

## NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

### NOTICE OF FINAL EXEMPT RULEMAKING

#### TITLE 9. HEALTH SERVICES

#### CHAPTER 10. DEPARTMENT OF HEALTH SERVICES HEALTH CARE INSTITUTIONS: LICENSING

*Editor's Note: The following two Notices of Final Exempt Rulemaking were reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 111.) The Governor's Office authorized the notices to proceed through the rulemaking process on July 18, 2013.*

[R13-223]

#### PREAMBLE

- 1. Article, Part or Sections Affected (as applicable)      Rulemaking Action**  
R9-10-111      Amend
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific) and the statute or session law authorizing the exemption:**  
Authorizing statutes: A.R.S. § 36-136(F)  
Implementing statutes: A.R.S. §§ 36-132(A)(17), 36-405, and 36-2901.08, as added by Laws 2013, Ch. 10, § 5  
Statute or session law authorizing the exemption: Laws 2013, Ch. 10, § 43
- 3. The effective date of the rule and the agency's reason it selected the effective date:**  
January 1, 2014  
The Department believes that the selection of this date will minimize the administrative and regulatory burden on hospitals.
- 4. A list of all notices published in the Register as specified in R9-1-409(A) that pertain to the record of the exempt rulemaking:**  
Notice of Public Information: 19 A.A.R. 3584, November 15, 2013
- 5. The agency's contact person who can answer questions about the rulemaking:**  
Name:                    Cara Christ, M.D., Assistant Director  
Address:                Department of Health Services  
                              Public Health Services, Licensing Services  
                              150 N. 18th Ave., Suite 510  
                              Phoenix, AZ 85007  
  
Telephone:            (602) 364-2536  
Fax:                     (602) 364-4808  
E-mail:                 Cara.Christ@azdhs.gov  
  
or  
  
Name:                    Robert Lane, Acting Manager  
Address:                Department of Health Services  
                              Office of Administrative Counsel and Rules  
                              1740 W. Adams, Suite 203  
                              Phoenix, AZ 85007  
  
Telephone:            (602) 542-1020  
Fax:                     (602) 364-1150

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E-mail: Robert.Lane@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) §§ 36-132(A)(17) and 36-405 authorize the Department to license and regulate health care institutions. The Department has implemented A.R.S. §§ 36-132(A)(17) and 36-405 in Arizona Administrative Code (A.A.C.) Title 9, Chapter 10. Laws 2013, Ch. 10, § 5, adds A.R.S. § 36-2901.08, which requires an "assessment on hospital revenues, discharges or bed days for the purpose of funding the nonfederal share of the costs" for persons eligible for medical assistance under 42 U.S.C. § 1396a (a)(10)(A)(i)(viii). A.R.S. § 36-2901.08(H) requires the Department to suspend or revoke the health care institution license of a hospital that does not comply with the statute, upon notification from the director of the Arizona Health Care Cost Containment System. The rules that specify the Department's enforcement actions for health care institutions are adopted in 9 A.A.C. 10, Article 1. After receiving an exception from the Governor's rulemaking moratorium, established by Executive Order 2012-03, for this rulemaking, the Department has revised the rules in 9 A.A.C. 10, Article 1, to comply with A.R.S. § 36-2901.08(H), as added by Laws 2013, Ch. 10, § 5. All changes conform to current rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not 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

**8. A showing of good cause why the rule 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

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

Not applicable

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

Not applicable

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:**

Not applicable

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:**

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

The rule does not require a permit.

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

**13. A list of any incorporated by reference material and its location in the rules:**

None

**14. Whether this rule previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:**

The rule was not previously made, amended, repealed, or renumbered as an emergency rule.

