

## 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 20. BOARD OF DISPENSING OPTICIANS

*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 1157.)*

[R12-75]

#### PREAMBLE

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

R4-20-102	Amend
R4-20-109	Amend
R4-20-118	Amend
R4-20-119	Amend
Table 1	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. § 32-1673

Implementing statute: A.R.S. §§ 32-1671, 32-1672, 32-1673, 32-1674, 32-1681, 32-1682, 32-1683, 32-1684, 32-1684.01, 32-1685, 32-1686, 32-1687, 32-1691, 32-1691.01, 32-1693, 32-1694, 32-1695, 32-1695, 32-1696, 32-1697, 32-1698, 32-1699
- 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: 18 A.A.R. 659 March 16, 2012
- 4. The agency contact person who can answer questions about the rulemaking:**

Name:	Lori D. Scott, Executive Director
Address:	1400 W. Washington St., Rm 230 Phoenix, AZ 85007
Telephone:	(602) 542-8158
Fax:	(602) 542-3093
E-mail:	director@asbdo.state.az.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 An agencies justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**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 provides detailed licensing and regulatory information and procedural instructions. The Board is proposing to amend rule R4-20-102 for clarification on material necessary to submit with the application for licensure. R4-20-109 is being amended to clarify qualifications for reinstatement of an optician's license. R4-20-118 is amended to require opticians to maintain a record of the customer's prescription and a record of optical devices dispensed versus a copy of the prescription. R4-20-119 is amended to include filling prescriptions beyond the expiration date as sub-standard care. Table 1 is amended to change the time-frame on Optical Establishments to fall in line with other applications.

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**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, and 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:**

The proposed amendments do not diminish a previous grant of authority of a political subdivision of this state.

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

This rulemaking will not impact applicants. This will impact licensed opticians and establishments by clarifying qualifications already set forth in statute for establishment licensing and will also help in eliminating paper by allowing establishments to keep electronic records. These changes will have a minimal impact on opticians and establishments.

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

Name: Lori D. Scott, Executive Director  
Address: 1400 W. Washington St., Rm 230  
Phoenix, AZ 85007  
Telephone: (602) 542-8158  
Fax: (602) 542-3093  
E-mail: director@asbdo.state.az.us

**10. The time, place and nature of the proceedings to make, amend, or 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 proceedings are scheduled.

Written comments will be accepted by the Board office, Monday through Friday 8:00 a.m. – 5:00 p.m. no later than 5:00 p.m. May 31, 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 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 rules:**

Not applicable

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 20. BOARD OF DISPENSING OPTICIANS**

**ARTICLE 1. GENERAL**

Section

- R4-20-102. Application for a Dispensing Optician's License by Examination  
R4-20-109. Renewal of Dispensing Optician's License; Late Renewal; Reinstatement  
R4-20-118. Unprofessional Conduct

R4-20-119. Substandard Care  
Table 1. Time-frames (in days)

ARTICLE 1. GENERAL

**R4-20-102. Application for a Dispensing Optician's License by Examination**

At least 45 days before an examination date, an applicant for a dispensing optician's license by examination shall submit to the Board an application packet that contains:

