



NOTICES OF EMERGENCY RULEMAKING

This section of the Arizona Administrative Register contains Notices of Emergency Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these rules.

Questions about the interpretation of the emergency rules should be addressed to the agency proposing them.

Refer to Item #5 to contact the person charged with the rulemaking.

NOTICE OF EMERGENCY RULEMAKING

TITLE 9. HEALTH SERVICES

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

[R15-102]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action
2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):
3. The effective date of the rule:
4. Citations to all related emergency rulemaking notices published in the Register as specified in R1-1-409(A) that pertain to the record of this notice of emergency rulemaking:
5. The agency's contact person who can answer questions about the rulemaking:
6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:



fetal tissue for valuable consideration if the transfer affects interstate commerce.” (See 42 U.S.C. § 289g-2(e) for the definition of “valuable consideration.”) To address the potential illegal sale of tissue from unborn children in Arizona, the Department requested and received an exception from the Governor’s rulemaking moratorium, established by Executive Order 2015-01, and has initiated an emergency rulemaking.

Through this emergency rulemaking, the Department is clarifying, in the health care institution licensing rules in 9 A.A.C. 10, the abortion reporting requirements in A.R.S. § 36-2161. The Department is also adding a requirement for a licensed health care institution where abortions are performed to include information on the final disposition of the fetal tissue, the person or persons taking custody of the fetal tissue, the amount of any compensation received by the licensed health care institution for the fetal tissue, and whether a patient has provided informed consent for the transfer of custody of the fetal tissue, consistent with 42 U.S.C. §§ 289g-1 and 289g-2. An exception is made in the reporting rule for a transfer of custody to a funeral establishment or a crematory for final disposition. By reviewing the information submitted, the Department will be better able to monitor health care institutions where abortions are performed for compliance with applicable laws and rules on the use of donated tissues, including the potential illegal sale of tissue from unborn children. Based on the foregoing and pursuant to A.R.S. § 41-1026, the Department finds the existence of an emergency justifying an emergency rulemaking.

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

The Department did not review or rely on any study related to this rulemaking package.

8. 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

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

Not applicable. Pursuant to A.R.S. § 41-1055(D)(1), this rulemaking is exempt from the requirements to prepare and file an economic, small business and consumer impact statement.

10. 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 are not 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:

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:

The rule is not more stringent than federal law.

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

No analysis comparing competitiveness was received by the Department.

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

None

12. An agency explanation about the situation justifying the rulemaking as an emergency rule:

The Department just became aware of the potential for fetal tissue from an abortion to be sold and has immediately initiated this emergency rulemaking to address the situation. This situation was not caused by the Department’s delay or inaction. In addition, given the additional time necessary to conduct a regular rulemaking, the current situation cannot be averted by a regular rulemaking (which at a minimum could take an additional six to eight months to complete).

13. The date the Attorney General approved the rule:

August 14, 2015

14. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

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



ARTICLE 1. GENERAL

Section
R9-10-119. ~~Reserved~~ Abortion Reporting

ARTICLE 1. GENERAL

R9-10-119. ~~Reserved~~ Abortion Reporting

A. A licensed health care institution where abortions are performed shall submit to the Department, in a Department-provided format and according to A.R.S. § 36-2161(B) and (C), a report that contains the information required in A.R.S. § 36-2161(A) and the following:

- 1. The final disposition of the fetal tissue from the abortion; and
- 2. If custody of the fetal tissue is transferred to another person or persons, except for a funeral establishment, as defined in A.R.S. § 32-1301, or a crematory, as defined in A.R.S. § 32-1301:
 - a. The name and address of the person or persons accepting custody of the fetal tissue;
 - b. The amount of any compensation received by the licensed health care institution for the transferred fetal tissue; and
 - c. Whether a patient provided informed consent for the transfer of custody of the fetal tissue.

B. For purposes of this Section, the following definition applies:
“Fetal tissue” means cells, or groups of cells with a specific function, obtained from an aborted human embryo or fetus.