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

**TITLE 9. HEALTH SERVICES**

**CHAPTER 10. DEPARTMENT OF HEALTH SERVICES**

**HEALTH CARE INSTITUTIONS: LICENSING**

Notices of Exempt Rulemaking

ARTICLE 1. GENERAL

Section R9-10-111. Denial, Revocation, or Suspension of License

ARTICLE 1. GENERAL

R9-10-111. Denial, Revocation, or Suspension of License

- A. The Department may deny, revoke, or suspend a license to operate a health care institution if an applicant, a licensee, or an individual in a business relationship with the applicant including a stockholder or controlling person:
1. Provides false or misleading information to the Department;
2. Has had in any state or jurisdiction any of the following:
a. An application or license to operate a health care institution denied, suspended, or revoked, unless the denial was based on failure to complete the licensing process within a required time-frame; or
b. A health care professional license or certificate denied, revoked, or suspended; or
3. Has operated a health care institution, within the ten years preceding the date of the license application, in violation of A.R.S. Title 36, Chapter 4 or this Chapter, that posed a direct risk to the life, health, or safety of a patient.
B. The Department shall suspend or revoke a hospital's license if the Department receives, pursuant to A.R.S. § 36-2901.08(H), notice from the Arizona Health Care Cost Containment System that the hospital's provider agreement registration with the Arizona Health Care Cost Containment System has been suspended or revoked.

NOTICE OF FINAL EXEMPT RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 11. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTION FACILITY DATA

[R13-224]

PREAMBLE

- 1. Article, Part or Sections Affected (as applicable) Rulemaking Action
R9-11-202 Amend
2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific) and the statute or session law authorizing the exemption:
Authorizing statutes: A.R.S. § 36-136(F)
Implementing statutes: A.R.S. §§ 36-125.04 and 36-2901.08, as added by Laws 2013, Ch. 10, § 5
Statute or session law authorizing the exemption: Laws 2013, Ch. 10, § 43
3. The effective date of the rule and the agency's reason it selected the effective date:
January 1, 2014
The Department believes that the selection of this date will minimize the administrative and regulatory burden on hospitals.
4. A list of all notices published in the Register as specified in R9-1-409(A) that pertain to the record of the exempt rulemaking:
Notice of Public Information: 19 A.A.R. 3585, November 15, 2013
5. The agency's contact person who can answer questions about the rulemaking:
Name: Don Herrington, Assistant Director
Address: Department of Health Services
Public Health Preparedness Services
150 N. 18th Ave., Suite 520
Phoenix, AZ 85007
Telephone: (602) 542-1023
Fax: (602) 364-3266
E-mail: Don.Herrington@azdhs.gov

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or

Name: Robert Lane, Acting Manager  
Address: Department of Health Services  
Office of Administrative Counsel and Rules  
1740 W. Adams, Suite 203  
Phoenix, AZ 85007  
Telephone: (602) 542-1020  
Fax: (602) 364-1150  
E-mail: Robert.Lane@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) § 36-125.04 requires hospitals to submit annual financial statements to the Arizona Department of Health Services (Department). The rules in Arizona Administrative Code (A.A.C.) Title 9, Chapter 11, Article 2, implement A.R.S. § 36-125.04 by providing requirements for hospitals to follow when submitting annual financial statements to the Department. Laws 2013, Ch. 10, § 5, adds A.R.S. § 36-2901.08, which requires an "assessment on hospital revenues, discharges or bed days for the purpose of funding the nonfederal share of the costs" for persons eligible for medical assistance under 42 U.S.C. § 1396a (a)(10)(A)(i)(viii). A.R.S. § 36-2901.08(G) requires a hospital to submit to the Department "an attestation that it has not passed on the cost of the assessment to patients" as part of its financial statement submission required under 9 A.A.C. 11, Article 2. After receiving an exception from the Governor's rulemaking moratorium, established by Executive Order 2012-03, for this rulemaking, the Department has revised the rules in 9 A.A.C. 11, Article 2, to comply with A.R.S. § 36-2901.08(G), as added by Laws 2013, Ch. 10, § 5. All changes conform to current rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not 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

**8. A showing of good cause why the rule 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

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

Not applicable

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

Not applicable

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:**

Not applicable

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:**

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

The rule does not require a permit.

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

**13. A list of any incorporated by reference material and its location in the rules:**

None

**14. Whether this rule previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:**

The rule was not previously made, amended, repealed, or renumbered as an emergency rule.

