

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 1. DEPARTMENT OF ADMINISTRATION

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| R2-1-801 | Amend |
| R2-1-802 | Amend |
| R2-1-803 | Amend |
| R2-1-804 | Amend |
| R2-1-805 | Amend |
- 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. § 41-703
Implementing statute: A.R.S. § 41-786
- 3. The effective date of the rules if different from the date the rules are filed with the Secretary of State:**
February 1, 2000
- 4. List of all previous notices appearing in the register addressing the final rule:**
Notice of Docket Opening: 5 A.A.R. 3090, September 10, 1999
Notice of Proposed Rulemaking: 5 A.A.R. 3266, September 24, 1999
- 5. Name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Kayelen Corley
Arizona Department of Administration
Address: 1700 West Washington, Suite 420
Phoenix, Arizona 85007
Telephone: (602) 542-3632
Fax: (602) 542-3636
- 6. An explanation of the rules, including the agency's reasons for initiating the rules:**
The rules allow the state to subsidize the commuting cost of eligible state employees using public transportation operated by an incorporated city or town or a regional public transportation authority. The rules also allow eligible state employees to pay certain public transportation expenses through a payroll deduction. This rulemaking amends the rules to allow the state to provide bus subsidies on behalf of eligible state employees commuting to work on private, commercially-owned buses. The change in the rules is necessary to conform with recent amendments to A.R.S. § 41-786 which allow for reimbursement of private bus transportation expenses.
- 7. A reference to any studies that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:**
None
- 8. 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
- 9. The summary of the economic, small business, and consumer impact:**
The rules will allow bus subsidies to be paid on behalf of eligible state employees traveling to and from state offices on fixed route, commercial buses. The lowering of pollution from removing single occupancy vehicles from the road

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is significant. The need for parking at the state offices served, and the lower congestion on the state highways are additional benefits that accrue to the public.

10. A description of the changes between the proposed rules including supplemental notices, and the final rules:

Grammar, word choice, and format changes were made to make the rules more clear, concise, and understandable.

11. Summary of the principal comments and the agency response to them:

No comments were made to the proposed rules.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was the rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 1. DEPARTMENT OF ADMINISTRATION

ARTICLE 8. REIMBURSEMENT FOR PUBLIC OR PRIVATE TRANSPORTATION

Section

- R2-1-801. Definitions
- R2-1-802. ~~Public~~ Transportation Program Reimbursement Subsidy Eligibility
- R2-1-803. ~~Public~~ Transportation Program Reimbursement Subsidy Amount
- R2-1-804. ~~Public~~ Transportation Program Reimbursement Subsidy Procedure
- R2-1-805. ~~Public~~ Transportation Program Reduced Cost Procedure

ARTICLE 8. REIMBURSEMENT FOR PUBLIC OR PRIVATE TRANSPORTATION

R2-1-801. Definitions

In this Article, unless otherwise specified: ~~the context otherwise requires:~~

1. "Bus" means a motor vehicle designed to carry 16 or more passengers including the driver.
- ~~2.~~ 2. "Commute" means traveling to and from an employee's place of employment.
- ~~3.~~ 3. "Director" means the ~~director~~ chief executive officer of the Department of Administration or the director's designee.
- ~~4.~~ 4. "Eligible employee" means an individual who is employed by the state of Arizona, in a ~~paid work pay status, and lives or works~~ in a vehicle emissions control area, as defined in A.R.S. § 49-541, except a university ~~employees~~ employee and or those employees employee subject to the provisions of ~~A.R.S. § 23-981(01)~~ A.R.S. § 23-981.01.
5. "Paid work Pay status" means the condition of an employee who is receiving pay for work or for compensated absence from the State of Arizona has the same meaning as in A.A.C. R2-5-101(36).
6. "Private transportation" means the conveyance of passengers, by a commercial enterprise, on scheduled routes by bus on an individual passenger fare-paying basis.
- ~~7.~~ 7. "Public transportation" has the same meaning as in A.R.S. § 41-786 (B).
- ~~8.~~ 8. "~~Public transportation~~ Transportation card" means the evidence of an eligible employee's participation in a ~~public~~ transportation program, that is issued to the employee by the regional transit authority or the Department of Administration.
- ~~9.~~ 9. "~~Public transportation~~ Transportation program" means a program system for reimbursement or subsidy of public or private transportation expenses ~~as contemplated by~~ under A.R.S. § 41-786.
- ~~10.~~ 10. "Reduced cost" means ~~the an~~ eligible employee's share of the total cost of public or private transportation that remains after the reimbursement subsidy ~~has been is~~ paid.
- ~~11.~~ 11. "Reimbursement subsidy" means the portion of the total cost of public or private transportation that is paid ~~to a regional transit authority~~ through a contract with the state of Arizona on behalf of an eligible employee under A.R.S. § 41-786.
10. "Regional transit authority" means ~~an incorporated city or town, regional public transportation authority as defined in A.R.S. § 28-2502(A), or regional transportation authority as defined in A.R.S. § 28-2902(A) which that operates or licenses a public transportation system.~~

R2-1-802. ~~Public~~ Transportation Program Reimbursement Subsidy Eligibility

~~The Director shall pay a A reimbursement subsidy shall be paid to a regional transit authority~~ on behalf of an eligible

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employee in a paid work status who:

1. ~~commutes~~ Commutes by public or private transportation; and
2. ~~is~~ Is enrolled in a public transportation program; and
3. ~~has~~ Has authorized payroll deductions ~~therefore pursuant to~~ under A.R.S. § 38-612 (B)(9).

R2-1-803. Public Transportation Program Reimbursement Subsidy Amount

A. ~~The Director shall determine the~~ The amount of reimbursement subsidy, ~~of up to 100% of the actual cost of public or private transportation, shall be determined by the Director according to the following based upon:~~

1. ~~the~~ The number of eligible employees participating in the program;:
2. ~~the~~ The cost of public or private transportation; and
3. ~~the~~ The amount of state funds appropriated by the Legislature for reimbursement subsidy purposes.

B. ~~The Director shall~~ will notify ~~an~~ employees of:

1. ~~the~~ The initial percentage of subsidy ~~prior to enrollment of~~ before the employee ~~enrolls in~~ into the program; and
2. ~~of any~~ Any change in that percentage ~~not less than at least 30 days prior to~~ before the effective date of the change.

R2-1-804. Public Transportation Program Reimbursement Subsidy Procedure

~~Upon receipt, from the regional transit authority~~ The provider of public or private transportation shall submit a monthly invoice to the Director of a detailed invoice that itemizes each public or private transportation ride taken by each eligible employee; ~~The Director shall~~ the Department of Administration will subtract from the total amount due the percentage of subsidy. ~~The eligible employee shall pay the reduced cost remaining amount, considered the reduced cost, is the responsibility of the employee and will be paid through payroll deduction.~~

R2-1-805. Public Transportation Program Reduced Cost Procedure

A. An eligible employee seeking to pay a reduced cost shall complete, ~~sign, and submit~~ the an public transportation application and payroll deduction authorization form ~~and submit it to the office designated by the Department of Administration personnel office within the agency compensating the employee.~~ The application form shall contain the following:

1. The employee's name and social security number;:
2. The name and mailing address of the state agency compensating the employee;:
3. ~~For public transportation, the~~ The type of public transportation card requested; and
4. The employee's ~~signature evidencing~~ agreement to comply with the conditions ~~contained~~ in subsection (B).

B. As a condition of receiving a public transportation card, an eligible employee ~~shall~~ must agree to the following:

1. ~~Not to~~ The public transportation card is to be used only by the employee to whom it is issued. Improper use includes selling, loaning, or making the card available for ~~allow anyone else to use the transportation card; to anyone other than the employee to whom it was issued.~~
2. ~~The employee's~~ To use of the public transportation card ~~will be subsidized only for trips to and from work with a state agency, board, or commission; Additional trips may be taken with the public transportation card if unless the employee incurs the maximum monthly charge in commuting; to and from work.~~
3. ~~The employee will~~ To be responsible for charges incurred with the public transportation card;:
4. ~~The employee must~~ To notify the office designated by the Department of Administration if the public transportation card is lost or stolen;:
4. ~~5. An employee who applies~~ To pay \$5 on a payroll deduction to replace a lost, damaged, or stolen public transportation card; ~~will be charged \$5 on a payroll deduction.~~
5. ~~6. To surrender the transportation card upon~~ Upon termination of employment with the state; ~~and the employee must surrender the public transportation card.~~
6. ~~7. An employee's~~ That use of the public transportation card after receiving notice from the Department of Administration of change in the public transportation program policies constitutes the employee's agreement to the change. ~~Notice of change will be given by mail to each cardholder.~~

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. BOARD OF DENTAL EXAMINERS

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
R4-11-401	Amend
R4-11-402	Amend
R4-11-403	Amend

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R4-11-404	Amend
R4-11-405	Amend
R4-11-406	Amend
R4-11-407	Repeal

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

Authorizing statutes: A.R.S. § 32-1207(A)(1) and (12), (D), and (E).

Implementing statutes: A.R.S. §§ 32-1207A(1) and (12), (D), and (E), 32-1232(C), 32-1236, 32-1262(D) and (E), 32-1284(A), 32-1287, 32-1297.01, 32-1297.04, and 32-1297.06.

3. The effective date of the rules:

February 2, 2000

4. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 5 A.A.R. 2262, July 16, 1999

Notice of Proposed Rulemaking: 5 A.A.R. 3746, October 15, 1999

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

Name: Julie Chapko, Executive Director

Address: Arizona State Board of Dental Examiners
5060 N. 19th Ave., Suite 406
Phoenix, AZ 85015

Telephone: (602) 242-1492

Fax: (602) 242-1445

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

The rule will amend the fees in Article 4 by adding new fees to comply with A.R.S. § 41-1008 relating to specific statutory authority for any and all fees. In 1998 the Legislature amended A.R.S. § 32-1207 by adding subsection E. A.R.S. § 32-1207(E) gives the Board authority to establish and collect fees for license verification, board meeting agendas and minutes, published lists and mailing labels. The rule package amends Article 4 to include these fees that the Board has been collecting based on general instead of specific authority. The language in the entire Article will be amended to provide a clear, concise, and understandable document in compliance with the current rule writing standards.

The Board believes that making these rules will benefit licensees and the public by establishing a clear and concise fee structure based on statutory authority.

