

NOTICES OF SUMMARY RULEMAKING

The Administrative Procedure Act allows an agency to use the summary rulemaking procedure instead of the regular rulemaking procedure for repeals of rules made obsolete by repeal or supersession of an agency's statutory authority or the adoption, amendment, and repeal of rules that repeat verbatim existing statutory authority granted to the agency. An agency initiating summary rulemaking shall file the proposed summary rule with the Governor's Regulatory Review Council and the Secretary of State for publication in the next available issue of the Register. The proposed summary rule takes interim effect on the date of publication in the Register.

Editor's Note: The following Notice of Summary Rulemaking appeared in the July 21, 1995, Register as a Notice of Adopted Summary Rulemaking. The Department of Health Services, however, had not completed the Governor's Regulatory Review Council (GRRC) approval process at that time. The review process is now complete and the Department has again submitted these rules as adopted summary rules.

NOTICE OF ADOPTED SUMMARY RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 9. DEPARTMENT OF HEALTH SERVICES

HEALTH CARE INSTITUTIONS: ESTABLISHMENT; MODIFICATION

PREAMBLE

1. Sections Affected

	<u>Rulemaking Action</u>
R9-9-225	Repeal
R9-9-226	Repeal
R9-9-227	Repeal
R9-9-228	Repeal
R9-9-229	Repeal
R9-9-230	Repeal
R9-9-231	Repeal
R9-9-232	Repeal
R9-9-233	Repeal
R9-9-234	Repeal
R9-9-235	Repeal
R9-9-236	Repeal
R9-9-237	Repeal
R9-9-238	Repeal
R9-9-239	Repeal
R9-9-240	Repeal
R9-9-241	Repeal
R9-9-242	Repeal
R9-9-243	Repeal

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 36-136(F)

Implementing statutes: A.R.S. §§ 36-433, 36-433.01, 36-433.02, and 36-434

3. The effective date of the summary rules:

April 21, 1995

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Arlene Good Thunder
Address: Department of Health Services
Assurance and Licensure Services
1647 East Morten, Suite 230
Phoenix, Arizona 85020

Telephone: (602) 255-1132

Fax: (602) 255-1109

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The Department is repealing these rules because the statutory authority for the certificate of need process was repealed on March 16, 1985; therefore, the rules are obsolete.

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6. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.
7. The preliminary summary of the economic, small business, and consumer impact:
Pursuant to A.R.S. § 41-1055(D)(2), the agency is exempt from preparing the economic, small business, and consumer impact summary statement.
8. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:
Not applicable.
9. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule:
None scheduled.
10. An explanation of why summary proceedings are justified:
Pursuant to A.R.S. § 41-1027, the Department is using summary rulemaking to repeal these rules because the Department's statutory authority governing the certificate of need process expired on March 16, 1985, thereby making these rules obsolete.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules
None.
12. Incorporations by reference and their location in the rules:
None.
13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 9. DEPARTMENT OF HEALTH SERVICES
HEALTH CARE INSTITUTIONS: ESTABLISHMENT; MODIFICATION**

ARTICLE 2. APPLICATION FOR CERTIFICATE OF NEED

- R9-9-225. Statement of Authority
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- R9-2-227. General
- R9-2-228. Construction Letter of Intent
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- R9-2-243. State Health Planning Advisory Council Comparative Review Procedures

ARTICLE 2. APPLICATION FOR CERTIFICATE OF NEED

R9-9-225. Statement of Authority
The Department of Health Services is authorized pursuant to A.R.S. §§ 36-433, 36-433.01, 36-433.02, and 36-434 to adopt rules and regulations governing the issuance of certificates and needs.

R9-9-226. Definitions
Words defined in A.R.S. § 36-401 have the same meaning when used in this Chapter. Words not defined in A.R.S. § 36-401 have the following meanings when used in this Chapter, unless the context otherwise requires:

1. "Affected person" means any person residing within the geographic area served or to be served by the applicant, any agency serving a contiguous health service area, any

provider in the same health service area which provides services similar to the services proposed or provided by the applicant, any provider in a different health services area if the proposal under review would adversely affect the provider, and providers which have on file with the agency and Department a currently effective letter of intent to provide a facility or service similar to the project being reviewed.

