)
R20-6-2302(A)(2)	154-215(f)
R20-6-2302(A)(2)(a)	154-215(f)(i)
R20-6-2302(A)(2)(b)	154-215(f)(2)
R20-6-2302(B)	154-215(d)
R20-6-2303(A)	154-220(a)
R20-6-2303(B)	154-220(b)
R20-6-2304	154.230(a)
R20-6-2304(1)	154.230(a)
R20-6-2304(2)	154.230(a)
R20-6-2304(2)(a)	154.230(b)
R20-6-2304(2)(b)	154.230(b)
R20-6-2304(2)(c)	154.230(b)
R20-6-2304(3)	154.230(c)
R20-6-2304(3)(a)	154.230(c)(1)
R20-6-2304(3)(b)	154.230(c)(2)
R20-6-2304(3)(b)(i)	154.230(c)(2)(ii)
R20-6-2304(3)(b)(ii)	154.230(c)(2)(iii)
R20-6-2304(3)(c)	154.230(c)(3)
R20-6-2305(A)	154.301
R20-6-2305(A)(1)	154.301(a)(3)(i)
R20-6-2305(A)(2)	154.301(a)(3)(ii)
R20-6-2305(B)	154.301(a)(4)
R20-6-2305(B)(1)	154.301(a)(4)(i)
R20-6-2305(B)(2)	154.301(a)(4)(ii)
R20-6-2305(B)(3)	154.301(a)(4)(iii)
R20-6-2305(B)(4)	154.301(a)(4)(iv)
R20-6-2305(B)(5)	154.301(a)(4)(v)
R20-6-2305(B)(6)	154.301(a)(4)(vi)
R20-6-2305(B)(7)	154.301(a)(4)(vii)

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R20-6-2305(B)(8)	154.301(a)(4)(viii)
R20-6-2305(B)(9)	154.301(a)(4)(ix)
R20-6-2305(B)(10)	154.301(a)(4)(x)
R20-6-2305(B)(11)	154.301(a)(4)(xi)
R20-6-2305(B)(12)	154.301(a)(4)(xii)

The Department may include information in the preamble of the Notice of Final Rulemaking that demonstrates that the rule needs to be effective immediately on filing in the Office of the Secretary of State under A.R.S. § 41-1032(A).

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

Oliver Wyman Study Regarding Effective Rate Review in Arizona’s Individual Market, October 17, 2011. The study can be obtained from or reviewed at the Arizona Department of Insurance, 2910 N. 44th St., Phoenix, AZ 85015 or viewed on the Department’s web site at www.id.state.az.us/legact.html.

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

Not applicable

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

Businesses

The businesses that will be directly impacted by this rulemaking are health insurers that offer individual health insurance products in Arizona. This rulemaking will have minimal economic impact on these businesses, as it will not have any new requirements for health insurers that the existing federal regulations do not already have, other than to file documentation and communicate with the Department, instead of with the federal government. The rulemaking will not add any filing-submission costs for health insurers. However, state review may cost health insurers more than federal review costs them because the insurers will have to pay for actuarial review of each filing filed with the state. The federal government does not charge the insurer for the required actuarial review. However, the Department does not employ, nor does it intend to employ, actuaries to review the filings. Instead, the Department intends to use contracted external actuaries to do the reviews and the Department bill health insurers for the cost of the review.

Small Businesses

Small businesses may be impacted by these rules to the extent that small businesses are consumers of health insurance, as described below.

Consumers

Consumers of health insurance will be impacted by this rulemaking. This rulemaking does not regulate consumers and will have no negative regulatory economic impact on consumers. However, the rules will result in non-quantifiable benefits as a result of oversight by state regulators who understand the state health insurance market and have an effective and efficient regulatory relationship with the industry. The Department also expects non-quantifiable benefits as a result of greater disclosure of information and transparency regarding health insurance rate increases. Some disclosure and transparency improvements already exist under the federal regulations, but the Department expects to enhance those through its ability to reach out and respond at the state level to Arizona consumers. It is possible that insurers might increase premiums in order to pass on to consumers the cost of added disclosure and transparency requirements, but these are already required under the federal regulations.