7. A reference to any study that the agency relied on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

Not applicable

8. 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

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

The rule will have no economic impact except the cost to the Board of Dental Examiners and the Secretary of State for writing and publishing the rule. The changes do not impose anything new. The rule codifies existing fees based on statutory authority. The rule does not impose any costs on small business or consumers.

10. A description of the changes between the proposed rule, including supplemental notices, and final rules (if applicable):

Minor grammatical changes between the text of the proposed rule and the final rule were made as suggested by G.R.R.C. staff.

11. A summary of the principal comments and the agency response to them:

No comments were received.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

None

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14. Was this rule previously approved as an emergency rule?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

ARTICLE 4. FEES

Section

- R4-11-401. ~~Triennial Registration~~ Licensure Fees-Dentist
- R4-11-402. ~~Triennial Registration~~ Denturist Certification Fees-Hygienist
- R4-11-403. ~~Triennial Registration Fees: Retired or Disabled Licensees and Certificate Holders~~ Examination Fees
- R4-11-404. Penalty Fees for Late Renewal
- R4-11-405. ~~Duplicate License, Duplicate Registration Receipt~~ Other Fees
- R4-11-406. ~~Triennial Registration Fees: Denturist Fees for Anesthesia and Sedation Permits~~
- R4-11-407. ~~Fees for Anesthesia and Sedation Permits~~Repealed

ARTICLE 4. FEES

R4-11-401. ~~Triennial Registration~~ Licensure Fees-Dentist

- A.** ~~The triennial registration fee for dentists is \$450.00.~~ Dentist:
- 1. Initial licensure (prorated according to A.R.S. § 32-1236(B): \$450.00.
 - 2. Licensure renewal: \$450.00.
 - 3. Retired or disabled licensure renewal: \$15.00.

B. Dental Hygienist:

- 1. Initial licensure (prorated according to A.R.S. § 32-1287(B): \$225.00.
- 2. Licensure renewal: \$225.00.
- 3. Retired or disabled licensure renewal: \$15.00.

R4-11-402. ~~Triennial Registration~~ Denturist Certification Fees-Hygienist

- A.** ~~The triennial registration fee for hygienists is \$225.00.~~ Initial certification (prorated according to A.R.S. § 32-1297.06(B): \$225.00.

- B.** Certification renewal: \$225.00.

R4-11-403. ~~Triennial Registration Fees: Retired or Disabled Licensees and Certificate Holders~~ Examination Fees:

- A.** ~~The triennial registration fee for fully retired or permanently disabled licensees or certificate holders is \$15.00.~~ Arizona Dental Jurisprudence examination:

- 1. Dentist: \$200.00.
- 2. Dental Hygienist: \$50.00.

- B.** Denturist Certification examination: \$150.00.

R4-11-404. Penalty Fees for Late Renewal

- A.** ~~The penalty fee for a licensee who does not pay the triennial registration fee on or before June 30 is~~ License: \$25.00.

- B.** Certificate: \$25.00.

R4-11-405. ~~Duplicate License, Duplicate Registration Receipt~~ Other Fees

- A.** ~~Each Duplicate license, or registration fee is~~ \$25.00.

- B.** Duplicate certificate: \$25.00.

C. License verification:

- 1. For licensee: \$25.00
- 2. For non-licensee: \$5.00

- D.** Copy of tape recording: \$10.00.

- E.** Photocopies (per page): \$0.25.

F. Mailing lists:

- 1. Dentists:
 - a. In-state - paper or labels: \$150.00.
 - b. All licensees - paper or labels: \$175.00.
 - c. Computer disk: \$100.00.
- 2. Dental hygienists:
 - a. In-state - paper or labels: \$150.00.
 - b. All licensees - paper or labels: \$175.00.

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c. Computer disk: \$100.00.

3. Denturists: All certificate holders - paper or labels: \$5.00.

G. Board meeting agendas and minutes (mailed directly to consumer):

1. Agendas and minutes (annual fee): \$75.00.

2. Agendas only (annual fee): \$25.00.

3. Minutes only (annual fee): \$50.00.

R4-11-406. Triennial Registration Fees: Denturist Fees for Anesthesia and Sedation Permits

A. The triennial registration fee for denturists is \$225.00. Under A.R.S. § 32-1207(D), the fee for a Section 1301 permit to administer general anesthesia and semi-conscious sedation or a Section 1302 permit to administer conscious sedation is \$300.

B. Upon successful completion of the initial on-site evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301 or 1302 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every 3rd year.

C. The renewal fee for each Section 1301 or 1302 permit is \$300 per dentist, per location.

R4-11-407. Fees for Anesthesia and Sedation Permits Repealed

A. Pursuant to A.R.S. § 32-1207(D), the fee for a Section 1301 permit to administer general anesthesia and semi-conscious sedation or a Section 1302 permit to administer conscious sedation is \$300.

B. Upon successful completion of the initial on-site evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301 or 1302 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every 3rd year.

C. The renewal fee for each Section 1301 or 1302 permit is \$300 per dentist, per location.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. BOARD OF MEDICAL EXAMINERS

PREAMBLE

1. Sections Affected

Article 3
R4-16-301
R4-16-302
R4-16-303

Rulemaking Action

New Article
New Section
New Section
New Section

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. § 32-1404(D)

Implementing statute: A.R.S. § 32-1456(B) and (D)

3. The effective date of the rules:

February 2, 2000

4. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 5 A.A.R. 2010, June 18, 1999

Notice of Proposed Rulemaking: 5 A.A.R. 2149, July 9, 1999

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

Name: Dominick Spatafora, Legislative and Regulatory Liaison

Address: Arizona Board of Medical Examiners
1651 E. Morten, Suite 210
Phoenix, Arizona 85020

Telephone: (602) 255-3751, ext. 2712

Fax: (602) 870-5297

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

To effect its authority in A.R.S. § 32-1456(B) and (D), the Board is adopting rules which address medical assistants. The proposed rules set forth the criteria and process that the Board of Medical Examiners will use for approving train-

ing programs for medical assistants and the activities that a medical assistant may carry out under the direct supervision of a physician or physician assistant.

The use of medical assistants has increased significantly in recent years as the health care delivery system has evolved. This evolutionary process has resulted in the need for training requirements for individuals who assist physicians in providing basic patient services. This need has been recognized in statute, A.R.S. § 32-1456(D), and requires the Arizona Board of Medical Examiners to adopt rules regarding the training requirements of medical assistants.

Due to this statutory authority and mandate, the Board has proposed these rules to address what constitutes an approved medical assistant training program. R4-16-301 defines an approved medical assistant training program as a program that is “accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP), the Accrediting Bureau of Health Education Schools (ABHES), a medical assisting program accredited by any accrediting agency recognized by the United States Department of Education, or a training program designed and offered by a licensed allopathic physician, which meets or exceeds either of these 3 accrediting programs, and verifies the entry level competencies of a medical assistant referenced in R4-16-303.” The Board believes that the definition will provide students with a level of instruction necessary to function in a medical setting without posing a danger to patients’ health and safety. The definition has been reviewed by representatives of medical assistant educational programs, who have determined that the content and procedures identified in the rule can be effectively implemented and will not have a significant impact on the cost of these programs to students.

In addition to creating the definition of an “approved medical assistant training program,” R4-16-302(A) requires a supervising physician or physician assistant to ensure that a medical assistant has either completed an approved medical assistant training program or an unapproved medical assistant training program along with the passage of the medical assistant examination administered by either the American Association of Medical Assistants or the American Medical Technologists.

Because Arizona is a right to work state, the Board advocates providing a grandfather clause to protect a medical assistant who has been active in the practice of medical assisting, but does not satisfy one of the two requirements in R4-16-302(A). Therefore, R4-16-302(B) lists individuals exempt from the requirements of R4-16-302(A). R4-16-302(B) states that a medical assistant who has done the following prior to the effective date of these rules is exempt from R4-16-302(A): (1) completed an unapproved medical assistant training program and has been employed as a medical assistant since completion of the program, or has (2) been directly supervised by the same physician, group of physicians, or physician assistant for a minimum of 2000 hours. Additionally, a medical assistant who has completed a medical services training program of the Armed Forces of the United States is also exempt from R4-16-302(A).

Additionally, the Arizona Board of Medical Examiners is creating R4-16-303 to establish the parameters of accepted and safe practice for medical assistants working under the direction and supervision of licensed allopathic physicians and physician assistants. R4-16-303 specifies the procedures a medical assistant will learn while attending an approved training program. These procedures have been recommended and adopted by the American Association of Medical Assistants, which promotes the professional identity and stature of its members and the medical assistant profession through education and credentialing. Because the Board determined that certain other treatments were not clearly listed in the Standards and Guidelines for an Accredited Educational Program for the Medical Assistant manual, it decided to add additional procedures to R4-16-303.

By putting specific procedures in rule, the Board intends to provide clear and unequivocal direction for acceptable practices for medical assistants. In addition, by specifying these procedures, the Board will be able to evaluate allegations of a medical assistant established parameters in instances of inappropriate supervision of a medical assistant by a physician. These rules also enable a physician or a physician assistant employing a medical assistant to use the services of the medical assistant to the maximum effect, without jeopardizing the health and safety of their patients.

7. A reference to any study that the agency relied on in its evaluation of or jurisdiction for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

8. 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

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

The rule has very minimal financial impact. The Arizona Board of Medical Examiners will bear a minimal cost for writing the rule and fulfilling requirements imposed by the Governor’s Regulatory Review Council and the Secretary of State’s Office, and for public comments from the regulated community and interested parties regarding the new rulemaking.

The Secretary of State’s Office will bear a minimal financial impact for staff time and for printing the proposed rule.

Physicians who supervise a medical assistant will bear a minimal financial impact in ensuring that the medical assistant possesses proper training, and must be familiar with the Standards and Guidelines for an Accredited Educational

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Program for the Medical Assistant manual which is currently available for ten dollars or free of charge off the Internet.

These new rules may impose very minimal economic costs on the Board, the Office of the Secretary of State, and the regulated community. However, the benefit of having medical assistant rules clearly outweigh the cost. By adopting these rules, the Board is performing the public protection function of ensuring that an individual wishing to serve as a medical assistant is trained in the necessary procedures, and that training program standards are consistent. The Board is further ensuring that an individual serving as a medical assistant performs only procedures for which the medical assistant has been trained.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

R4-16-301

Deleted the phrase, "the following term shall have the meaning set forth in this rule."