2. "Agency" means the authorized local agency recognized by the Department pursuant to A.R.S. § 36-401 or, where no such recognized authorized local agency exists, the state Health Planning Advisory Council. If the applicant is a state-owned or operated health care institution, "agency" means the state Health Planning Advisory Council.
3. "Annual operating costs" means the aggregate annual expenses, calculated on the basis of generally accepted accounting principles, for the operation of health care institution or specific service during a twelve-month period.
4. "Emergency need" means a condition which presents an immediate threat to the the public health, safety, or welfare of the patients who would be served to conduct the regular certificate of need application review process. For purposes of this definition, "a condition which presents an immediate threat" means a condition which could contribute to death, cause serious disease, or cause or contribute to debilitating injury.
5. "Health care services organization" means any person who has a certificate of authority from the Director of the Department of Insurance to operate a health care services organization pursuant to A.R.S. § 20-1054.
6. "Increased expenditures" means an aggregate increased financial outlay of combined operating costs, capital expenditures, and all debt service.
7. "Interested person" means any person who testified or presented evidence at the public hearing.
8. "Modification" means the substantial improvement, enlargement, reduction, moving or alteration of, addition to, or other change in a health care institution or its

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facilities or in the services provided by such an institution.

9. "Person" means any individual, corporation, partnership, association, the state, or any other governmental unit or agency.
10. "Predevelopment expenses" means those expenses incurred or to be incurred by a person prior to offering or developing any medical or health-related service or facility for which a certificate of need pursuant to A.R.S. § 36-433(A). Predevelopment expenses include survey costs, architect fees, consultant fees, legal fees, and any cost directly related to preparation of the application or the project.
11. "Record" means:
 - a. The application, including all modifications, amendments, or supplementations to the application filed with the agency and the Department at least 24 hours before commencement of the public hearing. The agency may establish a deadline, which shall be no less than 7 days after the initial date of filing the application, within which all modification, amendments, or supplementations to the application shall be filed. The agency shall notify the Department of such deadline.
 - b. All staff memoranda, including an analysis of the application, and data used by the agency in connection with its evaluation of the application.
 - c. All correspondence or memoranda submitted by the applicant and other affected persons.
 - d. The applicant's response to staff analysis and all written testimony, including charts and graphs, filed with the agency by the applicant and other affected persons. The agency may establish a deadline for submittal of the documents included in this paragraph so that the material can be provided to the hearing body and the applicant at least 24 hours prior to the public hearing.
 - e. A transcript of the recording of the public hearing.
 - f. A statement of matters officially noticed.
 - g. For purposes of review of the findings by the agency governing body and the Director, the record also includes all findings and recommendation issued by any body of the agency, and a transcript or recording of all earlier oral proceedings before any body of the agency.
12. "Written testimony" means all information, exclusive of oral testimony, relating to the merits of an application offered by any person for consideration by the hearing body.

R9-9-227. General

- A. For purposes of A.R.S. § 36-433(A)(4), which requires a certificate of need for changes in the use of one or more existing beds if such changes will result in increased expenditures of more than \$150,000 within 12 months of the change:
 1. A health care institution shall obtain a certificate of need before changing the use of one or more existing beds from one license classification stated in R9-10-114 to another license classification. A certificate of need is not required by A.R.S. § 36-433(A)(4) to change from one subclass to another subclass within the same license classification.
 2. A permit issued pursuant to R9-9-316 is required for change in the use of one or more existing beds.

B. For purposes of A.R.S. § 36-433(A)(8), "substantial change" means "modification".

C. For purposes of A.R.S. § 36-433(A)(1), a single capital expenditure shall include all predevelopment expenses and development, construction, and modification activities and expenses which are related and which are directed toward a common goal, purpose, or service. Projects which are to be accomplished sequentially or simultaneously in the same or contiguous areas shall not be divided into segments for the purpose of determining whether a certificate of need is required.

R9-9-228. Construction Letter of Intent

Any person planning a construction project for a health care institution shall file with the agency and the Department a letter of intent describing the scope, nature, and estimated cost or other financial impact of the project at least 60 days prior to the planning date for applying for a certificate of need. A letter of intent shall be effective for a period of 90 days from the date of filing and shall be void thereafter.