Other State Agencies

This rulemaking will have no economic impact on other agencies.

The Department

In 2010, the Department received a \$1 million federal grant for conducting activities associated with having Arizona become an effective rate review state, including promulgating this rulemaking. The Department hired two staff members under the grant who are participating in activities related to promulgating this rulemaking. The grant funding and those positions are temporary and will end September 30, 2012. When the rulemaking becomes effective and Arizona is designated by CMS an effective rate review state, the Department will have responsibility for conducting review of threshold rate increases. The Department anticipates that this will not result in a need to hire additional FTEs, although some existing staff time will be required to implement a process for referring filings to contracted actuaries to conduct the actuarial reviews. The Department also incurred costs for promulgation of this rulemaking.

9. The agency’s contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Margaret McClelland

Notices of Proposed Rulemaking

Address: Arizona Department of Insurance
2910 N. 44th St.
Phoenix, AZ 85018

Telephone: (602) 364-2393

Fax: (602) 364-2175

E-mail: mmcclelland@azinsurance.gov

Web site: http://www.id.state.az.us/

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: Tuesday, May 15, 2012
Time: 11:00 a.m.
Location: State Office Building
400 W. Congress Road
Arizona Corporation Commission Hearing Room
Tucson, AZ 85701

Nature: Oral proceeding on proposed rulemaking

Date: Wednesday, May 16, 2012
Time: 10:00 a.m.
Location: Arizona Department of Insurance
2910 N. 44th St.
Training Room, Third Floor
Phoenix, AZ 85018

Nature: Oral proceeding on proposed rulemaking

Date: Thursday, May 17, 2012
Time: 11:00 a.m.
Location: Arizona Department of Game and Fish
3500 S. Lake Mary Road
Flagstaff, AZ 86001

Nature: Oral proceeding

Close of Record: 5:00 p.m., Thursday, May 24, 2012

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

Not applicable

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rule does not require a permit. This rulemaking governs review of rates and does not involve permitting.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law applies to the subject of the rule. The rule conforms to federal law and is not more stringent than federal law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

Not applicable

13. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 23. THRESHOLD RATE REVIEW – INDIVIDUAL HEALTH INSURANCE

Section

- R20-6-2301. Applicability; Definitions
- R20-6-2302. Disclosure of Preliminary Justification
- R20-6-2303. Timing for Submission of Preliminary Justification
- R20-6-2304. Response to Unreasonableness Determination
- R20-6-2305. Threshold Rate Increase Submission Requirements

ARTICLE 23. THRESHOLD RATE REVIEW – INDIVIDUAL HEALTH INSURANCE

R20-6-2301. Applicability; Definitions

A. This Article applies to rates charged by health insurers for individual health insurance. This Article does not apply to rates charged by health insurers for the following:

1. Health insurance that a health insurer issues to an employer or to any group described in either A.R.S. § 20-1401 or 20-1404(A);
2. Grandfathered health plan coverage as defined in 45 CFR 147.140; or
3. Health insurance that covers excepted benefits as described in section 2791(c) of the PHS Act, 42 U.S.C. 300gg-91(c).