Changed the word "education," in the actual definition, to the word "training."

Added the phrase, "a medical assisting program accredited by any accrediting agency recognized by the United States Department of Education."

Changed the number "2," to the number "3."

Changed the word, "the," before the number "3," and replaced it with the word "these."

R4-16-302(A)

Replaced the phrase, "The hiring physician," with the phrase, "The supervising physician or physician assistant."

Added the phrase, "prior to the medical assistant's employment," after the phrase "The hiring physician shall ensure that a medical assistant satisfies 1 of the following training requirements."

R4-16-302(A)(1)

Changed the word, "education," to the word, "training."

R4-16-302(A)(2)

Changed the word, "education," to the word, "training."

Deleted the phrase, "which was approved within 36 months following completion of the program."

Deleted the phrase, "Completion of an unapproved medical assistant education program," on the second and third lines of R4-16-302(A)(2).

R4-16-302(B)(1)

Changed the word, "education," to the word, "training."

Deleted the word, "continuously."

R4-16-302(B)(2)

Deleted the phrase, "during the preceding 24 consecutive calendar months."

R4-16-302(B)(3)

Deleted the phrase, "Prior to (effective date of rules)."

R4-16-303

Changed the term, "doctor of medicine," to "physician."

Deleted the phrase "Educational Components," and replaced it with the phrase "Commission on Accreditation of Allied Health Education Program's Standards and Guidelines for an Accredited Educational Program for the Medical Assistant, Section (2) (A) (5) (a through c)."

Added an "incorporation by reference" for the "Commission on Accreditation of Allied Health Education Program's Standards and Guidelines for an Accredited Educational Program for the Medical Assistant, Section (2) (A) (5) (a through c)."

Added a date for the "incorporation of reference" and an address indicating where the item could be obtained.

Deleted the phrase, "published by the American Association of Medical Assistants."

Deleted the phrase, "engage in physical medicine modalities, including."

Replaced the term, "doctor of medicine," with the word, "physician."

In addition to the changes listed above, technical changes were made throughout the rules to improve clarity, grammar, and consistency.

11. A summary of the principal comments and the agency response to them:

Twenty individuals attended the 3 public hearings held by the Board in Phoenix, Flagstaff, and Tucson. The Board received 13 comments regarding the proposed rulemaking before the close of the record on August 26, 1999. Three comments were written, and ten individuals made oral comments at the public hearings held in August 1999. Overall, comments were in support of the proposed rulemaking, however, there were a few negative comments regarding specific provisions of the rulemaking. The sections specifically addressed by the comments include the following:

R4-16-301. Definitions

Based on public comments received, it is agreed that both the Commission on Accreditation of Allied Health Education Programs (CAAHEP) and the Accrediting Bureau of Health Education Schools (ABHES) should remain in the rule. However, one commenter would like to see the Accrediting Commission of Career Schools and Colleges of Technology (ACCSCT) added as a third accrediting body. After learning about the existence of the ACCSCT at the Phoenix public hearing, research was immediately conducted to learn more about this accrediting body. Research revealed that the body does not accredit medical assistant **programs**, rather it accredits **institutions** that may, or may not have, medical assisting programs. Therefore, even if an institution is accredited by this body, it could very well mean that there is no programmatic accreditation for the medical assistant program. Because the role of the Board is to protect public health, it is necessary to accredit individual medical assisting programs as opposed to merely the institution in which the program is taught. Therefore, the Board feels that it would not be prudent to include ACCSCT in this rulemaking.

Additionally, it was brought to the Board's attention that the Maricopa Community Colleges District's (MCCD) medical assisting programs are accredited by the North Central Association Commission on Institutes of Higher Education. This organization also accredits the state university programs and is recognized by the United States Department of Education. Therefore, it was suggested that the Board add language to the rule similar to that of New Jersey which adds "...or a medical assisting program accredited by any accrediting agency recognized by the U.S. Department of Education." The Board agrees that the addition of this language serves a valuable purpose, because if the community colleges no longer conduct MA programs, the MA shortage would increase, impacting medical practices. The Board added the suggested language.

The last part of the definition, specifically the part that reads "or a training program designed and offered by a licensed allopathic physician, that meets or exceeds either of the 2 accrediting programs, and verifies the entry level competencies of a medical assistant referenced in R4-16-303" generated concern. Concerns mentioned included:

- a. What test will be administered to these medical assistants to verify their competence?
- b. Who will administer tests given?
- c. Will the Board keep a record of the medical assistants that are given tests to measure competency?
- d. A representative from Apollo College strongly recommended that the Board should eliminate this section of the definition completely in order to maintain consistent standards. However, she stated, if this language is left in the rule the Board should identify who will determine that the training meets or exceeds either of the two accrediting programs. The representative further added that the Board will also need to address this training in regards to written curriculum with verifiable and measurable objectives.

During the rulemaking process several members of the medical community notified the Board that certain physicians design their own training programs for their own medical assistants. These physicians argued that they should be able to train their own medical assistants since they are ultimately responsible for their medical assistants' actions. In other words, since medical assistants are not licensed or regulated, the only individual that holds responsibility for the actions of medical assistants are the hiring physicians. A.R.S. § 32-1401(25)(ii) states that unprofessional conduct of a physician includes "lack of or inappropriate direction, collaboration or direct supervision of a medical assistant...supervised or assigned to the physician." Additionally, physicians can be liable for unprofessional conduct if any "conduct or practice which is or might be harmful or dangerous to the health of the patient or public," according to A.R.S. § 32-1401(25)(q). Therefore, if a physician chooses to hire a medical assistant that has not successfully completed an accredited medical assistant program, and wants to design and offer a training program, it is completely up to the physician to verify the medical assistants competence and administer any tests the physician feels are necessary to ensure competency of the medical assistant. The rule does not establish a Medical Assistant Practice Act, therefore, the Board will not keep a record of the medical assistants that are given tests to measure competency. After examining the above concerns it became apparent that much of the burden for enacting this provision is placed on the individual physician supervising a medical assistant. This burden is absolutely necessary, however, if a physician chooses to train his or her own medical assistant. The Board is committed to ensuring that standardization of training occurs and that a student is provided with a level of instruction necessary to function in a medical setting without posing a danger to Arizona patients' health and safety. It is apparent that existing language in the rule, is proper to ensure the standardization and instruction necessary to adequately protect the public.

R4-16-302(A). Training Requirements

This rule can be broken into two separate parts: R4-16-302(A)(1) and (A)(2). No opposing comments were received regarding A(1). In fact, positive comments were received showing support for a physician ensuring that a medical assistant complete an approved medical assistant training program. For example, one commenter supported the train-

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ing requirements because a medical assistant must be trained properly. The commenter further stated, "If these rules didn't exist the guidelines and directions will not be there for medical assistants, and in the end it's only going to be a serious affront to the medical community, a serious problem for the medical community because the quality of service is not going to be there."

R4-16-302(A)(2) generated a significant amount of confusion. Comments raised were:

- a. Do only those that have attended an unapproved program have to take the exam?
- b. Those that attend an approved program don't have to take the exam? This individual believes that if a person took the courses they should be able to pass the exam.
- c. One commenter recommended that R4-16-302(A)(2) be deleted in its entirety.
- d. R4-16-302(A)(2), specifically the "36 month" provision is unclear as to what it is attempting to accomplish and how it would be made operational.

In response to comments a and b, it must be noted that if a medical assistant successfully completes an approved medical assisting program, the current statute does not authorize the Board to require the passage of an examination for certification. Therefore, it is not within the Board's current statutory framework to require a medical assistant to be certified. Even though the Board agrees with the comment that an individual who successfully completes an approved program should be able to demonstrate a higher level of competency by passing an exam, the Board is satisfied that completion of the training program provides adequate protection. However, if a medical assistant comes from an unapproved training program, the Board needs some assurance that the medical assistant has been properly trained. Unapproved programs are not accredited by one of the two accrediting bodies, which means that the only way the Board can assure the competency of a medical assistant is to require passage of one of the two exams listed in the rule.

In response to comments (c) and (d), these suggestions were addressed at the Tucson public hearing. Those in attendance at the Tucson hearing reached a consensus to amend the rule in a way that would actually address concerns (c) and (d) above. Suggested language created during the Tucson hearing was, "Completion of an unapproved medical assistant education program which was pending and approved within 24 months following completion of the program and passage of the medical assistant examination administered by either the American Association of Medical Assistants or American Medical Technologists." However, one participant of the Tucson hearing submitted follow-up written comments the day after the hearing retracting pertinent information she gave to the Board at the hearing. Upon receiving these comments and conducting further review of this issue, it was discovered that a program must be accredited by ABHES **before** the program can be offered at an educational institute. With this discovery, it is now apparent that the phrase, "which was approved within 36 months following completion of the program," is incorrect and therefore not necessary to promulgate in this rulemaking. Because the language is not necessary it has been omitted from the final rule.

R4-16-302(B). Grandfathering Section

Some individuals, who tend to be practicing medical assistants from unapproved schools have concerns with R4-16-302(B):

- a. One commenter asked what happens if a medical assistant does not fall under any of the grandfathering clauses?
- b. One practicing medical assistant testified that she has been in the field for a number of years and never graduated from an accredited approved school. If she takes a sabbatical for one or two years what does that mean for her?
- c. What happens if I take a full year off of work after a pregnancy? Can I still be a medical assistant, or do I have to go back to school?

The Board attempted to grandfather in an existing medical assistant in the most equitable fashion possible, and while the Board does not want an existing medical assistant to lose employment, the Board must ensure that the medical assistant has the skills necessary to do the job. In response to the first comment, the Board would have to discover a person is practicing as a medical assistant without proper training. If the allegation is true the physician or physician assistant under which the medical assistant is working will be held responsible for employing a medical assistant who does not meet prescribed standards of training. This could have negative implications for a physician in the event that an issue arises concerning the quality of care provided by the medical assistant. Theoretically, a physician using an unlicensed person, who has not completed a Board approved training program or who falls under this grandfathering clause to perform the tasks of a medical assistant, may present an issue of unprofessional conduct, as defined at A.R.S. § 32-1401(25)(a), (q), or (s).