R9-9-229. Notices of Intent

A. A person planning the establishment of a new medical service not listed in A.R.S. § 36-433(A)(5) shall file with the Department and the agency a notice of intent describing the proposed new medical service and shall provide on forms supplied by the Department, a detailed estimate of the annual operating costs for the first 12 months of operation of the service. The Department may request and the applicant shall provide additional information which the Department deems necessary to evaluate the estimated annual operating costs.

1. Within 30 days of the receipt of the notice of intent, the Department will conduct a public hearing to determine whether the annual operating costs of the proposed new medical service will exceed \$75,000.
2. The provisions of A.C.R.R. Title 9, Chapter 1, Article 1, rules of practice and procedure before the Department, shall govern the public hearing conducted by the Department.
3. The Director will issue a written decision within 15 days after the conclusions of the public hearing.
4. A person otherwise subject to A.R.S. § 36-433(A)(6) who expressly acknowledges that the annual operating costs of the proposed new medical service will exceed \$75,000 may waive notice and his right to a public hearing under this Section by submitting an application for a certificate of need.

B. A health care services organization planning a project which is exempt from certificate of need review pursuant to A.R.S. § 36-433(F) shall file with the agency and the Department a notice of intent describing the scope, nature, and estimated cost or other financial impact of the project at least 30 days prior to the planned date of implementing the project.

C. A person planning the acquisition of a health care institution shall file with the Department and the agency a notice of acquisition describing the proposed acquisition, and specifying any anticipated differences between the existing bed capacity and the services of the institution and those proposed to be offered after the acquisition. The letter shall be filed at least 30 days prior to the date the person acquires or enters into a contract to acquire the health care institution.

R9-9-230. Contents of the Application

A. The applicant for a certificate of need shall complete forms developed by the Department and supplied by the Department or agency and concurrently file copies of the application

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with the Department and agency. The number of copies to be filed shall be determined by the Department and the agency.

B. The following information shall be included in an application:

1. The description of the project and the geographical areas to be served, the nature, purpose, and cost of the project, including the methods of proposed construction in the case of facilities. In addition, the following information shall be included:
 - a. Estimated annual operating costs of the project for each of the first 3 years of operation.
 - b. Estimated annual operating income of the project for each of the first 3 years of operation.
 - c. Projected utilization of the project for the first 3 years.
 - d. Anticipated rates and charges for the project for the first 3 years of operation.
2. The health problem or needs that the population served or to be served by the proposed service has for the service. In addition, in the case of a reduction of a medical or health related service or the relocation of a medical facility, the need that the population presently served has for the service and the extent to which that need will be met after the proposed reduction or relocation.
3. The ability of the applicant to comply with all applicable professional and institutional standards. In addition, where applicable, any relevant information relating to the quality of service rendered by the applicant in the past.
4. The relationship of services reviewed to the long range plan, if any, of the applicant.
5. The availability of less costly or more effective alternative methods of providing the service.
6. The relationship of services reviewed to the existing health care system of the area in which the services are provided or proposed to be provided.
7. The efficiency and appropriateness of the use of existing services or facilities that are similar to those proposed.
8. The qualifications and ability of the applicant to provide and obtain proper financing, staffing, equipment, management, and operation of the proposed services or facilities.
9. In the case of health services proposed to be provided:
 - a. The effect of the proposed services on the clinical needs of health professional training programs.
 - b. The extent to which the proposed services will be accessible to:
 - i. Health professional training program applicants, and
 - ii. The persons who reside in the area to be served by the proposed services.
10. The special needs and circumstances of health care service organizations or applicants which provide a substantial portion of their services to individuals not residing in the health service areas in which the applicants are located.
11. The effect of competition on the financing, provision, and supply of the health services being reviewed.
12. The impact of proposed construction projects on the applicant's cost of providing health services and on the costs and charges for health services provided by other persons.
13. The relationship of the services or facilities reviewed to the health plans adopted by the authorized local agency

and the State Health Plan. If the application is in conflict with either plan, the applicant shall prove by a preponderance of the evidence that a need exists for the project.

