

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)

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 33. BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2937.)

[R12-210]

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| Table 1 | Amend |
| R4-33-104 | Amend |
| Article 6 | New Article |
| R4-33-601 | New Section |
| R4-33-602 | New Section |
| R4-33-603 | New Section |
| R4-33-604 | New Section |
| R4-33-605 | New Section |
| R4-33-606 | New Section |
| Article 7 | New Article |
| R4-33-701 | New Section |
| R4-33-702 | New Section |
| R4-33-703 | New Section |
| R4-33-704 | New Section |
| R4-33-705 | New Section |
| R4-33-706 | 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. § 36-446.03(A)
Implementing statute: A.R.S. §§ 36-446.03(B)(11) and (12), (O), and (P), and 41-1072
- 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. 1350, June 15, 2012
- 4. The agency's contact person who can answer questions about the rulemaking:**
Name: Allen Imig, Executive Director
Address: 1400 West Washington
Ste. B8
Phoenix, AZ 85007
Telephone: (602) 542-8156
Fax: (602) 542-8316
E-mail: allen.imig@aznciaboard.us
Web site: www.aznciaboard.us

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 An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

During a recent legislative session, the legislature enacted SB1038, which transferred regulatory oversight of training programs for assisted living facility managers from the Arizona Department of Health Services to the Board. The Board is charged with establishing standards for and approving training programs for managers and caregivers of assisted living facilities; specifically authorized to make nonrefundable fees for review of initial and renewal applications; and authorized to impose discipline if a training program violates the Board's rules. The Board is making the rules necessary to fulfill its statutory responsibility.

To facilitate transition from regulatory oversight provided by the Arizona Department of Health Services to that provided by the Board, the Board has determined that it will allow six months after these Articles become effective for a training program to comply fully with all regulatory requirements.

This rulemaking is exempt from the rulemaking moratorium contained in Executive Order 2012-03 under paragraph (4)(c) of the Order.

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:

None

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 primary economic impact results from the legislative decision to require that assisted living facility training programs be approved by the Board. The economic impact from these rules results from the requirement that an application for approval be submitted, fees paid, and compliance with requirements designed to ensure that assisted living facility managers and caregivers are trained adequately to care for the fragile individuals entrusted to them.

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

Name: Allen Imig, Executive Director
Address: 1400 West Washington
Ste. B8
Phoenix, AZ 85007
Telephone: (602) 542-8156
Fax: (602) 542-8316
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Web site: www.aznciaboard.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:

An oral proceeding regarding the proposed rules will be held as follows:

Date: Tuesday, December 18, 2012
Time: 1:00 p.m.
Location: 1400 West Washington St, Room B-1
Phoenix, AZ 85007

The rulemaking record will close at 5:00 p.m. on Friday, December 21, 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:

None

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 rules do not require a permit.

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:

There are federal laws such as the Americans with Disabilities Act, OSHA, and employment-related laws that apply to all employers. There is no federal law specifically applicable to assisted living facilities.

- 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:**

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CHAPTER 33. BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

ARTICLE 1. GENERAL

Section

Table 1. Time-frames (in days)

R4-33-104. Fees

ARTICLE 6. ASSISTED LIVING FACILITY MANAGER TRAINING PROGRAMS

Section

R4-33-601. Definitions

R4-33-602. Minimum Standards for Assisted Living Facility Manager Training Program

R4-33-603. Curriculum for Assisted Living Facility Manager Training Program

R4-33-604. Application for Approval of an Assisted Living Facility Manager Training Program

R4-33-605. Renewal of Approval of an Assisted Living Facility Manager Training Program

R4-33-606. Notice of Deficiency; Correction Plan; Disciplinary Action; Voluntary Termination

ARTICLE 7. ASSISTED LIVING FACILITY CAREGIVER TRAINING PROGRAMS

Section

R4-33-701. Definitions

R4-33-702. Minimum Standards for Assisted Living Facility Caregiver Training Program

R4-33-703. Curriculum for Assisted Living Facility Caregiver Training Program

R4-33-704. Application for Approval of an Assisted Living Facility Caregiver Training Program

R4-33-705. Renewal of Approval of an Assisted Living Facility Caregiver Training Program

R4-33-706. Notice of Deficiency; Correction Plan; Disciplinary Action; Voluntary Termination

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ARTICLE 1. GENERAL

Table 1. Time-frames (in days)

Type of License	Overall Time-Frame	Administrative Review Time-Frame	Time to Respond to Deficiency Notice	Substantive Review Time-Frame	Time to Respond to Request for Additional Information
Initial License R4-33-201 and R4-33-202 A.R.S. §§ 36-446.04(A) and 36-446.05	135	30	90	105	60
Renewal of License R4-33-206 A.R.S. § 36-446.07(E)	75	30	15	45	15
Temporary License R4-33-203 A.R.S. § 36-446.06	135	30	90	105	60
Continuing Education Program Approval R4-33-502 A.R.S. § 36-446.07(E) and (F)	60	15	30	45	15
Administrator-in-Training Program Approval R4-33-301 A.R.S. § 36-446.04	60	15	30	45	15
Initial Certification R4-33-401 A.R.S. § 36-446.04(B)	135	30	90	105	60
Renewal of Certification R4-33-405 A.R.S. § 36-446.07(F)	75	30	15	45	15
Temporary Certification R4-33-402 A.R.S. § 36-446.06	135	30	90	105	60
<u>Initial Approval of an Assisted Living Facility Manager or Caregiver Training Program R4-33-604, R4-33-704, A.R.S. § 36-446.03(O)</u>	<u>120</u>	<u>60</u>	<u>60</u>	<u>60</u>	<u>60</u>
<u>Renewal Approval of an Assisted Living Facility Manager or Caregiver Training Program R4-33-605, R4-33-705, A.R.S. § 36-446.03(O)</u>	<u>120</u>	<u>60</u>	<u>30</u>	<u>60</u>	<u>30</u>

R4-33-104. Fees

- A. No change**
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
 7. No change
 8. No change
 9. No change
 10. No change
 11. No change

12. No change
- B. No change
 1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
 7. No change
 8. No change
 9. No change
 10. No change
 11. No change
- C. Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees related to approval of an assisted living facility manager training program. The fees are nonrefundable unless A.R.S. § 41-1077 applies:
 1. Initial approval, \$1,000; and
 2. Renewal approval, \$600.
- D. Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees related to approval of an assisted living facility caregiver training program. The fees are nonrefundable unless A.R.S. § 41-1077 applies:
 1. Initial approval, \$1,500; and
 2. Renewal approval, \$1,300.
- ~~E.~~ The Board shall ensure that fees established under subsections (A) and (B) this Section are not increased by more than 25 percent above the amounts previously prescribed by the Board.