Regarding the next 2 concerns, the Board did not realize the extent the impact of R4-16-302(B)(2) would have on an existing medical assistant. Therefore, in an attempt to modify this language in a way that satisfies the vast majority of medical assistant, while still maintaining the highest level of public protection, the Board decided to delete the last part of R4-16-302(B)(2). The Board decided to end the sentence after "2000 hours," deleting "during the preceding 24 consecutive calendar months. Additionally, to specifically address concern number (c), the Board decided to remove the word "continuously" from R4-16-302(B)(1). By removing the word "continuously" a medical assistant will not be punished for taking time off for a pregnancy, sabbatical, or any other leave. With these changes, the Board

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strongly feels that the 3 options listed present a reasonable presumption of preparedness to be grandfathered in either one of the 3 levels.

R4-16-303. Authorized Procedures For Medical Assistants

Prior to the close of the record there was no opposition to this rule. Although there was no opposition to this rule prior to the close of the record, there was an oral comment inquiring where a small volume nebulizer (SVN) treatment fit into this rule. Two separate individuals suggested that they would like to see a SVN included in this rule as long as treatments are administered under the direct supervision of a physician or physician assistant. A SVN is a pharmacological agent, or a prescription drug that is mixed with a saline or other solution and administered through a nebulizer. After carefully examining this issue, and receiving input from several physicians across the state, it is apparent that it is a very common practice for medical assistants to administer SVNs. Therefore, the Board agreed with the public comment and attempted to include the administration of SVNs in this rulemaking. However, the Governor's Regulatory Review Council determined that the inclusion of SVNs was a substantive change because the persons affected by and the effects of the final rule differed from those of the proposed rule. The Board agreed. Therefore, SVNs were left out of this rulemaking due to lack of opportunity for public comment on the substantive change. The Board intends to open a new docket to explore amending the rule to include SVNs at a later time.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

"Commission on Accreditation of Allied Health Education Program's Standards and Guidelines for an Accredited Educational Program for the Medical Assistant, Section (2) (A) (5) (a through c)." The address is 35 East Wacker Drive, Suite 1970, Chicago, Illinois 60601.

R4-16-303

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. BOARD OF MEDICAL EXAMINERS

ARTICLE 3. MEDICAL ASSISTANTS

Section

R4-16-301. Definitions

R4-16-302. Medical Assistant Training Requirements

R4-16-303. Authorized Procedures for Medical Assistants

ARTICLE 3. MEDICAL ASSISTANTS

R4-16-301. Definitions

For the purposes of A.R.S. Title 32, Chapter 13 and of this Chapter, unless the context otherwise requires:

"Approved medical assistant training program" means a program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP), the Accrediting Bureau of Health Education Schools (ABHES), a medical assisting program accredited by any accrediting agency recognized by the United States Department of Education, or a training program designed and offered by a licensed allopathic physician, that meets or exceeds any of these 3 accrediting programs, and verifies the entry level competencies of a medical assistant referenced in R4-16-303.

R4-16-302. Medical Assistant Training Requirements

A. The supervising physician or physician assistant shall ensure that a medical assistant satisfies 1 of the following training requirements prior to the medical assistant's employment:

1. Completion of an approved medical assistant training program.
2. Completion of an unapproved medical assistant training program and passage of the medical assistant examination administered by either the American Association of Medical Assistants or the American Medical Technologists.

B. This rule does not apply to any person who:

1. Prior to the effective date of these rules completed an unapproved medical assistant training program and was employed as a medical assistant since completion of the program.
2. Prior to the effective date of these rules was directly supervised by the same physician, group of physicians, or physician assistant for at least 2000 hours.
3. Completes a medical services training program of the Armed Forces of the United States.

R4-16-303. Authorized Procedures for Medical Assistants

A medical assistant may, under the direct supervision of a physician or a physician assistant, perform the medical procedures listed in the, April 1999, Commission on Accreditation of Allied Health Education Program's, "Standards and Guidelines for an Accredited Educational Program for the Medical Assistant, Section (2)(A)(5)(a through c)." The address is 35 East Wacker Drive, Suite 1970, Chicago, Illinois 60601. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State. Additionally, a medical assistant may, under the direct supervision of a physician or physician assistant, administer whirlpool treatments, diathermy treatments, electronic galvaton stimulation treatments, ultrasound therapy, massage therapy, traction treatments, apply Transcutaneous Nerve Stimulation units, and apply hot and cold packs.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

PREAMBLE

1. Sections affected

Article 8
R4-19-801
R4-19-802
R4-19-803
R4-19-804
R4-19-805
R4-19-806
R4-19-807
R4-19-808
R4-19-809
R4-19-810
R4-19-811
R4-19-812
R4-19-813
R4-19-814
R4-19-815

Rulemaking action

New Article
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section

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. § 32-1606(A)(1)

Implementing statutes: A.R.S. §§ 32-1606(B)(11), 32-1642, 32-1643, 32-1645, 32-1646, 32-1647, and 32-1648

3. The effective date of the rules:

February 4, 2000

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Docket Opening: 1 A.A.R. 392, April 28, 1995

Notice of Proposed Rulemaking: 5 A.A.R. 3032 September 10, 1999

5. Name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Janet M. Walsh
Associate Director
Arizona State Board of Nursing

Address: 1651 E. Morten, Suite 150
Phoenix, Arizona 85020

Telephone Number: (602) 331-8111, ext. 145

Fax Number: (602) 906-9365

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

In this proposed rulemaking, the Board seeks to establish rules to govern the certification process for nursing assistants, the approval of and standards for nursing assistant training programs, and regulation of and standards of practice for nursing assistants. Additionally, the Board filed a Notice of Docket Opening on Article 1, Definitions, on June 8, 1999, to include definitions related to nursing assistants and plans to initiate rulemaking on R4-19-102 to revise the time frames and section numbers to be consistent with this rulemaking.

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During the course of this rulemaking, the Board has worked with the Department of Health Services, the Arizona Health Care Cost Containment System (AHCCCS), the Arizona Nurses Association, and various organizations representing the home care industry and long-term care industry. Following an analysis of surveys sent to existing nursing assistant training programs and major employers of certified nursing assistants (CNAs), the Board set 120 hours as the minimum requirement for curriculum hours for nursing assistant training programs.

On October 16, 1998, the Board held a public workshop to solicit feedback and comments from interested stakeholders regarding the potential impact of the proposed rules. The majority of the comments received concerned the proposed minimum curriculum requirement of 120 hours. In response to feedback from the public workshop, the Board revised the curriculum requirement to include a minimum requirement of 80 hours of classroom and clinical instruction and a maximum of 40 hours in a preceptor program to satisfy the 120-hour minimum curriculum requirement. The Board plans to include the following definition of preceptorship when it files its Notice of Proposed Rulemaking on Article 1: "Preceptorship" means a clinical learning experience within a long-term care facility in which the student is assigned to personnel with equivalent or higher training for the purpose of providing direct client care."

At its meeting on August 19, 1999, the Board voted to approve the Notice of Proposed Rulemaking. On October 22, 1999, the Board conducted a public hearing on this rulemaking package. At its meeting on December 10, 1999, the Board voted to approve the Notice of Final Rulemaking, the Concise Explanatory Statement, and the Economic, Small Business and Consumer Impact Statement.

7. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

While the Board sent a survey to all nursing assistant training programs approved by the Board as of July 1, 1998 and the major employers of CNAs, the survey was focused on the increased curriculum requirement and the potential financial impact of an increase in curriculum hours to a minimum of 120 classroom and clinical hours. The survey, survey data, and analysis of the survey are available at the Board of Nursing, 1651 E. Morten Ave., Suite 150, Phoenix, Arizona 85020.

A total of 486 training programs and employers responded to the survey of which 41% reported a minimal financial impact (less than \$1000), 25% reported a moderate financial impact (between \$1000 and \$5000), 16% reported a maximal financial impact (over \$5000), and 18% did not respond (see Attachment A). Since the survey was completed, the Board revised the curriculum requirement to allow a preceptor program of up to 40 hours in satisfaction of no more than 40 hours of the 120-hour minimum requirement.

8. 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

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

Since the Board received statutory authority for certification and regulation of nursing assistants in 1995, it has been charging an application fee of \$20 for applications for nursing assistant certification by endorsement and an optional document fee of \$30 for nursing assistant examination applicants and \$10 for CNA renewal applicants. The Board does not anticipate increasing its fees in these areas as a result of this proposed rulemaking.

At its meeting on November 10, 1999, the Board approved a fee of \$15 for issuance of a temporary certificate to nursing assistant applicants. Temporary certificates are available to applicants who submit their applications for certification to the Board within 30 days of hire by a Medicare or Medicaid certified long-term care facility, who remain at that facility for 75 to 100 days, and for whom receipt of fingerprint results by the Board exceeds 120 days. Under federal law, a nursing assistant can work in a long-term care facility for up to 120 days before placement on the nursing assistant register. Because the language of the rule limits the availability of temporary certificates, the Board anticipates revenue in the amount of \$4500 for application fees of \$15 for each of approximately 300 nursing assistant applicants. The Board will incur costs associated with developing and printing application forms, postage, and reviewing the applications to ensure that applicants meet the requirements for issuance of a temporary nursing assistant certificate.

In drafting these rules, the Board initially planned to set 120 hours as the minimum curriculum requirement for nursing assistant training programs. However, after receiving feedback from many nursing assistant training programs that increasing the curriculum hours would pose a financial hardship, the Board modified this requirement to allow programs a choice of offering 120 hours of classroom and clinical instruction or combining the curriculum requirement with a preceptor program of no more than 40 hours to meet the 120-hour minimum requirement and clearly provided that the preceptorship could take place at a long-term care facility other than the facility offering the nursing assistant training program. As a result of these changes, the Board does not anticipate that existing nursing assistant training programs will experience a significant economic impact in operating nursing assistant training programs because many of these facilities currently offer a preceptor program.

At the present time, there are 179 approved nursing assistant training programs in the state, of which 87 programs are offered by long-term care facilities. For those programs for which the number of curriculum hours is known by the

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Board, 36 offer 120 or more curriculum hours in their nursing assistant training programs, 35 offer between 80 to 119 curriculum hours; only 5 programs offer 75 hours.

10. A description of the changes between proposed rules, including supplemental notices, and final rules (if applicable):

R4-19-801(b)(5)

Insert “for classroom and clinical instruction excluding hours spent in a preceptorship” before “include” on the second line.