14. A statement that the applicant has reviewed, or attempted to review, the proposed project with other health care institutions which provide services to the residents in the area to be served for the purpose of exploring the feasibility of coordinating with such institution's programs, services, or facilities. In cases where coordination among institutions is planned, a statement concerning the implementation of such coordination shall be included. If there is no other health care institution providing services to residents of the service area, the applicant shall so state.
15. A timetable for making the proposed service or equipment available or obligating the proposed expenditure. The timetable shall address the following points, where applicable:
 - a. The time the applicant requires to obtain financing for the project.
 - b. The time the applicant requires to obtain architectural drawings of the project.
 - c. The time the applicant requires to obtain a permit for the project.
 - d. The time the applicant requires to acquire the site.
 - e. In the case of an acquisition of equipment, the time required for delivery and installation of the equipment.
 - f. The date the applicant expects to begin construction.
 - g. The date the applicant expects the project to be completed.
 - h. The closing date of the applicant's fiscal year.

C. An abbreviated application shall contain the information required in subsections (B)(1) through (B)(5), (B)(7), (B)(8), and (B)(15). The following projects shall, and others may, require the use of an abbreviated certificate of need application:

1. Acceptance of a donation is such acceptance will cause increased expenditures, apart from the donation, for any item for which a certificate of need is required pursuant to A.R.S. § 36-433(A).
2. Changes in bed capacity of more than 10 beds or 10% of the total bed capacity, whichever is less, over a two-year period, if such changes will not require a capital expenditure greater than \$150,000.
3. Changes in the use of one or more existing beds if such changes will result in increased expenditures of more than \$150,000.
4. A substantial change in an existing medical service which will result in a new or increased annual operating cost of \$75,000 or more.
5. A replacement of equipment which will entail a capital expenditure over \$150,000.

R9-9-231. Commencement of Review

A. The agency shall serve notice of the public hearing on the applicant and the Department and shall notify all affected persons at least 15 days prior to the hearing date. The notice shall include a statement of the date, time, place, and nature of the hearing.

B. Notice of the applicant and the Department shall also include a list of the names of the panel members from which a hearing body will be selected, with instructions that the applicant shall disqualify the appropriate number of panel members

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pursuant to A.R.S. § 36-433.01(A)(3). The applicant shall notify the agency in writing of the names of the panel members disqualified no later than 10 days prior to the hearing date.

~~C. After the agency issues the notice of the public hearing as specified in subsection (B) above, and before the issuance of a final decision by the Director, there shall be no off the record conversations or other communication pertaining to the merits of the application between any persons in the following two categories:~~

- ~~1. Any person acting:

 - a. On behalf of the applicant, or
 - b. In support of the applicant, or
 - c. Opposed to the applicant, or
 - d. In favor of withdrawal of a certificate of need, and~~
- ~~2. Any member of the governing body, hearing panel, or hearing body.~~

~~D. After the commencement of the public hearing and before the issuance of a final decision by the Director, there shall be no off the record conversations or other communication pertaining to the merits of the application between any persons in the following two categories:~~

- ~~1. Any person in subsection (C), and~~
- ~~2. Any person acting on behalf of or employed by the agency or the Department who exercises any responsibility respecting the application or withdrawal of the application.~~

~~E. The applicant and the agency may extend the review period specified in A.R.S. § 36-433.01(A) by a written agreement which shall:~~

- ~~1. State the reasons for the extension,~~
- ~~2. Be signed by the applicant and agency,~~
- ~~3. Specify the number of days by which the review period shall be extended, and~~
- ~~4. Be filed with the Department and the agency.~~

R9-9-232. Conduct of Public Hearing

~~A. The hearing body shall conduct the public hearing required by A.R.S. § 36-433.01(A)(2). There shall be one public hearing although such hearing may continue for more than one session. The hearing shall be conducted in accordance with the following procedures:~~

- ~~1. The hearing chairman may, or at the request of the applicant shall, call a conference at the opening of the hearing or at any other reasonable time for the purpose of clarifying the procedural steps to be followed in the proceeding. The conference shall be on the record and shall not deal with substantive matters relating to the merits of the application.~~
- ~~2. The same chairman and hearing body shall preside over all sessions of the public hearing on an application.~~
- ~~3. The chairman shall regulate the course of the hearing in an impartial manner and shall rule upon procedural matters. Any affected person shall be given an opportunity to present oral or written testimony, filed in accordance with R9-9-226(A)(11), supporting his or her position. Members of the hearing body may question all witnesses and employees of the agency. At the request of the agency the applicant may, not later than 24 hours before the public hearing, file material in addition to the original application.~~
- ~~4. All witnesses at a hearing shall testify under oath or affirmation. The applicant shall have the right to present such oral or written testimony or arguments, filed in accordance with R9-9-226(A)(11), and conduct such cross-examination as may be required for a full and true~~