ARTICLE 6. ASSISTED LIVING FACILITY MANAGER TRAINING PROGRAMS

R4-33-601. Definitions

“Owner” means the person responsible for ensuring that an assisted living facility training program complies with this Article.

“Resident” means an individual who lives in an assisted living facility.

“Student cohort” means a group of individuals who begin participation in an assisted living facility training program at the same time.

R4-33-602. Minimum Standards for Assisted Living Facility Manager Training Program

- A. Organization and administration. The owner of an assisted living facility manager training program shall:
 1. Provide the Board with a written description of the training program that includes:
 - a. Length of the training program in hours and days; and
 - b. Educational goals that demonstrate the training program is consistent with state requirements;
 2. Execute a written agreement with each assisted living facility at which students enrolled in the training program receive training that includes the following information:
 - a. The rights and responsibilities of both the facility and the training program;
 - b. The role and authority of the governing bodies of both the facility and the training program; and
 - c. A termination clause that provides time for students enrolled in the training program to complete training at the facility upon termination of the agreement;
 3. Develop and adhere to written policies and procedures regarding:
 - a. Attendance. Ensure that a student receives at least 40 hours of instruction;
 - b. Grading. Require a student to attain at least 75 percent on each theoretical examination or 75 percent on a comprehensive theoretical examination;
 - c. Reexamination. Inform students that a reexamination:
 - i. Addresses the same competencies examined in the original examination,
 - ii. Contains items different from those on the original examination, and
 - iii. Is documented in the student's record;
 - d. Student records. Include the following information:
 - i. Records maintained,
 - ii. Retention period for each record,
 - iii. Location of records,
 - iv. Documents required under subsections (E)(1) and (E)(2), and
 - v. Procedure for accessing records and who is authorized to access records;

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- e. Student fees and financial aid, if any;
 - f. Withdrawal and dismissal;
 - g. Student grievances including a chain of command for disputing a grade;
 - h. Admission requirements including any criminal background or drug testing required;
 - i. Criteria for training program completion; and
 - j. Procedure for documenting before enrolling a student that the student has received notice of Board requirements for certification including the fingerprint clearance card requirement;
4. Date each policy and procedure developed under subsection (A)(3), review within one year from the date made and every year thereafter, update if necessary, and date the policy or procedure at the time of each review;
 5. Provide each student who completes the training program with evidence of completion, within 15 days of completion, which includes the following:
 - a. Name of the student;
 - b. Name and classroom location of the training program;
 - c. Number of classroom hours in the training program;
 - d. Date on which the training program was completed;
 - e. Board's approval number of the training program; and
 - f. Signature of the training program owner, administrator, or instructor;
 6. Provide the Board, within 15 days of completion, the following information regarding each student who completed the training program:
 - a. Student's name, date of birth, Social Security number, address, and telephone number;
 - b. Student's examination scores as provided by the examining entity;
 - c. Name and classroom location of the training program;
 - d. Number of classroom hours in the training program;
 - e. Date on which the training program was completed; and
 - f. Board's approval number of the training program; and
 7. Execute and maintain under subsections (E)(1) and (E)(2) the following documents for each student:
 - a. A skills checklist containing documentation the student achieved competency in the assisted living facility manager skills listed in R4-33-603(C); and
 - b. An evaluation form containing the student's responses to questions about the quality of the classroom experiences provided by the training program.
- B.** Program administrator responsibilities. The owner of an assisted living facility manager training program shall ensure that a program administrator performs the following responsibilities:
1. Supervises and evaluates the training program.
 2. Uses only instructors who are qualified under subsection (C), and
 3. Makes the written policies and procedures required under subsection (A)(3) available to each student on or before the first day of the training program;
- C.** The owner of an assisted living facility manager training program shall ensure that a program instructor:
1. Is a certified assisted living facility manager who:
 - a. Holds an assisted living facility manager certificate that is in good standing and issued under A.R.S. Title 36, Chapter 4;
 - b. Has held the assisted living facility manager certificate referenced in subsection (C)(1)(a) for at least five years;
 - c. Has not been subject to any disciplinary action against the assisted living facility manager certificate during the last five years; and
 - d. Has at least three years' experience within the last five years as an assisted living facility manager of record immediately before becoming a training program instructor;
 2. Performs the following responsibilities:
 - a. Plans each learning experience;
 - b. Accomplishes educational goals of the training program and lesson objectives;
 - c. Enforces a grading policy that meets or exceeds the requirement specified in subsection (A)(3)(b);
 - d. Requires satisfactory performance of all critical elements of each assisted living facility manager skill specified under R4-33-603(C);
 - e. Prevents a student from performing an activity unless the student has received instruction and been found able to perform the activity competently;
 - f. Is present in the classroom during all instruction;
 - g. Supervises health-care professionals who assist in providing training program instruction; and
 - h. Ensures that a health-care professional who assists in providing training program instruction:
 - i. Is licensed or certified.
 - ii. Has at least one year of experience in the field of licensure or certification, and
 - iii. Teaches only a learning activity that is within the scope of practice of the field of licensure or certification.

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- D.** Instructional and educational resources. The owner of an assisted living facility manager training program shall provide or provide access to the following instructional and educational resources adequate to implement the training program for all students and staff:
1. Current reference materials related to the level of the curriculum;
 2. Equipment, including computers, in good working condition to simulate facility management;
 3. Audio-visual equipment and media; and
 4. Designated space that provides a clean, distraction-free, learning environment for accomplishing educational goals of the training program;
- E.** The owner of an assisted living facility manager training program shall:
1. Maintain the following training program records for three years:
 - a. Curriculum and course schedule for each student cohort;
 - b. Results of state-approved written and manual skills testing;
 - c. Evaluation forms completed by students, a summary of the evaluation forms for each student cohort, and measures taken, if any, to improve the training program based on student evaluations; and
 - d. Copy of all Board reports, applications, or correspondence related to the training program; and
 2. Maintain the following student records for three years:
 - a. Name, date of birth, and Social Security number;
 - b. Completed skills checklist;
 - c. Attendance record including a record of any make-up class sessions;
 - d. Score on each test, quiz, and examination and, if applicable, whether a test, quiz, or examination was retaken; and
 - e. Copy of the certificate of completion issued to the student as required under subsection (A)(5);
- F.** Examination and evaluation requirements. The owner of an assisted living facility manager training program shall ensure that each student in the training program:
1. Takes an examination that covers each of the subjects listed in R4-33-603(C) and passes each examination using the standard specified in subsection (A)(3)(b);
 2. Is evaluated and determined to possess the practical skills listed in R4-33-603(C);
 3. Passes, using the standard specified in subsection (A)(3)(b), a final examination approved by the Board and given by a Board-approved provider; and
 4. Does not take the final examination referenced in subsection (F)(3) more than two times. If a student fails the final examination referenced in subsection (F)(3) two times, the student is able to obtain evidence of completion only by taking the assisted living facility manager training program again;
- G.** Periodic evaluation. The owner of an assisted living facility manager training program shall allow a representative of the Board or a state agency designated by the Board to conduct:
1. An onsite scheduled evaluation:
 - a. Before initial approval of the training program as specified under R4-33-604(D),
 - b. Before renewal of the training program approval as specified under R4-33-605, and
 - c. During a time of correction as specified under R4-33-606(B); and
 2. An onsite unscheduled evaluation of the training program if the evaluation is in response to a complaint or reasonable cause, as determined by the Board; and
- H.** Notice of change. The owner of an assisted living facility manager training program shall provide the documentation and information specified regarding the following changes within 10 days after making the change:
1. New training program administrator. Name and license number;
 2. New instructor. Name, license number, and evidence of being qualified under subsection (C)(1);
 3. Decrease in number of training program hours. Description of and reason for the change, a revised curriculum outline, and revised course schedule;
 4. Change in classroom location. Address of new location, if applicable, and description of the new classroom; and
 5. For a training program that is based within an assisted living facility:
 - a. Change in name of the facility. Former and new name of the assisted living facility; and
 - b. Change in ownership of the facility. Names of the former and current owners of the assisted living facility.