R4-19-801(C)(5)

Add subsection e: “Copy of the documentation issued to a training program, indicating the number of curriculum hours satisfied by the preceptorship, if applicable; and” and renumber existing subsection e to f.

R4-19-802(A)

Delete “and does not include any aspects of facility orientation” after “program.”

R4-19-802(B)(2)

Insert “If a preceptorship takes place at a long-term care facility other than the facility where the nursing assistant training program is located, the long-term care facility where the preceptorship takes place shall provide documentation to the training program indicating the number of curriculum hours satisfied by the preceptorship.”

R4-19-815

Title: delete “Certified” before “Nursing Assistant Certificate.”

The Board made technical changes based on the suggestions of G.R.R.C. staff. These changes are reflected in the preamble, the text of the rule, the Concise Explanatory Statement, and the Consumer, Small Business, and Economic Impact Statement.

11. A summary of the principal comments and the agency response to them:

On October 22, 1999, a public hearing was held regarding this proposed rulemaking. A representative of the Arizona Association of Homes and Housing for the Aging (AzAHHA), which represents the nonprofit long-term care facilities, testified and read a comment which was also submitted to the Board in writing prior to the close of record. Additionally, the Board received 2 written comments prior to the close of record. A representative of the Arizona Association for Home Care submitted a written comment in support of the rulemaking package, specifically supporting the increased educational requirements for nursing assistant training programs. No representative of the Arizona Health Care Association (AHCA), which represents the for-profit long-term care facilities, testified at the hearing, and the Board received no written comment from AHCA before the close of record.

The comments submitted by AzAHHA and read into the record at the public hearing expressed support of allowing up to 40 hours of a preceptor program to satisfy the minimum curriculum requirement. AzAHHA also requested that the Board encourage approved training programs to allow sponsoring facilities the option of completing a preceptor program at the employing facility. In its comment, AzAHHA expressed concern that applicants seeking nursing assistant certification by endorsement from other states, who do not meet the curriculum requirement, would not receive credit for on-the-job experience.

In a meeting on January 6, 2000, a representative of AzAHHA stated that the organization supported the increase in curriculum hours only if the proposed rules clearly indicated that the preceptorship program could take place in a long-term care facility other than the facility at which the nursing assistant training program was held. At that meeting, a representative of AHCA stated, for the first time, that AHCA opposed the increase in curriculum hours for the same reason.

In response to AzAHHA’s request that the Board encourage sponsoring facilities to conduct a preceptor program, the Board revised the language of R4-19-802(A) to delete the restriction against allowing facility orientation as part of a preceptorship program. The Board also revised the language to R4-19-802(B)(2) to state that if the preceptorship takes place at a facility other than the facility at which the training program is held, the facility offering the preceptorship must provide documentation to the training program indicating the number of curriculum hours satisfied by the preceptorship. Because the Board lacks jurisdiction over facilities offering nursing assistant training programs, the Board believes that by specifically addressing the situation in which the preceptorship takes place at a facility other than the facility holding the training program in the section establishing the curriculum hours and by requiring documentation of the preceptorship to be submitted to the training program, the concerns of AzAHHA and AHCA will be alleviated.

In response to AzAHHA’s concern regarding recognition of on-the-job experience for out-of-state nursing assistants who do not meet the minimum curriculum requirement, the Board does not believe that a mechanism exists to quantify the equivalence of on-the-job experience to the subject areas covered in a 120-hour training program.

The Board also received a written comment from AHCCCS regarding the increase of curriculum hours from the 75-hour federal requirement to 120 hours. It is the Board’s understanding that AHCCCS is concerned that nursing facili-

ties will be financially liable for any increased costs associated with the increase in curriculum hours, particularly since nursing facilities have been impacted by changes in the Medicare reimbursement system. On January 6, 2000, AHCCCS held a meeting, at which representatives from AzAHHA, AHCA, and the Board attended. Following that meeting, the Board received information from AzAHHA and AHCA that revising sections R4-19-801 and 802 to clarify that the preceptorship could take place in a facility other than the facility offering the training program would alleviate their concerns. The Board anticipates that revising the sections requested will also alleviate AHCCCS's concerns because both AzAHHA and AHCCCS indicate that, with the requested revisions, the increase in curriculum hours will pose a minimal economic impact to their membership and reimbursement from AHCCCS will not be necessary.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporation by reference and their location in the rules:

Not applicable

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

ARTICLE 8. CERTIFIED NURSING ASSISTANTS

Section

<u>R4-19-801.</u>	<u>Standards for Nursing Assistant Training Programs</u>
<u>R4-19-802.</u>	<u>Standardized Curriculum</u>
<u>R4-19-803.</u>	<u>Approval of Nursing Assistant Training Programs</u>
<u>R4-19-804.</u>	<u>Renewal of Approval of Nursing Assistant Training Programs</u>
<u>R4-19-805.</u>	<u>Deficiencies and Rescission of Program Approval, Voluntary Termination and Reinstatement</u>
<u>R4-19-806.</u>	<u>Nursing Assistant Certification by Examination</u>
<u>R4-19-807.</u>	<u>Nursing Assistant Certification by Endorsement</u>
<u>R4-19-808.</u>	<u>Temporary Certificate</u>
<u>R4-19-809.</u>	<u>Nursing Assistant Renewal</u>
<u>R4-19-810.</u>	<u>Nursing Assistant Register</u>
<u>R4-19-811.</u>	<u>Application for Duplicate Certificate</u>
<u>R4-19-812.</u>	<u>Change of Name or Address</u>
<u>R4-19-813.</u>	<u>Performance of Nursing Assistant Tasks</u>
<u>R4-19-814.</u>	<u>Standards of Conduct for Nursing Assistants</u>
<u>R4-19-815.</u>	<u>Reinstatement or Issuance of a Certified Nursing Assistant Certificate</u>

ARTICLE 8. CERTIFIED NURSING ASSISTANTS

R4-19-801. Standards for Nursing Assistant Training Programs

A. Organization and administration

1. A nursing assistant training program shall provide a description of the program that includes purpose, goals, and objectives, and meets federal, state, and if applicable, private postsecondary requirements. The program description must be consistent with the purpose, goals, and objectives of a parent institution, if any.
2. A nursing assistant training program utilizing external clinical facilities shall have a written agreement between the program and each external clinical facility. The agreement shall define the rights and responsibilities of the program and the clinical facility, including agreements on the role and authority of the governing bodies of both the clinical facility and the program.
3. A nursing assistant training program shall have written policies and procedures that are consistent with its parent institution, if any, and that meet federal, state, and if applicable, private postsecondary requirements. The program shall provide a regular schedule for the review of policies and procedures. The program policies and procedures shall include the following areas:
 - a. Student attendance;
 - b. Student grading, including program completion criteria;
 - c. Student record maintenance;
 - d. Student fees and financial aid;

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- e. Student rights and responsibilities; and
 - f. Student grievance.
- B.** Program coordinator and instructor qualifications and responsibilities
- 1. A program coordinator shall:
 - a. Hold a current, unencumbered, Arizona professional nurse license; and
 - b. Have 2 years of professional nursing experience with at least 1 year in a long-term care facility.
 - 2. A director of nursing in a long-term care facility-based program may assume the administrative responsibility and accountability of a program coordinator for a nursing assistant training program but shall not engage in classroom or clinical teaching in that program.
 - 3. A program coordinator's responsibilities include the following:
 - a. Planning, implementing, and evaluating the program;
 - b. Securing qualified instructors, if applicable;
 - c. Making available admission and program completion requirements in written form to students prior to admission to the program;
 - d. Coordinating classroom and clinical sites and activities;
 - e. Evaluating and supervising students and instructors; and
 - f. Providing documentation of program completion to a student within 10 days of program completion.
 - 4. A program instructor shall:
 - a. Hold a current, unencumbered, Arizona professional nurse license; and
 - b. Meet 1 of the following requirements:
 - i. Have completed a course in teaching adults,
 - ii. Have 1 year's experience in teaching adults, or
 - iii. Have 1 year's experience in supervising nursing assistants.
 - 5. A program instructor's responsibilities for classroom and clinical instruction excluding hours spent in a preceptorship include the following:
 - a. Participating in the planning of each learning experience.
 - b. Ensuring that course objectives are accomplished.
 - c. Requiring a grade of 75% or greater on all theoretical examinations.
 - d. Requiring a passing grade for satisfactory completion of all skills evaluations.
 - e. Ensuring that students do not perform activities for which they have not received instruction and in which they have not been found competent.
 - f. Supervising students giving care to clients in clinical areas.
 - g. Being present in the classroom at least 75% of the time, and
 - h. Supervising health care professionals who assist in providing program instruction.
 - 6. A certified or licensed health care professional may assist the program instructor if the health care professional has 1 year of experience in the field of licensure or certification.
- C.** Resources, ratio, services, and records
- 1. A program shall provide a minimum instructor or professional nurse to student ratio of 1 to 10 for students caring directly for clients.
 - 2. A program shall plan and schedule clinical experiences according to the course curriculum.
 - a. The program shall include a clinical experience for each nursing assistant student.
 - b. The program shall ensure that nursing assistant students are identified and treated as students and not utilized as staff while the students are enrolled in a nursing assistant training program.
 - 3. A program shall provide instructional and educational materials adequate to meet the needs of the program, the number of students, and the instructional staff and shall include:
 - a. Current reference materials related to the level of the curriculum, and
 - b. Instructional tools and equipment for simulating patient care.
 - 4. A program shall maintain program records for 3 years that contain the following documentation:
 - a. Curriculum and course schedule.
 - b. Classroom and supervised clinical hours, and
 - c. Student participation in program evaluation.
 - 5. A program shall maintain student records for 3 years that contain the following:
 - a. Name and date of birth.
 - b. Skills checklist.
 - c. Attendance record.
 - d. Program examination score.
 - e. Copy of the documentation issued to a training program, indicating the number of curriculum hours satisfied by a preceptorship, if applicable; and

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- f. Copy of the documentation issued to a student upon successful completion of the training program, such as a certificate, transcript, or letter.

D. Periodic evaluation

- 1. A program shall permit the Board, or a state agency designated by the Board, to conduct an on-site scheduled evaluation for initial Board approval, as required by R4-19-803, and renewal of approval, as required by R4-19-804.
- 2. For reasonable cause, a program shall permit the Board, or a state agency designated by the Board, to conduct an on-site unannounced evaluation of the program.