~~disclosure of the facts. The chairman shall allow relevant, probative, and material evidence, including testimony from affected persons and exclude all irrelevant, immaterial, or unduly repetitious evidence.~~

~~B. At the public hearing the hearing body shall adopt findings which sequentially cover those factors required in R9-9-203(B) or (C), as applicable. A further finding shall be made whether to recommend to the governing body issuance or denial of a certificate of need for the proposed project. Hearing body members who have not been present for all sessions of the public hearing shall not vote on the findings or recommendation.~~

~~C. Within 15 days after the close of the public hearing and at least 10 days before the date set for review by the governing body, the hearing body shall:~~

- ~~1. File the findings with the governing body and the Department;~~
- ~~2. Deliver or send a copy of the findings to the applicant by certified mail return receipt requested;~~
- ~~3. Deliver or send a copy of the findings or a notice of issuance of findings to all affected persons;~~
- ~~4. Include with the findings the names and addresses of all interested persons;~~
- ~~5. Deliver or send a statement to all interested persons that any person desiring to receive notice of the findings issued by the governing body of the local agency, notices of appeal, findings and decision by the Director shall file a demand for notice with the local agency before the governing body issues the findings. The demand for notice shall state the interested person's name and mailing address.~~

R9-9-233. Governing Body Review of the Findings

~~A. The governing body shall review the findings of the hearing body. The governing body review shall conform with the following procedures:~~

- ~~1. At least 10 days before the date set for review by the governing body, it shall send notice identifying the application and findings of the hearing body in question, specifying the date, time, and place of review. The notice shall be delivered or sent by certified mail to the applicant, the Director, and all interested persons.~~
- ~~2. The governing body shall not accept or solicit any new or additional evidence. No written, graphic, pictorial, or other documentary evidence shall be offered or made available to the governing body other than a copy of such material which is in the record. Oral presentations offered to the governing body should be limited to excerpts of the record. If an oral summary or other non-verbatim statement is made to the governing body not also contained in the record, the findings may be subject to modification or substitution by the Director.~~
- ~~3. The applicant and any interested person:

 - ~~a. May submit written argument in support of his or her position to the governing body. The agency may establish a deadline, which shall be no less than 24 hours before the commencement of the review by the governing body, within which all written argument shall be filed with the agency; and~~
 - ~~b. Shall be given a reasonable opportunity to present oral argument in support of his or her position at the review by the governing body.~~~~
- ~~4. All written and oral argument presented to the governing body shall be limited to a consideration of the facts and circumstances arising out of the public hearing with~~

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respect to the review criteria stated in subsection (5)(b) of this Section.

5. At the completion of the review, the governing body shall:

- a. Adopt the findings of the hearing body; or
- b. Modify the findings, issue entirely separate findings or refer the application back to the hearing body if the governing body decides that:
 - i. The findings were against the weight of the evidence, or
 - ii. The findings were arbitrary or capricious, or
 - iii. The findings were incorrect as a matter of law; or
 - iv. The applicant did not receive a fair hearing.

6. If the governing body refers an application back to the hearing body for further review, the governing body shall issue instructions and questions which shall limit the scope of review by the hearing body.

B. Not later than 45 days after the close of the public hearing, the agency shall issue the written findings of the governing body and shall:

1. File the findings, all demands for notice filed by interested persons, and all other portions of the record with the Department;
2. Certify by signed written statement of a responsible agency employee, the date of issuance of the findings;
3. Satisfy the requirements of R9-9-232(C)(2) through (4).