R4-33-603. Curriculum for Assisted Living Facility Manager Training Program

- A.** The owner of an assisted living facility manager training program shall ensure that the training program consists of at least 40 hours of classroom instruction.
- B.** The owner of an assisted living facility manager training program shall provide a written curriculum plan to each student that includes overall educational goals and for each required subject:
1. Measurable learner-centered objectives,
 2. Outline of the material to be taught,
 3. Time allotted to each unit of instruction, and

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4. Learning activities or reading assignments.
- C. The owner of an assisted living facility manager training program shall ensure that the training program includes instruction regarding each of the following subjects:
 1. Resident services management. Developing policies and procedures regarding:
 - a. Resident rights and confidentiality;
 - b. Developing, implementing, and updating resident service plans;
 - c. Resident agreements;
 - d. Providing social and recreational services;
 - e. Maintaining resident records and managing documentation systems;
 - f. Managing ancillary services;
 - g. Responding to and reporting specific incidents, accidents, and emergencies involving residents;
 - h. Managing dining services to meet resident needs;
 - i. Preventing abuse, neglect, and exploitation;
 - j. Accepting or retaining residents; and
 - k. Developing systems for managing residents with dementia, Alzheimer's Disease, or difficult behaviors;
 2. Personnel management.
 - a. Complying with federal, state and local laws relating to hiring personnel;
 - b. Developing and implementing systems related to qualifying, orienting, training, and other recurring personnel requirements; and
 - c. Evaluating personnel;
 3. Medication management.
 - a. Developing and evaluating policies and procedures for:
 - i. Medication management including medical restraints; and
 - ii. Non-medication intervention; and
 - b. Developing systems for:
 - i. Receiving and documenting doctors' orders;
 - ii. Ordering, refilling, and storing medications; and
 - iii. Recordkeeping related to receipt and administration of medication; and
 4. Legal management.
 - a. Board-prescribed requirements for certification and re-certification;
 - b. Delegation;
 - c. Ethics;
 - d. Advanced directives and do-not-resuscitate orders;
 - e. Standards of conduct under R4-33-407;
 - f. Department of Health Services compliance and complaint inspections:
 - i. Statement of deficiencies;
 - ii. Plan for correction, and
 - iii. Enforcement action; and
 - g. Risk management and quality improvement;
 5. Financial management.
 - a. Developing and implementing policies, procedures, and practices that comply with:
 - i. State and local laws; and
 - ii. Generally accepted accounting principles regarding accounts receivable, accounts payable, payroll, resident funds, and refunds;
 - b. Developing, implementing, and evaluating facility budgeting including revenues, expenses, capital expenditures, and long-term projections; and
 - c. Maintaining appropriate insurance coverage; and
 6. Physical environment management.
 - a. Complying with federal, state, and local laws regarding:
 - i. Occupational Safety and Health Administration,
 - ii. Americans with Disabilities Act, and
 - iii. Fire and safety requirements for assisted living facilities;
 - b. Preparedness for and prevention of fire, emergencies, and disasters;
 - c. Resident safety and security including evacuation, relocation, and transportation; and
 - d. Daily and preventative maintenance plans for buildings, equipment, and grounds.
- D. The owner of an assisted living facility manager training program shall ensure that the training program provides a student with at least:
 1. Eight hours of classroom instruction and skills practice in each of the subjects identified in subsections (C)(1) through (C)(4), and

2. Four hours of classroom instruction and skills practice in each of the subjects identified in subsections (C)(5) and (C)(6).

E. The owner of an assisted living facility manager training program shall ensure that the training program uses textbooks that are relevant to the subjects being taught and have been published within the last five years.

R4-33-604. Application for Approval of an Assisted Living Facility Manager Training Program

A. The owner of an assisted living facility manager training program shall ensure that no training is provided until the program is approved by the Board.

B. To obtain approval of an assisted living facility manager training program, the owner of the training program shall submit to the Board an application packet that contains the following:

1. Name, address, telephone number, and e-mail address of the owner;
2. Name, address, telephone and fax numbers, and web site of the training program;
3. Form of business organization under which the training program is operated and a copy of the establishing documents and organizational chart;
4. A statement of whether the training program is based within an assisted living facility or other location;
5. Name, telephone number, and license or certificate number of the program administrator required under R4-33-602(B);
6. Name, telephone number, and certificate number of each program instructor and evidence that each program instructor is qualified under R4-33-602(C);
7. A statement of whether the training program is accredited and if so, name of the accrediting body and date of last review;
8. For all assisted living facilities at which the training program will provide classroom instruction:
 - a. Name, address, and telephone number of the assisted living facility;
 - b. Name and telephone number of a contact person at the assisted living facility;
 - c. License number of the assisted living facility issued by the Department of Health Services;
 - d. A statement of whether the license of the assisted living facility is in good standing; and
 - e. Date and results of the most recent compliance inspection conducted by the Department of Health Services;
9. Evidence of compliance with R4-33-602 and R4-33-603, including the following:
 - a. Written training program description, consistent with R4-33-602(A)(1), and an implementation plan that includes timelines;
 - b. Description of classroom facilities, equipment, and instructional tools available, consistent with R4-33-602(D);
 - c. Written curriculum, consistent with R4-33-603(B);
 - d. Skills checklist used to verify whether a student has acquired the necessary assisted living facility manager skills, consistent with R4-33-602(A)(7)(a);
 - e. Evaluation form required under R4-33-602(A)(7)(b) to enable students to assess the quality of the classroom experience provided by the training program;
 - f. Evidence of completion issued to a student under R4-33-602(A)(5);
 - g. Name of textbook used, author, publication date, and publisher; and
 - h. Copy of written policies and procedures required under R4-33-602(A)(3);
10. Signature of the owner of the training program; and
11. The fee prescribed under R4-33-104(C)(1).