R4-19-802. Standardized Curriculum

- A.** The standardized curriculum content for a nursing assistant training program shall include material that will provide a basic level of both knowledge and demonstrable skills for each student completing the program.
- B.** The standardized curriculum shall require a minimum number of 120 hours which can be met by 1 of the following:
 - 1. An integrated curriculum of at least 120 hours of classroom and clinical instruction; or
 - 2. A curriculum of at least 80 hours of classroom and clinical instruction followed by a long-term care facility-based preceptorship consisting of as many hours as required to equal 120 hours or more of instruction. If a preceptorship takes place at a long-term care facility other than the facility where the nursing assistant training program is located, the long-term care facility where the preceptorship takes place shall provide documentation to the training program indicating the number of curriculum hours satisfied by the preceptorship.
- C.** The standardized curriculum shall include classroom and clinical instruction in the following:
 - 1. Communication and interpersonal skills;
 - 2. Infection control;
 - 3. Safety and emergency procedures, including the Heimlich maneuver and cardiopulmonary resuscitation;
 - 4. Client independence;
 - 5. Client rights, such as the right to confidentiality, the right to privacy, and the right to be free from abuse, mistreatment, and neglect;
 - 6. The need to report abuse, mistreatment and neglect to appropriate staff;
 - 7. Basic nursing skills;
 - 8. Personal care skills;
 - 9. Individual client needs including age-specific mental health and social service needs;
 - 10. Care of the cognitively impaired client;
 - 11. Skills for basic restorative services, including body mechanics;
 - 12. Nursing team member skills; and
 - 13. Legal aspects of nursing assistant practice.
- D.** A program shall require that a student receive a minimum of 16 hours instruction in the subjects identified in subsections (C)(1) through (C)(6) prior to allowing a student to care for clients.

R4-19-803. Approval of Nursing Assistant Training Programs

- A.** An applicant for initial nursing assistant training program approval shall submit an application to the Board at least 90 days in advance of the expected program opening date.
- B.** The application for initial program approval shall include the following:
 - 1. Name, address, and telephone number of program;
 - 2. Identity of program as a long-term care facility-based or other program;
 - 3. Name and qualifications of program coordinator;
 - 4. Name and qualifications of program instructors;
 - 5. Accreditation status of applicant, if any, including name of accrediting body and date of last review;
 - 6. Licensure status, if required, including name of licensing agency and the date of last review;
 - 7. Medicare certification status, if any;
 - 8. Evidence of compliance with R4-19-801 and R4-19-802, including the following:
 - a. Program description and implementation plan, including timelines;
 - b. Classroom facilities, equipment, and instructional tools available; and
 - c. Standardized curriculum.
 - 9. An affidavit executed by a program coordinator of a Medicare or Medicaid certified long-term care facility, affirming that the program does not require a nursing assistant student to pay a fee for any portion of the program.
- C.** Following receipt and review of a complete application packet, the Board shall schedule an on-site evaluation of the program.
- D.** A program shall not enroll students prior to receiving program approval.
- E.** The Board shall grant initial approval to any applicant who meets the criteria set forth in R4-19-801 and R4-19-802 and if approval is in the best interest of the public. If the Board denies approval, an applicant may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6.

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R4-19-804. Renewal of Approval of Nursing Assistant Training Programs

- A.** A nursing assistant training program applying for renewal of approval shall submit an application packet to the Board prior to expiration of the current approval.
- 1.** The application packet shall include the following:
 - a.** Changes in the program description since previous approval;
 - b.** Names and qualifications of current faculty;
 - c.** Changes in course curriculum since previous approval;
 - d.** Number of classes held within the past 2 years;
 - e.** Changes in resources, contracts, and clinical facilities in use since previous approval; and
 - f.** Copy of current student program evaluation forms.
 - 2.** Following receipt and review of a complete application packet, the Board shall schedule an on site evaluation of the program.
- B.** Following an on site evaluation, the Board shall renew program approval for 2 years if a program meets the criteria set forth in R4-19-801 and R4-19-802 and if renewal is in the best interest of the public.
- C.** If the Board denies approval, a program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6.

R4-19-805. Deficiencies and Rescission of Program Approval, Voluntary Termination, and Reinstatement

- A.** Deficiencies and rescission of approval
- 1.** Upon determining that a nursing assistant training program does not comply with R4-19-801 or R4-19-802, the Board shall provide the program coordinator with a written notice of deficiency. The Board shall establish a reasonable period of time, based upon the number and severity of deficiencies, to correct the deficiencies. No period for correction of deficiencies shall exceed 3 months after the date of graduation of the next training class.
 - a.** Within 10 days from the date of service of the notice of deficiency, the program coordinator shall file a plan of correction with the Board.
 - b.** The program shall be subject to periodic evaluations by the Board during the period of correction to determine whether the program has corrected the deficiencies.
 - 2.** The Board shall rescind the approval of a nursing assistant training program for any of the following reasons:
 - a.** Failure to file a plan of correction with the Board within 10 days of service of a notice of deficiency.
 - b.** Failure to comply with R4-19-801 or R4-19-802 within the time period set by the Board in the notice of deficiency;
 - c.** Noncompliance with federal, state, or if applicable, private postsecondary requirements;
 - d.** Failure to permit a scheduled or unannounced on-site evaluation authorized by subsection R4-19-801(D); or
 - e.** Failure to conduct at least 1 program during a 2-year period.
 - 3.** A program that has its approval rescinded may request a hearing by filing a written request with the Board within 30 days of service of the Board's order rescinding approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6.
- B.** Voluntary termination
- 1.** The program coordinator shall submit written notification to the Board when a decision is made to voluntarily terminate a nursing assistant training program.
 - 2.** The program coordinator shall maintain the nursing assistant training program, including the instructors, until the last student is transferred or has completed the nursing assistant training program.
- C.** Reinstatement
- 1.** Any nursing assistant training program that has its approval rescinded may apply for reinstatement of the program by meeting the requirements of R4-19-803.
 - 2.** An application packet shall be submitted in writing and shall contain all of the information and documentation required to be submitted in subsection R4-19-803(B). The application packet shall contain or have attached substantial evidence that the basis for rescission has been removed and that reinstatement of the program is in the best interest of the public.
 - 3.** The Board shall reinstate a nursing assistant training program that meets the requirements of R4-19-803. A program that is denied reinstatement may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying reinstatement. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6.

R4-19-806. Nursing Assistant Certification by Examination

- A.** An applicant for certification by examination shall submit the following information and documentation to the Board:
- 1.** An application packet that contains the following information or documentation:
 - a.** Full name;
 - b.** Current address, including county of residence, and telephone number;

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- c. Date of birth;
 - d. Social security number;
 - e. Educational background, including the names of educational institutions attended, dates of graduation, and degree received, if applicable;
 - f. Current employer, including address and telephone number, type of position, and dates of employment;
 - g. A listing of all states in which the applicant is or has been registered as a nursing assistant and the certificate number, if any;
 - h. Responses to questions addressing the following subjects:
 - i. Prior disciplinary action on a license or certificate authorizing practice in any occupation,
 - ii. Pending investigation or disciplinary action on a nursing license or nursing assistant certificate,
 - iii. Pending criminal charges,
 - iv. Prior misdemeanor or undesignated offense conviction,
 - v. Prior felony conviction and date of absolute discharge of sentence,
 - vi. Use of chemical substances in a way that may limit the ability to practice in a health care profession, and
 - vii. Prior civil judgment resulting from malpractice or negligence in connection with practice in a health care profession.
 - i. A sworn statement under oath by the applicant verifying the truthfulness of the information provided by the applicant.
2. Proof of satisfactory completion of a nursing assistant training program that meets the requirements of subsection (B), such as a certificate, transcript, or letter;
3. One or more fingerprint cards, if required by A.R.S. § 32-1606; and
4. Applicable fees.
- B.** An applicant for certification as a nursing assistant shall meet both of the following:
- 1. Satisfactory completion of an approved training program in Arizona or a program in another state or territory of the United States that meets the requirements of subsection R4-19-802(B).
 - 2. Passing score on the written and manual skills examinations or a passing score on the written examination and proof of a valid nursing license or proof of graduation from an approved nursing program.
- C.** An applicant who fails either the written or manual skills examination may retake the examination 2 additional times within 2 years from the date of completion of the nursing assistant training program.
- D.** An applicant who fails either the written or manual skills examination 3 times or who does not pass an examination within the time period specified in subsection (C) shall repeat and satisfactorily complete a training program before being permitted to retake an examination.
- E.** The Board shall certify an applicant who meets the criteria in this Article if certification is in the best interest of the public.
- F.** An applicant who is denied nursing assistant certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 6 and 4 A.A.C. 19, Article 6.

R4-19-807. Nursing Assistant Certification by Endorsement

- A.** An applicant for nursing assistant certification by endorsement shall submit all of the information, documentation, and fees required in R4-19-806.
- B.** An applicant for nursing assistant certification by endorsement shall meet the criteria in subsection R4-19-806(B)(1) and:
- 1. Be listed as active on a nursing assistant register or a substantially equivalent register by another state or territory of the United States; and
 - 2. Meet 1 of the following:
 - a. Currently is working in nursing, performing nursing-related activities, or working in the job description of a certified nursing assistant;
 - b. Has worked in nursing, performed nursing-related activities, or worked in the job description of a nursing assistant within the past 2 years; or
 - c. Has completed a nursing assistant training program and passed the required examination within the past 2 years.
- C.** The Board shall certify an applicant who meets the criteria in this Article if certification is in the best interest of the public.
- D.** An applicant who is denied nursing assistant certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 6 and 4 A.A.C. 19, Article 6.