R9-9-234. Comparative Review by the Agency

The agency may review certificate of need applications for similar facilities, services, or equipment in relation to each other in accordance with the following procedures:

1. The agency shall obtain the written concurrence for comparative review from all involved applicants.
2. The public hearing shall be conducted in accordance with the provisions of R9-9-231 and R9-9-232 except that one hearing body shall be appointed to conduct one public hearing on all certificate of need applications to be reviewed in relation to each other.
3. The governing body shall review in relation to each other all applications which were reviewed in one public hearing. The governing body review shall be conducted in accordance with the provisions of R9-9-233 except that:
 - a. The notification of review shall identify all applications, parties, and findings to be reviewed in relation to each other by the governing body.
 - b. The applicant and interested persons:
 - i. May submit written argument in support of or in opposition to any application subject to comparative review.
 - ii. Shall be given a reasonable opportunity to present oral argument in support of or in opposition to any application subject to comparative review.

R9-9-235. Review of Findings by the Director

A. The Director will review the record of all applications and will:

1. Adopt the findings of the agency; or
2. Modify the findings, issue entirely separate findings, or refer the application back to the agency for further review if the Director decides that the agency findings were:
 - a. Against the weight of the evidence, or
 - b. Arbitrary or capricious, or
 - c. Incorrect as a matter of law, or

d. The applicant did not receive a fair hearing.

B. A copy of the Director's findings and decision will be mailed to the applicant, the agency, and all interested persons who appealed or addressed arguments to the Director.

R9-9-236. Appeal Procedure

A. The applicant or any interested person may appeal the findings and recommendation of the agency to the Director.

B. Any party may file with the Director written objections to the accuracy and completeness of the record of the public hearing. Objections to the record shall be filed within 10 days of issuance of the written findings by the agency.

1. In the absence of objections, the accuracy and completeness of the record of the public hearing will be conclusively presumed.
2. The person filing a notice of appeal, the agency, all interested persons and the applicant collectively shall be referred to as "parties".

C. An appeal shall be commenced by filing a written notice of appeal with the agency and the Director within 10 days of issuance of the written findings by the agency. The notice of appeal shall:

1. Identify the application in question;
2. State the name of the party filing the appeal;
3. Designate the findings in dispute.

D. The Director will mail or deliver to all interested persons who filed a demand for notice with the local agency, a copy of all objections to the record, and notice of appeal. The Director will mail or deliver to all persons who file objections to the record or notices of appeal the names and addresses of all persons who have filed a demand for notice.

E. Any party may submit written argument to the Director in support of his or her position or in response to the written argument of any other party. The Director will consider only those matters contained in the record. The Director will not consider new or additional facts. Submission of written arguments shall conform with the following:

1. The party who originates the memorandum shall file with the Director and shall simultaneously send one copy to persons who filed a demand for notice.
2. The parties shall adhere to the following time schedule for the submission of written memoranda:
 - a. The person initiating the appeal shall file an opening memorandum no later than 15 days after the date of filing of the notice of appeal.
 - b. The response memorandum of any other party shall be filed no later than 15 days from receipt of all opening memoranda.
 - c. The person who initiated the appeal may submit a reply memorandum which shall be filed no later than 5 days following receipt of all response memoranda. The contents of a reply memorandum shall be limited solely to the arguments and positions raised by response memoranda.

F. Any party may file a written request for an oral argument before the Director. The person who initiated the appeal shall request oral argument in the opening memorandum. Any other party shall request oral argument not later than 15 days after receipt of the opening memorandum. The Director shall give written notice to all persons who filed a demand for notice at least 10 days prior to the date set for oral argument.

G. In computing any period of time prescribed or allowed by this Section, the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end

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of the next day which is not a Saturday, Sunday, or legal holiday. Intermediate Saturdays, Sunday, and holidays shall be included in the computation. Whenever a party must act in response to receipt of a notice or memorandum which is received by mail, 5 days shall be added to the period. The time prescribed by A.R.S. § 36-433.02 when the Director shall grant or deny a certificate of need may be extended by written agreement between the applicant and the Director.

R9-9-237. — Rehearing or Review of Decision

Any rehearing or review of the Director's decision shall be conducted in accordance with R9-1-125.

R9-9-238. — Comparative Review by the Director

A. The Director will review in relation to each other all certificate of need applications and records pertaining to similar types of services, facilities, or equipment which the agency reviewed in relation to each other.