C. The owner of an assisted living facility manager training program shall ensure that the application materials submitted under subsection (B) are printed on only one side of white, letter-sized paper, and are not bound in any manner.

D. After review of the materials submitted under subsection (B), the Board shall schedule an onsite evaluation of the training program and take one of the following actions:

1. If requirements are met, approve the training program for one year; or
2. If requirements are not met, deny approval of the training program.

E. The owner of an assisted living facility manager training program that is denied approval by the Board may request a hearing regarding the denial by filing a written request with the Board within 30 days after service of the Board's order denying approval of the training program. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.

R4-33-605. Renewal of Approval of an Assisted Living Facility Manager Training Program

A. The approval of an assisted living facility manager training program expires one year from the date of approval. If the approval of an assisted living facility manager training program expires, the owner of the training program shall immediately stop all training program activity.

B. To renew approval of an assisted living facility caregiver training program, the owner of the training program shall submit to the Board, no fewer than 60 and no more than 120 days before expiration of the current approval, an application packet that contains the following:

1. Name, address, e-mail, and telephone number of the owner;

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2. Name, address, telephone and fax numbers, and web site of the training program;
 3. Name, telephone number, and license number of the program administrator required under R4-33-602(B);
 4. Name, telephone number, and license number of each program instructor and evidence that each program instructor is qualified under R4-33-602(C);
 5. Written training program description, consistent with R4-33-602(A)(1);
 6. Written curriculum, consistent with R4-33-603(B);
 7. Since the time the training program was last approved:
 - a. Number of student-cohort classes to which training was provided,
 - b. Number of students who completed the training program,
 - c. Results obtained on the Board-approved written and skills examinations for each student, and
 - d. Percentage of students who passed the examinations on the first attempt;
 8. For an assisted living facility at which the training program has started to provide classroom instruction since the training program was last approved, the information required under R4-33-604(B)(7);
 9. Evaluation form required under R4-33-602(A)(7)(b) to enable students to assess the quality of the classroom experience provided by the training program;
 10. Summary of evaluations for each student cohort, required under R4-33-602(E)(1)(c), and measures taken, if any, to improve the training program based on student evaluations;
 11. Evidence of completion issued to a student under R4-33-602(A)(5);
 12. Name of textbook used, author, publication date, and publisher;
 13. Copy of written policies and procedures required under R4-33-602(A)(3);
 14. Signature of the owner of the program; and
 15. The fee prescribed under R4-33-104(C)(2).
- C.** After review of the materials submitted under subsection (B), the Board shall ensure that the training program is evaluated at either an onsite or telephonic meeting. The program owner shall ensure that the program owner, program administrator, and all instructors are available to participate in the evaluation meeting.
- D.** The Board shall ensure that each training program receives an onsite evaluation at least every four years. An onsite evaluation includes visiting each assisted living facility at which the training program provides classroom instruction.
- E.** If the Board approves a training program following an onsite evaluation, no deficiencies were identified during the onsite evaluation, and no complaints are filed with the Board, the Board shall evaluate the training program under subsection (C) using a telephonic meeting for at least two years.
- F.** After conducting the evaluation required under subsection (C), the Board shall:
 1. Renew approval of a training program that the Board determines complies with R4-33-602 and R4-33-603; or
 2. Issue a notice of deficiency under R4-33-606 to the owner of a training program that the Board determines does not comply with R4-33-602 or R4-33-603.
- G.** The owner of an assisted living facility manager training program that is issued a notice of deficiency by the Board under subsection (F)(2) may request a hearing regarding the deficiency notice by filing a written request with the Board within 30 days after service of the Board's order. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.

R4-33-606. Notice of Deficiency; Correction Plan; Disciplinary Action; Voluntary Termination

- A.** Notice of deficiency. If the Board determines that an assisted living facility manager training program does not comply with the requirements in this Article, the Board shall issue a written notice of deficiency to the owner of the training program. The Board shall include the following in the notice of deficiency:
 1. Description of each deficiency;
 2. Citation to the requirement in this Article with which the training program is not in compliance; and
 3. The time, to a maximum of three months, allowed by the Board for correction of the deficiencies.
- B.** Correction plan.
 1. Within 10 days after service of a notice of deficiency under subsection (A), the owner of the served training program shall submit to the Board a written plan to correct the identified deficiencies;
 2. The Board may conduct onsite or telephonic evaluations during the time for correction to assess progress towards compliance;
 3. The owner of a training program implementing a correction plan shall notify the Board when all corrections have been made; and
 4. After receiving notice under subsection (B)(3) or after the time provided under subsection (A)(3) has expired, the Board shall conduct an onsite evaluation to determine whether all deficiencies listed in the notice under subsection (A) have been corrected.
 - a. If the Board determines that all deficiencies have been corrected, the Board shall renew approval of the training program; or
 - b. If the Board determines that all deficiencies have not been corrected, the Board shall take disciplinary action under subsection (C).

C. Disciplinary action.

1. Under A.R.S. § 36-446.03(P), the Board shall issue a civil money penalty, suspend or revoke approval of an assisted living facility manager training program, or place the training program on probation if, following a hearing, the Board determines that the owner of the assisted living facility caregiver training program:
 - a. Failed to submit a plan of correction to the Board under R4-33-606(B) within 10 days after service of a notice of deficiency;
 - b. Failed to comply with R4-33-602 or R4-33-603 within the time set by the Board under R4-33-606(A)(3) for correction of deficiencies;
 - c. Failed to comply with a federal or state requirement;
 - d. Failed to allow the Board to conduct an evaluation under R4-33-602(G);
 - e. Failed to comply with R4-33-602(H);
 - f. Lent or transferred training program approval to another individual or entity or another training program, including one owned by the same owner;
 - g. Conducted an assisted living facility manager training program before obtaining Board approval;
 - h. Conducted an assisted living facility manager training program after expiration of program approval without submitting an application for renewal under R4-33-605;
 - i. Falsified an application for assisted living facility manager training program approval under R4-33-604 or R4-33-605;
 - j. Violated an order, condition of probation, or stipulation issued by the Board; or
 - k. Failed to respond to a complaint filed with the Board.
2. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.
3. The Board shall include in an order suspending or revoking approval of an assisted living facility manager training program the time and circumstances under which the owner of the suspended or revoked training program may apply again under R4-33-604 for training program approval.