R4-19-808. Temporary Certificate

- A.** Subject to subsection (B), the Board shall issue a temporary nursing assistant certificate to an applicant who desires to work as a certified nursing assistant if the applicant lacks a state criminal history as verified in a report issued by the Arizona Department of Public Safety and the applicant:

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1. Is qualified under:
 - a. A.R.S. § 32-1645 or § 32-1648, and
 - b. R4-19-806 or R4-19-807; and
 2. If seeking certification by endorsement:
 - a. Has filed an application for certification by endorsement within 30 days of hire by a Medicare or Medicaid certified long-term care facility.
 - b. Has been employed by the same Medicare or Medicaid certified long-term care facility for 75 to 100 days, and
 - c. Has submitted documents or an official statement from another state verifying that the applicant has a current certificate or equivalent document from that state; or
 3. If seeking certification by examination:
 - a. Has submitted an application within 30 days of hire by a Medicare or Medicaid certified long-term care facility, and
 - b. Has been employed by the same Medicare or Medicaid certified long-term care facility for 75 to 100 days, and
 4. Pays applicable fees.
- B.** An applicant who discloses a disciplinary charge or substantiated complaint, criminal conviction, chemical dependency, pending disciplinary charge or substantiated complaint by a regulatory agency, or malpractice claim is not eligible for a temporary certificate without prior Board approval.
- C.** Unless extended for good cause under subsection (D), a temporary certificate is valid for a maximum of 2 months.
- D.** A temporary certificate holder may apply and the Board or the Executive Director shall grant an extension for good cause. Good cause means reasons beyond the control of the temporary certificate holder, such as unanticipated delays in obtaining information required for nursing assistant certification.

R4-19-809. Nursing Assistant Renewal

- A.** A certified nursing assistant applying for renewal of certification shall submit an application packet to the Board on or before the expiration date of certification.
1. The application packet shall include the following:
 - a. Full name;
 - b. Current address, including county of residence, and telephone number;
 - c. Date of birth;
 - d. Current employer;
 - e. Whether the applicant, if not employed in nursing, performing nursing related activities, or working in the job description of a certified nursing assistant, has completed a Board approved nursing assistant training program and passed the written and manual skills examinations within the past 2 years;
 - f. Responses to questions addressing the following subjects:
 - i. Disciplinary action on a license or certificate authorizing practice in any occupation since certified or last renewed.
 - ii. Pending investigation or disciplinary action on a nursing license or nursing assistant certificate since certified or last renewed.
 - iii. Pending criminal charges since certified or last renewed.
 - iv. Misdemeanor or undesignated offense conviction since certified or last renewed.
 - v. Felony conviction and date of absolute discharge of sentence since certified or last renewed.
 - vi. Use of chemical substances in a way that may limit the ability to practice in a health care profession since certified or last renewed, and
 - vii. Civil judgment resulting from malpractice or negligence in connection with practice in a health care profession since certified or last renewed.
 - g. A sworn statement under oath by the applicant verifying the truthfulness of the information provided by the applicant.
 2. Documentation of proof of employment, such as a pay stub, W-2 form, or letter from an employer that validates the applicant's employment as a nursing assistant or the applicant's performance of nursing related activities within the past 2 years, and
 3. Applicable fees.
- B.** The certificate of a nursing assistant who fails to renew shall expire on the certificate holder's birthdate.
1. A nursing assistant's responsibility to renew is not relieved by the nursing assistant's failure to obtain an application.
 2. A nursing assistant who fails to renew shall not work as a certified nursing assistant.
 3. The Board shall impose a late fee on any nursing assistant who fails to renew certification in a timely manner.

R4-19-810. Nursing Assistant Register

- A.** The Register shall include the following information for each individual who has successfully completed a Board-approved nursing assistant training program:
1. Full name and any other names used;

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2. Home address;
 3. County of residence;
 4. Date of birth;
 5. Social security number;
 6. The date of initial placement on the register;
 7. Dates and results of written and manual skills examinations;
 8. Date of expiration of current certificate, if applicable;
 9. Existence of pending investigation, if applicable; and
 10. Status of certificate, such as active, denied, expired, or revoked, if applicable.
- B.** The Register shall include the following information for each individual who has been disciplined by the Board or sanctioned by the United States Department of Health and Human Services or the Arizona Department of Health Services:
1. Disciplinary action by the Board:
 - a. Type of action, and
 - b. Date of action.
 2. Sanctions by the United States Department of Health and Human Services:
 - a. Date excluded,
 - b. Nature of exclusion, and
 - c. Length of exclusion.
 3. Complaints substantiated by the Arizona Department of Health Services under the Omnibus Reconciliation Act, 42 C.F.R. § 483.150 et seq.:
 - a. Documentation of investigation,
 - i. Nature of allegation, and
 - ii. Evidence supporting allegation;
 - b. Date of hearing, if any, or date complaint substantiated; and
 - c. Statement disputing the allegation, if any.

R4-19-811. Application for Duplicate Certificate

- A.** A certified nursing assistant shall report a lost or stolen certificate to the Board within 30 days of discovery of the loss.
- B.** A certified nursing assistant shall make a written request for a duplicate certificate to the Board, provide a notarized signature or proof of identification, and pay the applicable fee.

R4-19-812. Change of Name or Address

- A.** A certified nursing assistant, who has legally changed the nursing assistant's name, shall notify the Board in writing within 30 days of the name change. The nursing assistant shall submit a copy of the official document evidencing the name change.
- B.** A certified nursing assistant shall notify the Board within 30 days of any address change.

R4-19-813. Performance of Nursing Assistant Tasks

- A.** A nursing assistant may perform the following:
1. Tasks for which the nursing assistant has been trained through a basic curriculum as identified in R4-19-802, and
 2. Tasks learned through inservice or educational training if the task meets the following criteria and the nursing assistant has demonstrated competence:
 - a. The task can be safely performed according to clear, exact, and unchanging directions;
 - b. The task poses minimal risk for the client and the consequences of performing the task improperly are not life-threatening;
 - c. The results of the task are reasonably predictable; and
 - d. Assessment, interpretation, or decision-making is not required during the performance or at the completion of the task.
- B.** A nursing assistant may not perform any task requiring judgment based on nursing knowledge, such as the administration of medications.
- C.** A nursing assistant who accepts a client assignment is responsible for the following:
1. Recognizing the nursing assistant's personal knowledge, skills, and abilities;
 2. Recognizing the legal aspects of nursing assistant practice;
 3. Informing the nurse or person authorized to delegate the task about the nursing assistant's ability to perform the assigned task prior to accepting the assignment;
 4. Accepting delegation, instruction, and supervision from the professional or practical nurse or the person authorized to delegate the task;
 5. Acknowledging accountability for personal actions in completing the assignment accepted;
 6. Following the client's plan of care, if available;
 7. Observing, reporting, and recording signs, symptoms, and changes in the client's condition in an ongoing and timely manner; and

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8. Retaining responsibility for the assigned task without delegating it to another person.

R4-19-814. Standards of Conduct for Nursing Assistants

For purposes of A.R.S. §32-1601, a practice that is or might be harmful or dangerous to the health of a patient or the public includes the following:

1. Leaving an assignment or abandoning a client requiring immediate care without properly notifying appropriate supervisory personnel;
2. Failing to document care and treatment provided to clients;
3. Failing to follow an employer's policies and procedures designed to safeguard the client;
4. Failing to take action to protect a client whose safety or welfare is at risk from potential or actual incompetent health care practice, or to report the practice to the appropriate authorities;
5. Failing to report signs, symptoms, and changes in client conditions to the appropriate individual in an ongoing and timely manner;
6. Failing to respect client rights and dignity;
7. Violating a client's right of privacy, disclosing confidential information, or knowledge concerning a client, unless required by law to disclose the information;
8. Neglecting or abusing a client physically, verbally, emotionally, or financially;
9. Engaging in sexual misconduct or boundary violations with a client;
10. Soliciting, borrowing, or removing property or money from a client, a client's family, a client's residence, or employer;
11. Using or being under the influence of alcoholic beverages, intoxicants, over-the-counter drugs, prescription drugs, or controlled drugs to the extent that judgment may be impaired and practice detrimentally affected while on duty in any work setting;
12. Assuming client care tasks for which the nursing assistant lacks the education or competence to perform;
13. Removing without authorization narcotics, drugs, supplies, equipment, or medical records from any work setting;
14. Obtaining, possessing, using, or selling any narcotic, controlled substance, or illegal drug in violation of any federal or state criminal law, or in violation of the policy of any employer;
15. Permitting or assisting another person to use the nursing assistant's certificate for any purpose;
16. Making untruthful or misleading statements to advertise the individual's practice as a certified nursing assistant;
17. Threatening, harassing, or exploiting an individual;
18. Using violent or abusive behavior in any work setting;
19. Failing to cooperate with the Board during an investigation;
20. Failing to cooperate with the Board by not responding to a Board subpoena; and
21. Practicing in any other manner that gives the Board reasonable cause to believe that the health of a client or the public may be harmed.

R4-19-815. Reinstatement or Issuance of a Nursing Assistant Certificate

An applicant whose application is denied or a nursing assistant whose certificate is revoked in accordance with A.R.S. § 32-1663, may reapply to the Board after a period of 5 years from the date the certificate or application is revoked or denied. A nursing assistant who voluntarily surrenders a nursing assistant certificate may reapply to the Board after no less than 3 years from the date the certificate is surrendered. The Board shall issue or reinstate a nursing assistant certificate under the following terms and conditions:

1. An applicant shall submit documentation showing that the basis for denial, revocation or voluntary surrender has been removed and that the issuance or reinstatement of nursing assistant certification will no longer constitute a threat to the public health or safety. The Board may require an applicant to be tested for competency, or retake and successfully complete a Board approved training program and pass the required examination.
2. The Board shall consider the application and may designate a time for the applicant to address the Board at a regularly scheduled meeting.
3. After considering the application, the Board may:
 - a. Grant nursing assistant certification, or
 - b. Deny the application.
4. An applicant who is denied issuance or reinstatement of nursing assistant certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying issuance or reinstatement of nursing assistant certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 6.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

PREAMBLE

1. **Sections Affected**
R4-46-202
2. **The specific authority for the rulemaking, including the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 32-3605 (A) & (B) (3)
Implementing statute: A.R.S. § 32-3613 (B)
3. **The effective date of the rules:**
February 3, 2000
4. **A list of all previous notices appearing in the Register addressing the final rules:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 1123, April 16, 1999
Notice of Proposed Rulemaking: 5 A.A.R. 2423, July 30, 1999
5. **The name and address of agency personnel with whom persons may communicate regarding the rules:**
Name: Edward C. Logan
Address: Board of Appraisal
1400 W. Washington, Suite 360
Phoenix, Arizona 85007
Telephone: (602) 542-1539
Fax: (602) 542-1598
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**
The Board is amending R4-46-202 to establish 18 months as the minimum calendar time for applicants to gain the required 2,000 hours of apprentice experience for the State *Licensed* Real Estate appraiser classification. This requirement supplements the Appraiser Qualification Criteria, February 16, 1994 published by The Appraiser Qualifications Board (AQB) of the Appraisal Foundation, which does not specify the calendar time to achieve the 2,000 hours for this classification. The AQB criteria do specify minimum calendar times for gaining experience in the two higher appraiser classifications, i.e., 2 years for 2,500 hours for State Certified Residential Real Estate Appraisers; and, 2 1/2 years for 3,000 hours for State Certified General Real Estate Appraisers.