1. An application form provided by the Board, signed and dated by the applicant, and notarized that contains:
  - a. The applicant's name, Social Security number, address, and telephone number;
  - b. The name and address of the applicant's employer at the time of application, if applicable;
  - c. If demonstrating technical skill and training under A.R.S. § 32-1683(5)(b), the name and address of each dispensing optician, physician, or optometrist for whom the applicant served as an apprentice for three of the six years immediately preceding the application date, and the beginning and ending dates of each apprenticeship;
  - d. If demonstrating technical skill and training under A.R.S. § 32-1683(5)(c), the name and address of the school from which the applicant graduated, dates of attendance, date of graduation, degree received, and the name and address of each dispensing optician for whom the applicant served as a dispensing optician apprentice for one of the six years immediately preceding the application date and the beginning and ending dates of service. The applicant shall submit a photocopy of the applicant's diploma from the optical dispensing school;
  - e. If demonstrating technical skill and training under A.R.S. § 32-1683(5)(d), the name and address of each dispensing optician, physician, or optometrist for whom the applicant has worked for three of the six years immediately preceding the application date and the beginning and ending dates of employment;
  - f. A statement of whether the applicant has ever been convicted of a felony or of a misdemeanor involving moral turpitude in any state;
  - g. A statement of whether the applicant has ever had an application for a professional license denied or had a license suspended or revoked in any state; and
  - h. A sworn statement by the applicant verifying the truthfulness of the information provided by the applicant;
2. A photocopy of the applicant's:
  - a. ~~high~~ High school diploma or general educational diploma issued in any state; or
  - b. Transcripts from a high school or college or evidence of a college degree or admission to any college in any state;
3. Verification of passing an ABO and NCLE Board examination in opticianry as evidenced by an original notice of examination results or a copy of the original certificate of passage issued by the organization that prepared the examination;
4. A letter attesting to good moral character from each of three individuals who are not family members, who have known the applicant for two years immediately before the date of the application, and support the applicant's licensure;
5. A letter from each physician, optometrist, or dispensing optician named in subsection (1)(c), (d), or (e) that contains:
  - a. The individual's printed name, address, and telephone number; and
  - b. A statement that the applicant has either served as an apprentice or been employed as a dispensing optician by the physician, optometrist, or dispensing optician for the time required in subsection (1)(c), (d), or (e).
6. A photograph of the applicant no smaller than 1 1/2 x 2 inches and taken not more than six months before the date of application; and
7. The fee required in R4-20-112.

**R4-20-109. Renewal of Dispensing Optician's License; Late Renewal; Reinstatement**

- A. No later than December 31 of each year, an applicant for renewal of a dispensing optician's license shall submit to the Board the fee required by R4-20-112, proof of continuing education credits required by R4-20-120, and an application form, provided by the Board, signed and dated by the applicant, and notarized that contains:
  1. The applicant's name, Social Security number, address, and telephone number;
  2. The name, address, telephone number, and Arizona license number of the optical establishment at which the applicant is currently practicing as a dispensing optician; and
  3. A statement that the information contained on the renewal application is correct.
- B. A licensee who submits a renewal application and renewal fee postmarked after December 31 but before January 31 of the following year shall pay the late fee in R4-20-112.
- C. A licensee who fails to submit a renewal application postmarked before January 31 following a license expiration of December 31, and who wishes to reinstate the license, shall:
  1. Submit a reinstatement application within one year of license expiration;
  2. Pay the renewal fee and the late fee in R4-20-112;
  3. Achieve a passing grade on the practical examination, unless the applicant has successfully completed the practical

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- examination in the five-year period immediately preceding the license expiration; ~~and~~  
 4. ~~Submit evidence of passing the ABO and NCLE examinations.~~

**R4-20-118. Unprofessional Conduct**

In addition to actions specified in A.R.S. § 32-1696, unprofessional conduct in the practice of optical dispensing includes the following:

1. Substandard care as specified in R4-20-119;
2. Failing to maintain a ~~copy~~ record of the customer’s prescription and failing to prepare and maintain a record of optical devices dispensed for at least three years. The record of optical devices dispensed shall include the brand, style, and size of the frame, if any, and the style, material, source, and all other information necessary to accurately reproduce each lens. The record shall be separate from optometrists’ or physicians’ records;
3. Failing or refusing to make a copy of a prescription or record described in subsection (2) promptly available to the customer who is the subject of the prescription or record, the customer’s designated representative, the customer’s prescribing practitioner, or the Board or its investigator, when requested. Notwithstanding this provision, a dispensing optician need not make the record of contact lenses dispensed on a trial basis available to the customer;
4. Failing or refusing to take corrective action or investigate a customer complaint concerning the manufacture or fit of eyeglasses, contact lenses, or other optical devices dispensed at the establishment by which the dispensing optician is employed if there is a substantial basis for the complaint;
5. Failure of any person, corporation, company, partnership, firm, association or society to maintain an active optical establishment license as required by R4-20-110; and
6. Failure to comply with a Board order.