D. Voluntary termination. If the owner of an approved assisted living facility manager training program decides to terminate the training program, the owner shall:

1. Provide written notice of the planned termination to the Board; and
2. Ensure that the training program, including the instructors, is maintained according to this Article until the last student is transferred or completes the training program.

ARTICLE 7. ASSISTED LIVING FACILITY CAREGIVER TRAINING PROGRAMS

R4-33-701. Definitions

- A.** The definitions in R4-33-601 apply to this Article.
- B.** “Distance learning” means the use of technology to teach students who may or may not be physically present in a classroom or practicum setting.

R4-33-702. Minimum Standards for Assisted Living Facility Caregiver Training Program

- A.** Organization and administration. The owner of an assisted living facility caregiver training program shall:
 1. Provide the Board with a written description of the training program that includes:
 - a. Length of the training program in hours:
 - i. Number of hours of classroom instruction.
 - ii. Number of hours of practicum training, and
 - iii. Number of hours of distance learning, and
 - b. Educational goals that demonstrate the training program is consistent with state requirements;
 2. Execute a written agreement with each assisted living facility at which students enrolled in the training program receive practicum training that includes the following information:
 - a. The rights and responsibilities of both the facility and the training program;
 - b. The role and authority of the governing bodies of both the facility and the training program; and
 - c. A termination clause that provides time for students enrolled in the training program to complete training at the facility upon termination of the agreement;
 3. Develop and adhere to written policies and procedures regarding:
 - a. Attendance. Ensure that a student receives at least 136 hours of instruction;
 - b. Grading. Require a student to attain at least 75 percent on each theoretical examination or 75 percent on a comprehensive theoretical examination;
 - c. Reexamination. Inform students that a reexamination:
 - i. Addresses the same competencies examined in the original examination,
 - ii. Contains items different from those on the original examination, and
 - iii. Is documented in the student's record;
 - d. Student records. Include the following information:

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under R4-33-703(C):

- e. Prevents a student from performing an activity unless the student has received instruction and been found able to perform the activity competently;
- f. Is present in the classroom during all instruction;
- g. Uses a maximum of 30 hours of distance learning;
- h. Supervises health-care professionals and practicum instructors who assist in providing training program instruction; and
- i. Ensures that a health-care professional who assists in providing training program instruction:
 - i. Is licensed or certified;
 - ii. Has at least one year of experience in the field of licensure or certification; and
 - iii. Teaches only a learning activity that is within the scope of practice of the field of licensure or certification.

D. Practicum requirements. The owner of an assisted living facility caregiver training program shall:

- 1. Provide at least one practicum instructor for every 10 student;
- 2. Ensure that a practicum instructor is physically present in the assisted living facility during the performance of an assisted living caregiver activity;
- 3. Provide each student with an instructor-supervised practicum experience that consists of at least 40 hours of resident care;
- 4. Ensure that each student is identified as a student by a name badge or other means readily observable to staff and residents; and
- 5. Not allow students to act as staff during practicum experiences.

E. Instructional and educational resources. The owner of an assisted living facility caregiver training program shall provide or provide access to the following instructional and educational resources adequate to implement the training program for all students and staff:

- 1. Current reference materials related to the level of the curriculum;
- 2. Equipment in functional condition for simulating resident care, including:
 - a. Patient bed, over-bed table, and nightstand;
 - b. Privacy curtain and call bell;
 - c. Thermometers, stethoscopes, including a teaching stethoscope, blood-pressure cuff, and balance scale;
 - d. Hygiene supplies, elimination equipment, drainage devices, and linens;
 - e. Hand-washing equipment and clean gloves; and
 - f. Wheelchair, gait belt, walker, anti-embolic hose, and cane;
- 3. Computer in good working condition;
- 4. Audio-visual equipment and media; and
- 5. Designated space that provides a clean, distraction-free, learning environment for accomplishing educational goals of the training program;

F. Records. The owner of an assisted living facility caregiver training program shall:

- 1. Maintain the following training program records for three years:
 - a. Curriculum and course schedule for each student cohort;
 - b. Results of state-approved written and manual skills testing;
 - c. Evaluation forms completed by students, a summary of the evaluation forms for each student cohort, and measures taken, if any, to improve the training program based on student evaluations; and
 - d. Copy of all Board reports, applications, or correspondence related to the training program; and
- 2. Maintain the following student records for three years:
 - a. Name, date of birth, and Social Security number;
 - b. Completed skills checklist;
 - c. Attendance record including a record of any make-up class sessions;
 - d. Score on each test, quiz, and examination and, if applicable, whether a test, quiz, or examination was retaken;
 - e. Documentation from the program instructor indicating the:
 - i. Number of practicum hours completed by the student;
 - ii. Student performance during the practicum training; and
 - iii. Verification of distance learning hours completed by the student; and
 - f. Copy of the certificate of completion issued to the student as required under subsection (A)(5);

G. Examination and evaluation requirements. The owner of an assisted living facility caregiver training program shall ensure that each student in the training program:

- 1. Takes an examination that covers each of the subjects listed in R4-33-703(C) and passes each examination using the standard specified in subsection (A)(3)(b);
- 2. Is evaluated and determined to possess the practical skills listed in R4-33-703(C);
- 3. Passes, using the standard specified in subsection (A)(3)(b), a final examination approved by the Board and given by a Board-approved provider; and

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4. Does not take the final examination referenced in subsection (G)(3) more than two times. If a student fails the final examination referenced in subsection (G)(3) two times, the student is able to obtain evidence of completion only by taking the assisted living facility caregiver training program again;
- H.** Periodic evaluation. The owner of an assisted living facility caregiver training program shall allow a representative of the Board or a state agency designated by the Board to conduct:
 1. An onsite scheduled evaluation:
 - a. Before initial approval of the training program as specified under R4-33-704(D).
 - b. Before renewal of the training program approval as specified under R4-33-705(C), and
 - c. During a time of correction as specified under R4-33-706(B); and
 2. An onsite unscheduled evaluation of the training program if the evaluation is in response to a complaint or reasonable cause, as determined by the Board;
- I.** Notice of change. The owner of an assisted living facility caregiver training program shall provide the documentation and information specified regarding the following changes within 10 days after making the change:
 1. New training program administrator. Name and license number;
 2. New instructor. Name, license number, and evidence of being qualified under subsection (C)(1);
 3. Decrease in number of training program hours. Description of and reason for the change, a revised curriculum outline, and revised course schedule;
 4. Change in classroom location. Address of new location, if applicable, and description of the new classroom;
 5. Change in practicum facility. Name of the new facility and a copy of the agreement required under subsection (A)(2); and
 6. For a training program that is based within an assisted living facility:
 - a. Change in name of the facility. Former and new name of the assisted living facility; and
 - b. Change in ownership of the facility. Names of the former and current owners of the assisted living facility.
- J.** Partial waiver of training program hours. The owner of an assisted living facility caregiver training program:
 1. May waive the following training program hours for a student who, at the time of admission, is certified as a nursing assistant under A.R.S. Title 32, Chapter 15, and in good standing:
 - a. Hours of classroom instruction listed in subsections R4-33-703(C)(2) through (C)(4) and (C)(6) through (C)(13), and
 - b. Forty hours of practicum instruction; and
 2. Shall ensure that a student to whom a waiver is provided under this subsection completes:
 - a. Hours of classroom instruction listed in subsections R4-33-703(C)(1), (5), and (14); and
 - b. Examination and evaluation requirements in subsection (G).