B. Agency findings on applications for similar types of services, facilities, or equipment will be reviewed in accordance with R9-9-235 and R9-9-236, except that:

1. The notice of appeal also shall identify all applications, parties, and findings subject to comparative review.
2. An applicant or interested person may file one opening memorandum in support of or in opposition to the findings and recommendation of the agency with regard to any application and attendant record which is subject to comparative review.
3. Thereafter, an applicant or interested person may file one response memorandum which shall be limited to an evaluation of the argument and positions raised in opening memoranda filed by other parties. The agency may file one memorandum in response to each opening memorandum filed by an applicant or interested person.
4. Thereafter, one reply memorandum may be filed by an applicant or interested person to whose opening memorandum a response was filed by one or more other parties or by the authorized local agency. The contents of the reply memorandum shall be limited solely to the argument and positions raised by opposing response memoranda.
5. An applicant who previously filed an opening memorandum limited only to a discussion of the findings and recommendation of the agency received by that applicant may file a supplemental memorandum containing arguments and positions with regard to the findings and recommendations received by other applicants subject to comparative review. The memorandum shall be filed at least 5 days before the date set for oral argument or, if there is not oral argument, within 5 days of receipt of all reply memoranda.

R9-9-239. — Expiration and Withdrawal of Certificate of Need

A. A certificate of need shall be valid only for the period of time stated in the application, unless the certificate of need is withdrawn pursuant to subsection (B) below. The Director may extend the time for which a certificate of need is valid upon showing by the applicant that a longer period is necessary due to circumstances beyond its control.

B. If the Director determines that the applicant is not making a good faith effort to meet the timetable defined in the application, the Director may withdraw the certificate.

1. The Department will issue a report detailing the lack of good faith effort on the part of the applicant.
2. The applicant shall supply to the Department any information which the Department may request regard-

ing the applicant's attempt to meet the timetable. The applicant may also submit to the Department such additional information as the applicant deems necessary to establish a good faith effort.

3. The Department's report, and any additional information supplied by the applicant to support the applicant's position, will be submitted to the agency by the Department.
 4. The agency will review only the information received from the Department and recommend to the Director whether the certificate should be withdrawn. The recommendation shall be filed with the Director within 45 days of the date the Department submits the information to the agency.
 5. The Director will consider the report, the applicant's position, and the agency's recommendation and issue his or her decision within 30 days of the date he or she receives the agency's recommendation.
- C. A certificate holder may, within 10 days of receipt of the Director's decision, file with the Director a request for a hearing to contest that decision. The provisions of A.R.S. Title 41, Chapter 6, Article 1, shall apply.

R9-9-240. — Temporary Certificate of Need

A. The Director will issue a temporary certificate of need for the acquisition of equipment if it is determined that an emergency need exists.

B. Review of an application for a temporary certificate of need shall be based as follows:

1. An application for a temporary certificate of need shall be filed concurrently with the agency and the Department. The application shall contain information pertaining to:
 - a. The description, nature, purpose, and cost of the equipment.
 - b. The health problems or needs that the population to be served has for the proposed equipment, and a description of the condition which the applicant believes presents an immediate threat.
 - c. The availability of alternative methods of delivering the service which the equipment will provide.
 - d. The qualifications and ability of the applicant to provide and obtain proper financing, staffing, and operation of the proposed equipment.
 - e. The time the applicant requires to make such equipment available.
 2. The application shall be reviewed by a panel comprised of members of the agency governing body. All deliberations of the review panel shall be recorded. All meetings shall be open.
 - a. The review panel shall conduct a public hearing if requested by the applicant.
 - b. The recommendation of the review panel shall be transmitted to the Department no later than 3 working days from the date the application was filed. The recommendation may be transmitted orally, but must be followed in writing.
 3. The Director will issue a decision no later than 5 working days from the date the application was filed. The review criteria in R9-9-235 shall apply to the Director's review.
- C. A party aggrieved by the Director's decision may, except as stated below, appeal the decision in accordance with R9-9-236:

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1. ~~The notice of appeal and opening memorandum from the applicant shall be filed within 5 days of receipt of the Director's decision.~~
2. ~~The response memorandum shall be filed no later than 5 working days from receipt of the opening memorandum.~~
3. ~~There shall be no reply memorandum.~~
4. ~~The Director will give notice of oral argument at least 3 days prior to the date set for oral argument.~~