**R4-20-119. Substandard Care**

**A.** It is substandard care for a dispensing optician:

1. To dispense improperly manufactured eyeglasses or contact lenses. If a complaint indicates that eyeglasses or contact lenses dispensed by a dispensing optician or other employee of an optical establishment may have been improperly manufactured, the Board shall be guided in its determination of the facts by referring to the standards incorporated by reference in subsection (B) with regard to the individual parameters listed in the standards and considering patient wear, care, and usage;
2. When interpreting written prescriptions:
  - a. ~~to~~ To fail to follow standards incorporated by reference in subsection (B) in determining lens powers due to differences in vertex distances, base curvatures, special lens requirements, and facial fitting problems, or filling prescriptions beyond the expiration date indicated on the prescription; or
  - b. ~~to~~ To fail to comply with special instructions of the vision practitioner or optometrist shown on the prescription without the full knowledge and consent of the customer, the physician, or optometrist;
3. To fail to follow manufacturer’s guidelines regarding usual and customary lens thickness of eyewear;
4. To intentionally or negligently injure a customer during the course of optical dispensing; or
5. To fail to give the customer appropriate instructions on the care, handling, and wearing of an optical device.

**B.** The following standards published by the American National Standards Institute, Inc., (ANSI), 1819 L Street, NW, Suite 600, Washington, DC 20036, are incorporated by reference, and no further editions or amendments and are on file with the Board:

1. ANSI Z80.1 1999, “Prescription Ophthalmic Lenses-Recommendations.”
2. ANSI Z80-20-1998, “Contact Lenses- Standard Terminology, Tolerances, Measurements And Physiochemical Properties.”
3. ANSI Z80.5-2004, “Requirements for Ophthalmic Frames.”
4. ANSI Z87.1-2003, “Occupational and Educational Personal Eye and Face Protection Devices.”
5. ANSI Z80.9-1998 “Optical Devices for Low Vision.”

**Table 1. Time-frames (in days)**

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Approval to Take a Dispensing Optician Examination (R4-20-102)	A.R.S. § 32-1682	90	30	60
License by Examination (R4-20-102)	A.R.S. § 32-1682 A.R.S. § 32-1684	60	30	30
License by Comity (R4-20-107)	A.R.S. § 32-1683	90	30	60
Optical Establishment License R4-20-110	A.R.S. § 32-1684.01	<del>30</del> <u>60</u>	<del>10</del> <u>30</u>	<del>20</del> <u>30</u>

Optician's License Renewal (R4-20-109)	A.R.S. § 32-1682	60	30	30
Establishment License Renewal (R4-20-115)	A.R.S. § 32-1684.01	60	30	30

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 9. HEALTH SERVICES**

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

*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 1157.) The Governor's Office authorized the notice to proceed through the rulemaking process on April 26, 2012.*

[R12-73]

**PREAMBLE**

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action**  
 R9-22-601 Amend  
 R9-22-604 Amend  
 R9-22-605 Amend  
 R9-22-606 Amend
- 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. § 36-2906  
 Implementing statute: A.R.S. §§ 36-2903, 36-2904, and 36-2906
- 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: 18 A.A.R. 1149, May 18, 2012 (*in this issue*)
- 4. The agency's contact person who can answer questions about the rulemaking:**  
 Name: Mariaelena Ugarte  
 Address: AHCCCS  
 Office of Administrative Legal Services  
 701 E. Jefferson St., Mail Drop 6200  
 Phoenix, AZ 85034  
 Telephone: (602) 417-4693  
 Fax: (602) 253-9115  
 E-mail: AHCCCSRules@azahcccs.gov  
 Web site: www.azahcccs.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:**  
 A.R.S. § 36-2906 authorizes the Administration to adopt rules for the RFP process and the award of contracts. The Administration is proposing revisions to several rules in Article 6 to streamline and clarify the RFP and contract award process, correct inaccurate references, and eliminate redundant language. The proposed rules are more clear, concise, and understandable. In particular, the proposed rules more clearly delineate the process for filing a protest alleging improprieties in an RFP or an amendment to the RFP. Additionally the proposed rules specify the legal bases for hearings as well as contract performance disputes. The term "procurement file" is defined in the proposed rule, and the term sanction is clarified to include actions beyond monetary sanctions and enrollment restrictions.
- 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:**  
 A study was not referenced or relied upon when revising the regulations for Contracts and RFPs.

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**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 Administration anticipates a minimal economic impact on the implementing agency, small businesses and consumers. The contractors, members, providers, and AHCCCS are nominally impacted by the changes to the rule language. These rules set forth the request for proposal and contract process pertaining to covered services under the AHCCCS Program as referenced in the procurement. The Administration is amending these rules to make the rules more clear, concise, and understandable. In addition, the proposed rules eliminate redundant language, update incorrect cross references, and streamline the RFP process.