R4-33-703. Curriculum for Assisted Living Facility Caregiver Training Program

- A.** The owner of an assisted living facility caregiver training program shall ensure that the training program consists of at least 136 hours of instruction including:
 1. Ninety-six hours of classroom instruction, of which a maximum of 30 hours may be provided by distance learning, and
 2. Forty hours of instructor-supervised practicum.
- B.** The owner of an assisted living facility caregiver training program shall provide a written curriculum plan to each student that includes overall educational goals and for each required subject:
 1. Measurable learner-centered objectives,
 2. Outline of the material to be taught,
 3. Time allotted to each unit of instruction, and
 4. Learning activities or reading assignments.
- C.** The owner of an assisted living facility caregiver training program shall ensure that the training program includes classroom and practicum instruction regarding each of the following subjects:
 1. Orientation to and overview of the assisted living facility caregiver training program (at least four classroom hours).
 - a. Levels of care within an assisted living facility, and
 - b. Impact of each level of care on residents;
 2. Legal and ethical issues and resident rights (at least six classroom hours).
 - a. Confidentiality (HIPPA);
 - b. Ethical principles;
 - c. Resident rights specified in R9-10-713;
 - d. Abuse, neglect, and exploitation;
 - e. Mandatory reporting; and
 - f. Do not resuscitate (DNR) order and advanced directives;
 3. Communication and interpersonal skills (at least four classroom hours).
 - a. Components of effective communication.

- b. Styles of communication.
- c. Attitude in communication.
- d. Barriers to effective communication:
 - i. Culture.
 - ii. Language, and
 - iii. Physical and mental disabilities, and
- e. Techniques of communication;
- 4. Job management skills (at least five classroom hours).
 - a. Stress management, and
 - b. Time management;
- 5. Service plans (at least four classroom hours). Developing, using, and maintaining resident service plans;
- 6. Infection control (at least six classroom hours).
 - a. Common types of infectious diseases.
 - b. Preventing infection.
 - c. Controlling infection:
 - i. Washing hands.
 - ii. Using gloves, and
 - iii. Disposing of sharps and other waste;
- 7. Nutrition and food preparation (at least six classroom hours).
 - a. Basic nutrition;
 - b. Menu planning and posting;
 - c. Procuring, handling, and storing food safely; and
 - d. Special diets;
- 8. Fire, safety, and emergency procedures (at least five classroom hours).
 - a. Emergency planning.
 - b. Medical emergencies.
 - c. Environmental emergencies.
 - d. Fire safety.
 - e. Fire drills and evacuations, and
 - f. Fire-code requirements;
- 9. Home environment and maintenance (at least six classroom hours).
 - a. Housekeeping.
 - b. Laundry, and
 - c. Physical plant;
- 10. Basic caregiver skills (at least 12 classroom hours).
 - a. Taking vital signs and measuring height and weight;
 - b. Maintaining a resident's environment;
 - c. Observing and reporting pain;
 - d. Assisting with diagnostic tests;
 - e. Providing assistance to residents with drains and tubes;
 - f. Recognizing and reporting abnormal changes to a supervisor;
 - g. Applying clean bandages;
 - h. Providing peri-operative care;
 - i. Assisting ambulation of residents including transferring and using assistive devices;
 - j. Bathing, caring for skin, and dressing;
 - k. Caring for teeth and dentures;
 - l. Shampooing and caring for hair;
 - m. Caring for nails;
 - n. Toileting, caring for perineum, and caring for ostomy;
 - o. Feeding and hydration including proper feeding techniques and use of assistive devices in feeding;
 - p. Preventing pressure sores; and
 - q. Maintaining and treating skin;
- 11. Mental health and social service needs (at least eight classroom hours).
 - a. Modifying the caregiver's behavior in response to resident behavior;
 - b. Understanding the developmental tasks associated with the aging process;
 - c. Responding to resident behavior;
 - d. Promoting resident dignity;
 - e. Providing culturally sensitive care;
 - f. Caring for the dying resident; and

- b. Name and telephone number of a contact person at the assisted living facility;
- c. License number of the assisted living facility issued by the Department of Health Services;
- d. A statement of whether the license of the assisted living facility is in good standing; and
- e. Date and results of the most recent compliance inspection conducted by the Department of Health Services;
- 9. Evidence of compliance with R4-33-702 and R4-33-703, including the following:
 - a. Written training program description, consistent with R4-33-702(A)(1), and an implementation plan that includes timelines;
 - b. Description of classroom facilities, equipment, and instructional tools available, consistent with R4-33-702(E);
 - c. Written curriculum, consistent with R4-33-703(C);
 - d. Skills checklist used to verify whether a student has acquired the necessary assisted living facility caregiver skills, consistent with R4-33-702(A)(7)(a);
 - e. Evaluation form required under R4-33-702(A)(7)(c) to enable students to assess the quality of the instructional experience provided by the training program;
 - f. Evidence of completion issued to a student under R4-33-702(A)(5);
 - g. Name of textbook used, author, publication date, and publisher;
 - h. Name of any distance learning materials used, producer of the material, and date produced; and
 - i. Copy of written policies and procedures required under R4-33-702(A)(3);
- 10. Signature of the owner of the training program; and
- 11. The fee prescribed under R4-33-104(C)(2).
- C. The owner of an assisted living facility caregiver training program shall ensure that the application materials submitted under subsection (B) are printed on only one side of white, letter-sized paper, and are not bound in any manner.
- D. After review of the materials submitted under subsection (B), the Board shall schedule an onsite evaluation of the training program and take one of the following actions:
 - 1. If requirements are met, approve the training program for one year; or
 - 2. If requirements are not met, deny approval of the training program.
- E. The owner of an assisted living facility caregiver training program that is denied approval by the Board may request a hearing regarding the denial by filing a written request with the Board within 30 days after service of the Board's order denying approval of the training program. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.