B. In this Article, the following definitions apply:

1. “Department” means the Arizona Department of Insurance.
2. “Blanket disability insurance” has the meaning prescribed in A.R.S. § 20-1404(A).
3. “CMS” means the Centers for Medicare & Medicaid Services.
4. “Federal medical loss ratio standard” means the applicable medical loss ratio standard determined under 45 CFR 158, Subpart B.
5. “Health insurance” means disability insurance as defined in A.R.S. § 20-253, a health care plan as defined in A.R.S. § 20-1051(5) and disability insurance or a health care plan offered by a hospital service corporation, medical service corporation or hospital, medical, dental and optometric service corporation as defined in A.R.S. § 20-822(3).
6. “Health insurer” means an insurer, as that term is defined in A.R.S. § 20-104, authorized to transact disability insurance in Arizona, a health care services organization as defined in A.R.S. § 20-1051(7) or a hospital service corporation, medical service corporation or hospital, medical, dental and optometric service corporation as defined in A.R.S. § 20-822(3).
7. “Individual health insurance” means health insurance that a health insurer issues to either:
 - a. An individual, to cover:
 - i. The individual, or
 - ii. The individual’s dependents, or
 - iii. The individual and the individual’s dependents.
 - b. An association or its individual members to cover the individual members and their dependents, and which the Department would regulate under A.R.S. Title 20, Chapter 6 as individual health insurance if the health insurer did not issue it to an association or individual members of an association.
8. “PHS Act” means Part A of title XXVII of the Public Health Service Act, U.S.C. Title 42, Chapter 6A.
9. “Product” means a package of health insurance benefits with a discrete set of rating and pricing methodologies that a health insurer offers as individual insurance in Arizona.
10. “Preliminary justification” means a justification that consists of the parts described in R20-6-2302(A).
11. “Rate increase” means an increase of the rates for an individual health insurance product that a health insurer offers in Arizona that:
 - a. Results from a change to the underlying rate structure of the product, and
 - b. May result in premium changes for the product.
12. “Secretary” means the Secretary of the United States Department of Health and Human Services.
13. “Threshold rate increase” means a rate increase that meets or exceeds an Arizona-specific threshold as noticed by the Secretary in 45 CFR 154.200, provided:
 - a. The average increase for all enrollees weighted by premium volume meets or exceeds the applicable threshold; and
 - b. If a rate increase that does not otherwise meet or exceed the Arizona-specific threshold meets or exceeds the Arizona-specific threshold when combined with a previous increase or increases during the 12-month period preceding the date on which the rate increase would become effective, then the rate increase must be considered to meet or exceed the Arizona-specific threshold and is subject to threshold rate review that shall include a review of the aggregate rate increases during the applicable 12-month period.
14. “Threshold rate review” means the review by the Department under this Article of a threshold rate increase.
15. “Unreasonable rate increase” means a rate increase that results in benefits that are not reasonable in relation to the

premium the health insurer charges for the product. The following factors are relevant in determining whether a rate increase results in benefits that are unreasonable in relation to premium:

- a. The rate increase results in a projected medical loss ratio below the federal medical loss ratio standard after accounting for any adjustments allowable under federal law;
- b. One or more of the assumptions on which the health insurer based the rate increase is not supported by sound actuarial reasoning, data and analysis;
- c. The choice of assumptions or combination of assumptions on which the insurer based the rate increase is unreasonable;
- d. The health issuer provides data or documentation that is incomplete, inadequate or otherwise does not provide a basis upon which the Department can determine the reasonableness of a rate increase; or
- e. The increase results in premium differences between insureds within similar risk categories that are unfairly discriminatory under A.R.S. Title 20, Chapter 2, Article 6.

R20-6-2302. Disclosure of Preliminary Justification

A. Preliminary Justification. For each threshold rate increase for each affected product, a health insurer shall submit to the Department and to CMS, on a form and in the manner prescribed by the Secretary in 45 CFR 154.215, a preliminary justification that contains all of the following:

1. Preliminary Justification Part I. A summary of the content of the threshold rate increase that includes:
 - a. Historical and projected claims experience;
 - b. Trend projections related to utilization, and service or unit cost;
 - c. Any claims assumptions related to benefit changes;
 - d. Allocation of the overall rate increase to claims and non-claims costs;
 - e. Per enrollee per month allocation of current and projected premium; and
 - f. Three year history of rate increases for the product associated with the rate increase.
2. Preliminary Justification Part II. A written description that justifies the rate increase and that contains a simple and brief narrative describing the data and assumptions the health insurer used to develop the rate increase, and includes the following:
 - a. An explanation of the most significant factors causing the rate increase, including a brief description of the relevant claims and non-claims expense increases reported in subsection (A)(1); and
 - b. A brief description of the overall experience of the policy, including historical and projected expenses, and loss ratios.

B. A health insurer may submit a single, combined preliminary justification that contains all the information in subsections (A)(1) and (2) for threshold rate increases that affect more than one product if the health insurer has aggregated the claims experience of all products to calculate the rate increases and the rate increases are the same for all products.

R20-6-2303. Timing for Submission of Preliminary Justification

A. If R20-6-607 applies to a threshold rate increase, the health insurer shall submit its preliminary justification to the Department and to CMS on the date on which the health insurer files the rate increase request under R20-6-607.