It is anticipated that the private sector, including small businesses or political subdivisions, will be minimally impacted since the proposed rule language streamlines and clarifies the existing rules, including rules delineating the protest process. The Administration, contractors, and providers will benefit because the changes provide clarification of the rule.

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

Name: Mariaelena Ugarte  
Address: AHCCCS  
Office of Administrative Legal Services  
701 E. Jefferson St., Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4693  
Fax: (602) 253-9115  
E-mail: AHCCCSRules@azahcccs.gov  
Web site: www.azahcccs.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:**

Proposed rule language will be available on the AHCCCS web site www.azahcccs.gov the week of April 30, 2012. Please send written or e-mail comments to the above address by the close of the comment period, 5:00 p.m., June 18, 2012.

Date: June 18, 2012  
Time: 2:00 p.m.  
Location: AHCCCS  
701 E. Jefferson St.  
Phoenix, AZ 85034  
Nature: Public Hearing

Date: June 18, 2012  
Time: 2:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
1010 N. Finance Center Drive, Suite 201  
Tucson, AZ 85710  
Nature: Public Hearing

Date: June 18, 2012  
Time: 2:00 p.m.  
Location: 2717 N. 4th St., Suite 130  
Flagstaff, AZ 86004  
Nature: Public Hearing

**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:**

No other matters have been prescribed.

**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:**

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:**

None

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

**TITLE 9. HEALTH SERVICES**

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

**ARTICLE 6. RFP AND CONTRACT PROCESS**

Section

- R9-22-601. General Provisions
- R9-22-604. Contract or Proposal Protests; Appeals
- R9-22-605. Waiver of Contractor's Subcontract with Hospitals
- R9-22-606. Contract Compliance Sanction

**ARTICLE 6. RFP AND CONTRACT PROCESS**

**R9-22-601. General Provisions**

- A. The Director has full operational authority to adopt rules for the RFP process and the award of contracts under A.R.S. § 36-2906.
- B. This Article applies to the award of contracts under A.R.S. §§ 36-2904 and 36-2906 to provide services under A.R.S. § 36-2907 and the expenditure of all public monies by the Administration for pertaining to covered services when the procurement so states under Articles 2 and 12 of this Chapter except as otherwise provided by law. The Administration shall establish conflict-of-interest safeguards for officers and employees of this state with responsibilities relating to contracts that comply with 42 U.S.C. 1396u-2(d)(3).
- ~~C. The Administration shall award contracts under A.R.S. §§ 36-2904 and 36-2906 to provide services under A.R.S. § 36-2907.~~
- ~~D.C.~~ The Administration is exempt from the procurement code under A.R.S. § 41-2501.
- ~~E.D.~~ The Administration and contractors shall retain all contract records for five years under A.R.S. § 36-2903 and dispose of the records under A.R.S. § 41-2550.
- E. The following terms are defined as related to this Article:  
"Procurement file" means the official records file of the Director whether located in the Office of the Director or at the public procurement unit. The procurement file shall include (electronic or paper); list of notified vendors, final solicitation, solicitation amendments, bids/offers, final proposal revisions, clarifications, and final evaluation report.

**R9-22-604. Contract or Proposal Protests; Appeals**

- A. Disputes related to contract performance. This Section does not apply to a dispute related to contract performance. A contract performance dispute is governed by ~~Article 8 of this Chapter~~ 9 A.A.C. 34.
- B. Resolution of a proposal protest. The procurement officer issuing a RFP shall have the authority to resolve proposal protests. An appeal from the decision of the procurement officer shall be made to the Director.
- C. Filing of a protest.
  - 1. A person may file a protest with the procurement officer regarding:
    - a. A RFP issued by the Administration,
    - b. A proposed award, or
    - c. An award of a contract.
  - 2. A protester shall submit a written protest and include the following information:
    - a. The name, address, and telephone number of the protester;
    - b. The signature of the protester or protester's representative;
    - c. Identification of a RFP or contract number;