R4-33-705. Renewal of Approval of an Assisted Living Facility Caregiver Training Program

- A. The approval of an assisted living facility caregiver training program expires one year from the date of approval. If the approval of an assisted living facility caregiver training program expires, the owner of the training program shall immediately stop all training program activity.
- B. To renew approval of an assisted living facility caregiver training program, the owner of the training program shall submit to the Board, no fewer than 60 and no more than 120 days before expiration of the current approval, an application packet that contains the following:
 - 1. Name, address, telephone number, and e-mail address of the owner;
 - 2. Name, address, telephone and fax numbers, and web site of the training program;
 - 3. Name, telephone number, and license number of the program administrator required under R4-33-702(B);
 - 4. Name, telephone number, and license number of each program instructor and evidence that each program instructor is qualified under R4-33-702(C);
 - 5. Written training program description, consistent with R4-33-702(A)(1);
 - 6. Written curriculum, consistent with R4-33-703(C);
 - 7. Since the time the training program was last approved:
 - a. Number of student-cohort classes to which training was provided,
 - b. Number of students who completed the training program,
 - c. Results obtained on the Board-approved written and skills examinations for each student, and
 - d. Percentage of students who passed the examinations on the first attempt;
 - 8. For an assisted living facility at which the training program has started to provide instruction since the training program was last approved, the information required under R4-33-704(B)(8);
 - 9. Evaluation form required under R4-33-702(A)(7)(c) to enable students to assess the quality of the instructional experience provided by the training program;
 - 10. Summary of evaluations for each student cohort, required under R4-33-702(F)(1)(c), and measures taken, if any, to improve the training program based on student evaluations;
 - 11. Evidence of completion issued to a student under R4-33-702(A)(5);
 - 12. Name of textbook used, author, publication date, and publisher;
 - 13. Name of any distance learning materials used, producer of the material, and date produced;
 - 14. Copy of written policies and procedures required under R4-33-702(A)(3);
 - 15. Signature of the owner of the training program; and

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16. The fee prescribed under R4-33-104(C)(2).
- C.** After review of the materials submitted under subsection (A), the Board shall ensure that the training program is evaluated at either an onsite or telephonic meeting. The program owner shall ensure that the program owner, program administrator, and all instructors are available to participate in the evaluation meeting.
- D.** The Board shall ensure that each training program receives an onsite evaluation at least every four years. An onsite evaluation includes visiting each assisted living facility at which the training program provides instruction.
- E.** If the Board approves a training program following an onsite evaluation, no deficiencies were identified during the onsite evaluation, and no complaints are filed with the Board, the Board shall evaluate the training program under subsection (C) using a telephonic meeting for at least two years.
- F.** After conducting the evaluation required under subsection (C), the Board shall:
1. Renew approval of a training program that the Board determines complies with R4-33-702 and R4-33-703; or
 2. Issue a notice of deficiency under R4-33-706 to the owner of a training program that the Board determines does not comply with R4-33-702 or R4-33-703.
- G.** The owner of an assisted living facility training program that is issued a notice of deficiency by the Board under subsection (F)(2) may request a hearing regarding the deficiency notice by filing a written request with the Board within 30 days after service of the Board's order. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.

R4-33-706. Notice of Deficiency; Correction Plan; Disciplinary Action; Voluntary Termination

- A.** Notice of deficiency. If the Board determines that an assisted living facility caregiver training program does not comply with the requirements in this Article, the Board shall issue a written notice of deficiency to the owner of the training program. The Board shall include the following in the notice of deficiency:
1. Description of each deficiency;
 2. Citation to the requirement in this Article with which the training program is not in compliance; and
 3. The time, to a maximum of three months, allowed by the Board for correction of the deficiencies.
- B.** Correction plan.
1. Within 10 days after service of a notice of deficiency under subsection (A), the owner of the served training program shall submit to the Board a written plan to correct the identified deficiencies;
 2. The Board may conduct onsite or telephonic evaluations during the time for correction to assess progress towards compliance;
 3. The owner of a training program implementing a correction plan shall notify the Board when all corrections have been made; and
 4. After receiving notice under subsection (B)(3) or after the time provided under subsection (A)(3) has expired, the Board shall conduct an onsite evaluation to determine whether all deficiencies listed in the notice under subsection (A) have been corrected.
 - a. If the Board determines that all deficiencies have been corrected, the Board shall renew approval of the training program; or
 - b. If the Board determines that all deficiencies have not been corrected, the Board shall take disciplinary action under subsection (C).
- C.** Disciplinary action.
1. Under A.R.S. § 36-446.03(P), the Board shall issue a civil money penalty, suspend or revoke approval of an assisted living facility caregiver training program, or place the training program on probation if, following a hearing, the Board determines that the owner of the assisted living facility caregiver training program:
 - a. Failed to submit a plan of correction to the Board under R4-33-706(B) within 10 days after service of a notice of deficiency;
 - b. Failed to comply with R4-33-702 or R4-33-703 within the time set by the Board under R4-33-706(A)(3) for correction of deficiencies;
 - c. Failed to comply with a federal or state requirement;
 - d. Failed to allow the Board to conduct an evaluation under R4-33-702(H);
 - e. Failed to comply with R4-33-702(I);
 - f. Lent or transferred training program approval to another individual or entity or another training program, including one owned by the same owner;
 - g. Conducted an assisted living facility manager training program before obtaining Board approval;
 - h. Conducted an assisted living facility manager training program after expiration of program approval without submitting an application for renewal under R4-33-705;
 - i. Falsified an application for assisted living facility manager training program approval under R4-33-704 or R4-33-705;
 - j. Violated an order, condition of probation, or stipulation issued by the Board; or
 - k. Failed to respond to a complaint filed with the Board.
 2. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.

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:

In accordance with A.R.S. § 28-5810, a rental vehicle business is required to collect a 5% surcharge on rental contracts for vehicles rented for a period of 180 days or less. Rental vehicle businesses shall submit to the Department any Rental Vehicle Surcharges collected in excess of Vehicle License Tax (VLT) paid to the Department for the rental vehicles regardless of whether the vehicle was rented in this state or in another state or jurisdiction.

Currently, there are 133 rental vehicle businesses required to collect, report, and remit applicable Rental Vehicle Surcharges pursuant to A.R.S. § 28-5810. In the past year, the Department collected \$11,136,250.97 from excess surcharges received and \$239,761.30 from assessments against 10 non-compliant businesses. Currently, 28 rental vehicle businesses have failed to submit an annual report for 2011 and have been referred to the Department's auditors.

The Department anticipates that the state will incur moderate to substantial benefits in increased VLT revenue collection as a result of this rule.