R9-9-241. Periodic Reports

~~Within 30 days after the close of an applicant's fiscal year, the applicant shall submit to the Director and the agency a report summarizing the progress or completion during the previous fiscal year of approved projects. Within 30 days of the completion of approved services or facilities, a final report shall be submitted to the Director which includes a list of the cost of construction and fixed equipment, movable equipment, site survey and soil investigation, architect and consultant fees, supervision and inspection at site, legal fees, financing fees, and all other direct and indirect costs applied to the project.~~

R9-9-242. State Health Planning Advisory Council

- A. ~~The State Health Planning Advisory Council (the Council) shall, except as stated in this Section, perform certificate of need application review functions in accordance with A.R.S. § 36-401(B) and regulations applicable generally to agencies.~~
- B. ~~The Council shall delegate to the hearing body the authority to hold public hearings and to make the findings and recommendation required by A.R.S. § 36-433.01(B) and regulations. The Council shall review the hearing body findings and recommendation in accordance with the provisions of R9-9-233.~~
- C. ~~The Council chairman or a designee shall select hearing panel members for certificate of need review hearings as follows:~~
 1. ~~A pool of persons shall be established consisting of volunteers from the applicable health service area and Council members. Each person shall attend a certificate of need orientation session presented by the Department if order to be eligible for certification by the Council to sit as a member of a hearing panel.~~
 2. ~~The Council chairman or a designee shall select from the pool the number of persons necessary to comprise a hearing panel.~~
 3. ~~The Council chairman or a designee shall select a hearing body chairman, and a vice chairman who shall assume the duties of the chairman if his or she is unable to serve for any reason at any time during the review proceedings.~~
 4. ~~The number of persons who comprise a hearing panel shall be 9, with the applicant to strike 2.~~
- D. ~~The public hearing shall be held if at least 3 voting hearing body members are present. If, after the commencement of the hearing, a hearing body member is absent during part of the hearing, no alternative shall be appointed. The review hearing shall proceed to conclusion without the absent member if at least 3 voting members remain.~~
- E. ~~As required by A.R.S. § 36-433(C)(13), the Council shall review applications for certificates of need filed with it as the authorized local agency for Health Service Area I compo-~~

~~missing Maricopa, Pinal, and Gila Counties, in relation to the following applicable health plans prepared by the Central Arizona Health Systems Agency:~~

1. ~~1978-1984 Hospital Bed Plan effective February 1, 1979.~~
2. ~~1979 Health Service Plan and 1980 Supplement Table 4.46.6, Determination of Needed (Surplus) Skilled and Intermediate Nursing Home Beds; HSA 1, 1984, page iv C-65.35.~~
3. ~~Ambulatory Surgery Criteria and Standards and Methodology for Projecting Need for Ambulatory Surge in HSA 1, 1980. Step 6. Determination of Surplus or Deficit Ambulatory Surgical Capacity, found in the appendix on page A-3.~~
4. ~~Computed Tomography Scanner Criteria and Standards and Methodology for Projecting Need for CT Scanners in HSA 1.~~

~~F. The plans listed in subsection (E) are available for inspection at the Department, Division of Health Resources.~~

R9-9-243. State Health Planning Advisory Council Comparative Review Procedures

~~The Council may review certificate of need applications for similar facilities, services, or equipment in relation to each other in accordance with the provisions of R9-9-234 except that:~~

1. ~~The number of persons selected for membership on the hearing panel and hearing body shall conform with the following:~~

Number of Applicants	Number of Hearing Panel Members	Number of Hearing Body Members
2	7	5
3	12	9
4	17	13
5 or more	19	Not greater than 15

2. ~~A public meeting for the purpose of providing the applicants an opportunity to exercise their required panel disqualification pursuant to A.R.S. § 36-433.01(A)(5) shall be held not less than 10 days before the date set for the hearing on the applications. The Council chairman or a designee shall conduct the public meeting.~~
3. ~~Each applicant shall disqualify one hearing panel member. The chairman shall not permit an applicant to disqualify a hearing panel member who previously had been disqualified by another applicant.~~
4. ~~Failure of an applicant to attend the public meeting to select the hearing body or failure of an applicant to exercise his or her right at the public meeting to disqualify the appropriate number of hearing panel members shall constitute a waiver of the applicant's right to disqualify a hearing panel member. As a result, the Council chairman or a designee shall disqualify the appropriate number of hearing panel members to obtain the required number of hearing body members.~~