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- d. A detailed statement of the legal and factual grounds of the protest including copies of any relevant documents; and
  - e. The relief requested.
- D. Time for filing a protest.**
- 1. ~~A protester filing a protest alleging improprieties in a RFP shall file the protest before the due date for receipt of proposals.~~
  - 1. A protester filing a protest alleging improprieties in an RFP or an amendment to an RFP shall file the protest at least 14 days before the due date of receipt of proposals.
  - 2. ~~A protester filing a protest alleging improprieties that do not exist in the original RFP but are subsequently incorporated into the RFP before the due date for receipt of proposals shall file the protest prior to the amended due date for receipt of proposals.~~
  - 2. Any protest alleging improprieties in an amendment issued 14 or fewer days before the due date of the proposal shall be filed before the due date for receipt of proposals.
  - 3. In cases other than those covered in subsections (D)(1) and (2), a protester shall file a protest within no later than 10 days after the procurement officer makes the procurement file available for public inspection ~~protester knows or should have known the basis of the protest.~~
- E. Stay of procurement during the protest.** If a protester files a protest before the contract award, the procurement officer may issue a written stay of the contract award. In considering whether to issue a written stay of contract, the procurement officer shall consider but is not limited to considering whether:
- 1. A reasonable probability exists that the protest will be sustained, and
  - 2. The stay of the contract award is in the best interest of the state.
- F. Stay of contract award during an appeal to the Director.** The Director shall automatically continue the stay of a contract award if:
- 1. An appeal is filed before a contract award, and
  - 2. The procurement officer issues a stay of the contract award under subsection (E), unless
  - 3. The Director issues a written determination that the contract award is necessary to protect the best interest of the state.
- G. Decision by the procurement officer.**
- 1. The procurement officer shall issue a written decision within no later than 14 days after a protest has been filed. The decision shall contain an explanation of the basis of the decision.
  - 2. The procurement officer shall furnish a copy of the decision to the protester by:
    - a. Certified mail, return receipt requested; or
    - b. Any other method that provides evidence of receipt.
  - 3. The Administration may extend, for good cause, the time-limit for decisions in subsection (F)(1) for a time not to exceed 30 days. The procurement officer shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
  - 4. If the procurement officer fails to issue a decision within the time-limits in subsection (F)(1) or (3), the protester may proceed as if the procurement officer issued an adverse decision.
- H. Remedies.**
- 1. If the procurement officer sustains the protest in whole or in part and determines that the RFP, proposed contract award, or contract award does not comply with applicable statutes and rules, the procurement officer shall order an appropriate remedy.
  - 2. In determining an appropriate remedy, the procurement officer shall consider all the circumstances of the procurement or proposed procurement, including:
    - a. Seriousness of the procurement deficiency,
    - b. Degree of prejudice to other interested parties or to the integrity of the RFP process,
    - c. Good faith of the parties,
    - d. Extent of performance,
    - e. Costs to the state, and
    - f. Urgency of the procurement.
    - g. Best interest of the state.
  - 3. An appropriate remedy may include one or more of the following:
    - a. Terminating the contract;
    - b. Reissuing the RFP;
    - c. Issuing a new RFP;
    - d. Awarding a contract consistent with statutes, rules, and the terms of the RFP; or
    - e. Any relief determined necessary to ensure compliance with applicable statutes and rules.
- I. Appeals to the Director.**

1. A person may file an appeal ~~about~~ of a procurement officer's decision with both the Director and the procurement officer ~~within no later than~~ five days from the date the decision is received. The date the decision is received shall be determined under subsection ~~(F)(2)~~ (F).
  2. The appeal shall contain:
    - a. The information required in subsection (C)(2),
    - b. A copy of the procurement officer's decision,
    - c. The alleged factual or legal error in the decision of the procurement officer on which the appeal to the Director is based, and
    - d. A request for hearing unless the person requests that the Director's decision be based solely upon the ~~contract record~~ procurement file.
- J.** Dismissal. The Director shall not schedule a hearing and shall dismiss an appeal with a written determination if:
1. The appeal does not state a basis for protest,
  2. The appeal is untimely under subsection (H)(1), or
  3. The appeal is moot.
- K.** Hearing. Hearings under this Section shall be conducted ~~under R9-22-802 of this Chapter~~ using the Arizona Administrative Procedure Act.