The Department expects to incur minimal costs since this rulemaking is generally intended to assist rental vehicle businesses by providing clarification of Department auditing procedures. In addition, there is no cost for the current edition of *Government Auditing Standards, December 2011 Revision*, since it is available as a free download from the U.S. Government Accountability Office's web site at <http://www.gao.gov/yellowbook>.

Rental vehicle businesses will incur minimal administrative costs associated with the clarified recordkeeping requirements outlined in this rulemaking.

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

Name: Candace Olson, Rules Analyst
Address: Government Relations and Policy Development Office
Department of Transportation
206 S. 17th Ave., Mail Drop 140A
Phoenix, AZ 85007
Telephone: (602) 712-4534
Fax: (602) 712-3232
E-mail: COlson2@azdot.gov
Web site: http://www.azdot.gov/Government_Relations/adotrules

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:

An oral proceeding is not scheduled for the proposed rules. To request an oral proceeding or to submit a comment in writing, by fax, or by e-mail, please contact the Administrative Rules Analyst listed in item 4. If no request for an oral proceeding is made, the Department will close the public record for this rule 30 days after the date that this proposed rule is published in the *Register* at 5:00 p.m.

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:

None

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:

Not applicable

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

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

ARTICLE 3. VEHICLE REGISTRATION

Section

R17-4-350. Rental Vehicle Surcharge Reimbursement

ARTICLE 3. VEHICLE REGISTRATION

R17-4-350. Rental Vehicle Surcharge Reimbursement

A. Definitions. In addition to the definitions prescribed under A.R.S. § 28-5810, the following definitions apply to this Section, unless otherwise specified:

~~“Division” means the Arizona Department of Transportation, Motor Vehicle Division.~~

~~“Person” means an individual, a sole proprietorship, firm, partnership, joint venture, association, corporation, limited liability company, limited liability partnership, estate, trust, business trust, receiver or syndicate, this state, any county, city, town, district or other subdivision of this state, an Indian tribe, or any other group or combination acting as a unit.~~

~~“Previous year” means the prior calendar year, January 1 through December 31.~~

~~“Rental revenue” means the total contract amount stated in the retail contract less any taxes and fees imposed by A.R.S. §§ Title 42, Chapter 5, Article 1 and Title 48, Chapter 26, Article 2 and selected non-vehicle related charges (e.g., including boxes, packing blankets, straps, or tow bars, etc.).~~

~~“Surcharge” means the amount equal to five percent of the total contract amount stated in the rental contract less any taxes and fees imposed by A.R.S. Title 42, Chapter 5, Article 1 and Title 48, Chapter 26, Article 2 and selected non-vehicle related items (e.g., including boxes, packing blankets, straps, or tow bars, etc.).~~

~~“Vehicle License Tax” means the tax imposed by A.R.S. § 28-5801, less any fees tax credited under A.R.S. § 28-2356.~~

B. Reports. Each person subject to A.R.S. § 28-5810, who has conducted a vehicle rental business for any time period during the previous year, shall file an annual report, for the previous year, with the ~~Division~~ Department. The annual report is due no later than February 15 of each year, unless the rental business is closed before December 31, in which case the annual report is due immediately. The report shall be made on a form furnished by the ~~Division~~ Department and shall contain all of the following:

1. Address where business records are secured.
2. Authorized preparer's name, title, phone number, and mailing address.
3. Business name.
4. Business type, ~~(e.g., Individual, Partnership, Corporation, etc.)~~ including sole proprietorship, partnership, corporation, limited liability company, and limited liability partnership.
5. Contact person's name, title, phone number, and mailing address.
6. Federal Employer Identification Number (FEIN).
7. Mailing address (if different from principal business address).
8. Principal business address.
9. Rental vehicle revenue collected, by county.
10. Total Arizona Vehicle License Tax paid on rental vehicles.
11. Total rental vehicle revenue collected.
12. Total surcharge collected.
13. Total surcharge due to the ~~Division~~ Department.
14. Type of rental business, ~~(e.g., including passenger vehicle, semitrailer, trailer, truck, etc.)~~ motorcycle, moped, and recreational vehicle.

C. Records. A person in the business of renting vehicles, as defined under A.R.S. § 28-5810, is required to maintain records in support of the required annual reports for a period of four years ~~from~~ after the date of the filing of the required annual report or the due date of the report, whichever is longer. The records shall contain all information in support of:

1. The total amount of Vehicle License Tax paid during the previous year. Supporting Vehicle License Tax records for each rental vehicle shall include, but are not limited to:
 - a. The Vehicle Identification Number.

- b. The Arizona vehicle license plate number.
 - c. A copy of the Arizona registration.
 - d. The amount paid for Vehicle License Tax minus any Vehicle License Tax ~~fee~~ credited under A.R.S. § 28-2356.
 - e. The date on which the Vehicle License Tax was paid.
 - f. The dates the rental vehicle was in and out of service.
2. The total gross amount of Arizona vehicle rental revenues collected for the previous year. Supporting Arizona vehicle rental revenue records shall include, but are not limited to:
 - a. The rental contract for each rental vehicle.
 - b. The amount of surcharge collected.
 - c. Chart of accounts.
 - d. General ledger.
 - e. Financial statements.
 - f. Federal tax returns.
 - g. Monthly trial balance.
 3. The amount of the surcharge collected during the ~~previous~~ previous year. Supporting surcharge collection records shall include, but are not limited to:
 - a. ~~The All applicable rental contract contracts~~.
 - b. The total amount stated in ~~the~~ each rental contract, supported by relevant documentation.
 4. Failure to keep and maintain proper records or failure to provide records for audit purposes may result in ~~an~~ the Division Department making an assessment; against the rental business for the total surcharge amount estimated to have been collected, as determined from the best information available to the ~~assistant~~ Director.
- D. Audits.** Each audit of a person who collects the surcharge will be conducted in accordance with ~~Generally Accepted Accounting Procedures and~~ generally accepted government auditing standards as set forth in the most recent edition of Government Auditing Standards (commonly referred to as ~~The the~~ Yellow Book, ~~2003 Revision~~) issued by the U.S. Government Accountability Office.
1. Records shall be made available for audit during normal business hours at the rental business location in Arizona. Audits may be conducted at an out-of-state location, ~~to~~ and shall be paid for by the rental business. Audit expenses, per diem, and travel ~~to~~ shall be paid in accordance with the Arizona Department of Transportation expense guidelines in effect at the time of the audit.
 2. The ~~Division~~ Director ~~shall have~~ has appropriate subpoena powers to require records to be produced for examination and to take testimony. In accordance with A.R.S. § 28-5922, ~~failure if a person fails~~ to respond to the Director's or agent of the Director's request for records, ~~will cause~~ the Director ~~to~~ shall issue subpoenas for the production of records or to allow seizure of records.