B. If R20-6-607 does not apply to a threshold rate increase, the health insurer shall submit the preliminary justification to the Department and to CMS at least 60 days prior to the date the health insurer intends to implement the threshold rate increase in Arizona.

R20-6-2304. Response to Unreasonableness Determination

If the health insurer receives from CMS a notice that the Department has determined that the health insurer's threshold rate increase is unreasonable, the health insurer shall select one of the following three options:

1. Option to not implement the rate increase determined unreasonable. Within 30 days of receiving from CMS the Department's determination, the health insurer shall notify the Department and CMS that it will not implement the rate increase and request the Department to withdraw the rate increase request;
2. Option to implement a smaller rate increase than the rate determined unreasonable. Within 30 days of receiving from CMS the Department's determination, the health insurer shall notify the Department and CMS, on a form and in the manner prescribed by the Secretary, that it intends to implement a rate increase that is smaller than the one determined unreasonable. One of the following shall apply to this option:
 - a. If the health insurer selects this option and the smaller rate increase is not a threshold rate increase, the smaller rate increase is not subject to this Article;
 - b. If the health insurer selects this option, and R20-6-607 applied to the rate increase the Department determined to be unreasonable, the health insurer shall revise the rate increase filing to reflect the smaller rate increase or file a new rate increase. If the smaller rate increase is a threshold rate increase, the health insurer shall submit a new preliminary justification on the date the health insurer revises the rate increase filing or files a new rate increase; or
 - c. If the health insurer selects this option, and R20-6-607 did not apply to the rate increase the Department deter-

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- mined to be unreasonable, and the smaller increase is a threshold rate increase, the health insurer shall submit to the Department and to CMS a new preliminary justification at least 60 days prior to the date the health insurer intends to implement the smaller increase in Arizona.
3. Option to implement the rate increase determined unreasonable. Within 10 business days after the health insurer either implements the rate increase that the Department determined unreasonable, or receives from CMS the Department's determination, the health insurer shall:
 - a. Submit, to the Department and to CMS, a final justification in response to the Department's determination. The information in the final justification shall be the same as the information submitted by the insurer under R20-6-2302(A)(1) and (2) in the preliminary justification supporting the rate increase; and
 - b. Prominently post on its web site, on a form and in the manner prescribed by the Secretary under 45 CFR 154.230 the following information:
 - i. The Department's determination that the rate increase is unreasonable and Department's explanation of the Department's analysis of the relevant factors set forth in R20-6-2305(A)(1) and (2), and
 - ii. The health insurer's final justification for implementing the rate increase.
 - c. Continue to make the information in subsection (3)(b) available to the public on its web site for at least three years.

R20-6-2305. Threshold Rate Increase Documentation Requirements

- A. For a threshold rate increase, a health insurer shall submit to the Department documentation that is sufficient to allow the Department to assess:
 1. The reasonableness of the assumptions used by the health insurer to develop the proposed rate increase and the validity of the historical data underlying the assumptions, and
 2. The health insurer's data related to past projections and actual experience.
- B. To the extent applicable to the submission under review by the Department, the health insurer shall submit documentation that includes all of the following:
 1. The impact of medical trend changes by major service categories;
 2. The impact of utilization changes by major service categories;
 3. The impact of cost-sharing changes by major service categories;
 4. The impact of benefit changes;
 5. The impact of changes in enrollee risk profile;
 6. The impact of any overestimate or underestimate of medical trend for prior year periods related to the rate increase;
 7. The impact of changes in reserve needs;
 8. The impact of changes in administrative costs related to programs that improve health care quality;
 9. The impact of changes in other administrative costs;
 10. The impact of changes in applicable taxes, licensing or regulatory fees;
 11. Medical loss ratio;
 12. The health insurance insurer's capital and surplus; and
 13. Other relevant documentation at the discretion of the Director.
- C. A health insurer shall submit all documentation required under subsection (A) or (B) at the same time that:
 1. The health insurer submits the preliminary justification required under R20-6-2302, or
 2. The health insurer submits any new preliminary justification required under R20-6-2304(2)(b) and (c).