**R9-22-605. Waiver of Contractor's Subcontract with Hospitals**

If a contractor is unable to obtain a subcontract with a hospital as contractually required, the contractor may request in writing a waiver from the Administration as allowed by A.R.S. § 36-2906. The contractor shall state in the request the reasons a waiver is believed to be necessary and all efforts the contractor has made to secure a subcontract. ~~The Administration shall consider the following criteria in deciding whether to grant the waiver:~~

- ~~1. The number of hospitals in the GSA,~~
- ~~2. The extent to which the contractor's physicians have staff privileges at noncontracting hospitals in the service area,~~
- ~~3. The size and population of, and the demographic distribution within, the service area,~~
- ~~4. Patterns of medical practice and care within the service area,~~
- ~~5. Whether the contractor has diligently attempted to negotiate a hospital subcontract with local hospitals capable of serving members in the service area,~~
- ~~6. Whether the contractor has any subcontracts in adjoining service areas with hospitals that are reasonably accessible to the contractor's members in the service area, and~~
- ~~7. Whether the contractor's members can reasonably be expected to receive all covered services in the absence of a hospital subcontract.~~

**R9-22-606. Contract Compliance Sanction**

- A.** The Director may impose ~~one or more of the following~~ sanctions upon a contractor ~~that violates~~ for violation of any provision of this Chapter or of a contract. Sanctions include but are not limited to:
- ~~1. Suspend any~~ Suspension of any or all further member enrollment, by choice ~~of~~ and/or assignment, for a period of time ~~commensurate with the nature, term, and severity of the violation.~~
  - ~~2. Withhold a percentage~~ Imposition of a monetary sanction of the contractor's capitation prepayment, ~~commensurate with the nature, term, and severity of the violation.~~
- B.** The Director shall consider the nature, severity, and length of the violation when determining a sanction.
- C.** The Director shall provide a contractor with written notice specifying grounds and terms for the sanction, ~~which are commensurate with the nature, term, and severity of the violation and one or more of the following:~~
- ~~1. Length of suspension,~~
  - ~~2. Amount to be forfeited, or~~
  - ~~3. Prepayment to be withheld.~~
- D.** Nothing contained in this Section shall be construed to prevent the Administration from imposing sanctions as provided in contract under A.R.S. § 36-2903.



Notices of Proposed Rulemaking

more clear, concise, and understandable. In addition, the proposed rules eliminate redundant language, update incorrect cross references, and streamline the RFP process.

It is anticipated that the private sector, including small businesses or political subdivisions, will be minimally impacted since the proposed rule language streamlines and clarifies the existing rules, including rules delineating the protest process. The Administration, contractors, and providers will benefit because the changes provide clarification of the rule.

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

Name: Mariaelena Ugarte  
Address: AHCCCS  
Office of Administrative Legal Services  
701 E. Jefferson St., Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4693  
Fax: (602) 253-9115  
E-mail: AHCCCSRules@azahcccs.gov  
Web site: www.azahcccs.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:**

Proposed rule language will be available on the AHCCCS web site www.azahcccs.gov the week of April 30, 2012. Please send written or e-mail comments to the above address by the close of the comment period, 5:00 p.m., June 18, 2012.

Date: June 18, 2012  
Time: 2:00 p.m.  
Location: AHCCCS  
701 E. Jefferson St.  
Phoenix, AZ 85034  
Nature: Public Hearing

Date: June 18, 2012  
Time: 2:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
1010 N. Finance Center Drive, Suite 201  
Tucson, AZ 85710  
Nature: Public Hearing

Date: June 18, 2012  
Time: 2:00 p.m.  
Location: 2717 N. 4th St., Suite 130  
Flagstaff, AZ 86004  
Nature: Public Hearing

**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:**

No other matters have been prescribed.

**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:**

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:**

None

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

**TITLE 9. HEALTH SERVICES**

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

**ARTICLE 6. RFP AND CONTRACT PROCESS**

Section

R9-28-604. Contract or Proposal Protests; Appeals

R9-28-606. Contract Compliance Sanction

**ARTICLE 6. RFP AND CONTRACT PROCESS**

**R9-28-604. Contract or Proposal Protests; Appeals**

Contract or proposal protests or appeals shall be under A.A.C. R9-22-604 and 9 A.A.C. 34 Article 8 of this Chapter.

**R9-28-606. Contract Compliance Sanction**

**A.** The Administration shall follow sanction provisions if criteria under A.A.C. R9-22-606 are met.

**B.** The Administration shall apply remedies found in 42 CFR 488, Subpart F, effective ~~May 17, 1999~~ October 1, 2010, incorporated by reference and on file with the Administration and the Office of the Secretary of State, for a nursing facility that does not meet requirements of participation under 42 U.S.C. 1396r. This incorporation by reference contains no future editions or amendments.