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

**TITLE 9. HEALTH SERVICES**

**CHAPTER 11. DEPARTMENT OF HEALTH SERVICES  
HEALTH CARE INSTITUTION FACILITY DATA**

**ARTICLE 2. ANNUAL FINANCIAL STATEMENTS AND UNIFORM ACCOUNTING REPORTS**

Section

R9-11-202. Hospital Annual Financial Statement

**ARTICLE 2. ANNUAL FINANCIAL STATEMENTS AND UNIFORM ACCOUNTING REPORTS**

**R9-11-202. Hospital Annual Financial Statement**

- A.** A hospital administrator or designee shall submit to the Department, no later than 120 calendar days after the ending date of the hospital's fiscal year:
1. An annual financial statement prepared according to generally accepted accounting principles; ~~and~~
  2. A report of an audit by an independent certified public accountant of the annual financial statement required in subsection (A)(1); ~~and~~
  3. An attestation, signed and dated by the hospital administrator or designee, that the hospital is not passing on the cost of the hospital assessment, established in A.R.S. § 36-2901.08(A), to a patient or a third-party payor that is responsible for paying for the patient's care.
- B.** If a hospital is part of a group of health care institutions that prepares a combined annual financial statement and is included in the combined annual financial statement, the hospital administrator or designee may submit the combined annual financial statement if the combined annual financial statement:
1. Is prepared according to generally accepted accounting principles,
  2. Identifies the hospital, and
  3. Contains a financial statement specific to the hospital.
- C.** The Department shall grant a hospital a 30-day extension for submitting an annual financial statement and audit of the annual financial statement required in subsection (A) if the hospital administrator or designee submits a written request for an extension that:
1. Includes the name, physical address, mailing address, and telephone number of the hospital;
  2. Includes the name, telephone number, mailing address, and e-mail address of:
    - a. The hospital administrator; and
    - b. An individual, in addition to the hospital administrator, who may be contacted about the extension request;
  3. Includes the date the hospital's annual financial statement and audit of the annual financial statement is due to the Department;
  4. Specifies that the hospital is requesting a 30-day extension from submitting the annual financial statement and audit of the annual financial statement required in subsection (A); and
  5. Is submitted to the Department at least 30 calendar days before the annual financial statement and audit of the annual financial statement is due to the Department.
- D.** The Department shall send a written notice of approval of a 30-day extension to a hospital that submits a request for an extension that meets the requirements specified in subsection (C) within seven business days after receiving the request.
- E.** If a request by a hospital administrator or designee for a 30-day extension does not meet the requirements specified in subsection (C), the Department shall provide to the hospital a written notice that specifies the missing or incomplete information. If the Department does not receive the missing or incomplete information within 10 calendar days after the date on the written notice, the Department shall consider the hospital's request withdrawn.
- F.** Before the end of the 30-day extension specified in subsection (C), a hospital administrator or designee may request an additional extension for submitting an annual financial statement and audit of the annual financial statement by submitting a written request that:
1. Includes the information specified in subsections (C)(1) through (C)(3),
  2. Specifies for how many calendar days the hospital is requesting an extension from submitting the annual financial statement and audit of the annual financial statement,
  3. Is submitted to the Department at least 14 calendar days before the annual financial statement and audit of the annual financial statement is due to the Department, and
  4. Includes the reasons for the additional extension request.

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- G.** In determining whether to approve or deny a request for a hospital to receive an additional extension as specified in subsection (F) for submitting an annual financial statement and audit of the annual financial statement, the Department shall consider the following:
  - 1. The reasons for the additional extension request provided according to subsection (F)(4);
  - 2. The length of time for which the additional extension is being requested according to subsection (F)(2); and
  - 3. If the hospital has a history of the following items:
    - a. Repeated violations of the same statutes or rules,
    - b. Patterns of noncompliance with statutes or rules,
    - c. Types of violations of statutes or rules,
    - d. Total number of violations of statutes or rules,
    - e. Length of time during which violations of statutes or rules have been occurring, and
    - f. Noncompliance with an agreement between the Department and the hospital.
- H.** The Department shall send written notice of approval or denial to a hospital that requests an additional extension specified in subsection (F) for submitting an annual financial statement and audit of the annual financial statement within seven business days after receiving the request.
- I.** If the Department denies a request for an additional extension specified in subsection (F), a hospital may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.
- J.** If a hospital administrator or designee does not submit an annual financial statement and a report of an audit of the annual financial statement according to this Section, the Department may assess civil penalties as specified in A.R.S. § 36-126.