This rule amendment is an outgrowth of the Board's repeated experiences, through its Application Review Committee, with a trend towards poorly equipped applicants who have accelerated completion of the 2,000 hours to within 1 calendar year to become licensed as soon as possible and then learn on the job. This approach inappropriately compresses the time for absorption of the knowledge needed to become a competent appraiser. It is inconsistent with the intent of the law, which requires the minimum criteria to be achieved before licensing. Continuing to license under-trained appraisers fails to protect the public interest.
7. **A reference to any study the agency relied on in its evaluation of or justification for the final rule and where the public may obtain or review the study, all data underlying the study, and analysis or review of the study and other supporting material.**
The Board reviewed its roster of Licensed Real Estate Appraisers; compiled a listing of licensed appraisers against whom complaints were filed correlated to months of apprentice experience; contacted the federal Appraisal Subcommittee and the Appraisal Foundation's Appraisal Qualification Board; and, surveyed other states' statutes and rules with regard to the time required for applicants to achieve the required 2,000 hours experience. This information is available at the Arizona Appraisal Board of Appraisal staff office located at 1400 West Washington, Suite 360, Phoenix, Arizona 85007.
8. **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
9. **The summary of the economic, small business, and consumer impact:**
Applicants for the State *Licensed* Real Estate Appraiser license shall now meet an extended time requirement of 6 more months of apprenticeship to enter the appraisal profession. Current practice allows the required 2,000 hours to be achieved in 1 year or less. The economic impact on the apprentice appraiser and their small business mentors

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depends on the salary or fee arrangements among them, if any, over the apprentice period. Whereas apprentices can command higher fees as soon as they are licensed, these financial advantages can be more than offset if new licensees are unmarketable due to poor skills, or receive complaints from the public due to incompetency. The new licensee can lose time and money responding to these deficiencies and could lose the license. There will be a positive economic impact on small businesses and consumers associated with the appraisal industry because costs to re-accomplish poor appraisals can be avoided.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules:

There were no changes to the proposed rule. However, the Preamble was changed and clarified. The Preamble now includes: the specific licensing classification involved, which is State *Licensed* Real Estate Appraiser; the reason the 18-month apprentice process is needed, which is to ensure adequate training time is provided for the trainee to complete 2,000 hours and achieve not less than the minimal competency for licensing; and, more detail on the economic impact. In addition various grammatical changes were made to improve clarity and consistency. These include those suggested by the Governor's Regulatory Review Council.

11. A summary of the principal comments and the agency response to them:

Public Comment:

The Board received no written comments from the public. There was one oral comment. A recent licensee stated before the Board that the 18-month requirement was excessive and that a 12-month requirement was preferable. After the public comment period closed, the Board received one other similar comment, by telephone.

Agency Response:

The Board's Application Review Committee makes a substantive determination as to the breadth and depth of an applicant's experience from information on the required experience log, in sample appraisal reports, and if necessary by interviewing the applicant. Based on the Committee's review of hundreds of applications, it appears that applicants follow a trend whereby they present a log showing completion of the 2,000 hours of experience in as few months as possible in order to enter the profession quickly.

This causes gaps in training, a high failure rate for applicants taking the exam the first time, and incompetency. Applicants called before the Committee and the full Board to explain their apprentice experience, or to answer complaints after licensing, have shown themselves to be poorly equipped to enter the appraisal profession. This unfavorable trend is a factor the Board can adjust through the rulemaking process and monitor for positive progress.

The Board has received strong support for this rule amendment from local professional appraisal organizations and coalitions, and various appraisers. The spirit of the law is to train appraisers for the career they have chosen and license them at the minimum level of competence. It is in the best interest of the apprentice applicant and the public that adequate time be given for learning to take place and for competency to be achieved.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

ARTICLE 2. LICENSING AND CERTIFICATION

Section

R4-46-202. Application for License or Certificate

ARTICLE 2. LICENSING AND CERTIFICATION

R4-46-202. Application for License or Certificate

- A.** An applicant for a state license or certificate shall submit a completed application accompanied by the appropriate application fee. After the application has been filed, fees are non-refundable except as required by A.R.S. § 41-1077.
- B.** To be eligible for a license or certificate an applicant shall:
1. Meet the qualification criteria contained in A.R.S. Title 32, Chapter 36, Article 2 and these rules;
 2. Achieve a passing score on the applicable examination required by R4-46-204(D), unless exempted under A.R.S. § 32-3626;

3. Pay all required application and examination fees;
4. Pay the biennial federal registration fee; and
5. Comply with the requirements of A.R.S. § 32-3611.

C. In addition to the requirements listed above in subsection (B), an applicant for licensure shall demonstrate 2,000 hours of experience earned in not less than 18 months.

C.D. An applicant shall meet all requirements for a license or certificate within 1 year of filing the application or the applicant's file will be closed and the applicant shall reapply, meeting the requirements of subsections R4-46-202(B) and (C). The Board shall notify an applicant whose application has been closed by certified mail or personal service at the applicant's last known address of record. Notice is complete upon deposit in the U.S. mail or by service as permitted under the Arizona Rules of Civil Procedure.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION MOTOR VEHICLE DIVISION

PREAMBLE

1. Sections Affected:

R17-4-435
R17-4-435.01
R17-4-435.02
R17-4-435.03
R17-4-435.04
R17-4-435.05
R17-4-435.06

Rulemaking Action:

Amend
Amend
Amend
Amend
Amend
Amend
New Section

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. § 28-366

Implementing statute: A.R.S. § 28-5204

3. The effective date of the rules:

February 1, 2000

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 3 A.A.R. 3748, December 26, 1997

Notice of Proposed Rulemaking: 4 A.A.R. 2912, October 9, 1998

Notice of Supplemental Proposed Rulemaking: 5 A.A.R. 854, March 26, 1999

Notice of Public Information: 5 A.A.R. 4329, November 12, 1999

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

Name: George R. Pavia, Hearing Officer II

Address: 3737 North Seventh Street, Suite 160
Phoenix, Arizona 85014

Telephone: (602) 712-8446

Facsimile: (602) 241-1624

E-Mail: gpavia@dot.state.az.us

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

The Motor Vehicle Division is amending the rules to adopt the October 1, 1996 edition of Title 49 of the Code of Federal Regulations. Specifically, the Division is adopting Subtitle B - Other Regulations Relating to Transportation, Chapter B - Federal Motor Carrier Safety Regulations, Parts 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399. The existing rule adopted the October 1, 1993 edition of the Code of Federal Regulations.

As a participant in the Motor Carrier Safety Assistance Program, Arizona has agreed to adopt and maintain rules consistent with the Federal Motor Carrier Safety Regulations. The Departments of Transportation and Public Safety have certified, in the State Enforcement Plan, that the state will adopt and enforce the Motor Carrier Safety Regulations as required by the provisions of the Motor Carrier Safety Assistance Program as specified in the Code of Federal Regulations, Title 49, Parts 350 and 355.

The amendments to the rules are necessary to update the Motor Vehicle Division's rules governing motor carrier safety. Modifications to the text incorporated by reference are intended only to make the language consistent with state terminology and are not intended to make any change to the content.

7. A reference to any study that the agency relied on in its evaluation of or justification for the final rules and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

8. 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

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

There are two changes that will have an economic impact on intrastate motor carriers.

I. 49 CFR 40 and 49 CFR 382 are incorporated to require intrastate motor carriers to implement commercial driver drug and alcohol testing programs identical to the drug and alcohol testing programs interstate carriers have been required to implement and administer for many years.

Arizona law enforcement agencies, particularly the Department of Public Safety, strongly support implementation of 49 CFR 40 and 49 CFR 382 because the drug and alcohol testing provisions prescribed in the federal regulations cannot be enforced by local law enforcement agencies until those provisions are adopted as a state rule.

Because the proposed drug and alcohol testing provisions must be implemented by the affected motor carriers themselves rather than by the state, it is not anticipated that certification of 49 CFR 40 and 49 CFR 382 will have an economic impact on the state or any state agency. It is not believed that the proposed provisions are in conflict with any existing statutes involving the illegal use of drugs or alcohol.

Because motor carriers will administer the drug and alcohol testing provisions there will be an obvious economic impact on affected intrastate carriers. This impact, however, will be no greater than the impact on interstate carriers who are currently required to implement drug and alcohol programs.

Further, the Division believes the positive impact on highway and public safety anticipated by the ability to enforce commercial driver drug and alcohol testing provisions clearly outweighs the cost of the rules.

II. The proposed amendments implement an intrastate pilot program which allows qualified individuals who are insulin dependent to be issued commercial driver licenses.

It is believed that this pilot program will affect approximately 200 potential applicants statewide who will become eligible to be employed as commercial drivers. The positive economic impact for these potential commercial licensees who have not previously been eligible for employment as commercial drivers is obvious.

A person whose commercial driver license was withdrawn when the person failed to meet commercial driver licensing medical standards because of an insulin-dependent diabetic condition recently sued the State of Arizona. The lawsuit involved an allegation that the license withdrawal action violated the Americans With Disabilities Act (ADA).

Because the State of Arizona and the Motor Vehicle Division are committed to absolute compliance with the ADA, this lawsuit was settled. As part of the settlement, the Motor Vehicle Division agreed to initiate the Insulin-Dependent Pilot Program set forth in the proposed amendments. The Division entered into the settlement for 2 reasons:

Compliance with the ADA is right, and

Non-compliance exposes the state and its citizens to potentially large damages.

Approximately 14 states have initiated similar pilot programs. No accident data from any jurisdictions with a pilot program indicates insulin-dependent diabetic commercial drivers create a highway safety problem.

The Motor Vehicle Division anticipates no negative impact on highway safety. Therefore, the positive economic impact to potential commercial licensees who will be able to seek employment as drivers clearly outweighs the potential negative economic impact on the state and its citizens from possible violation of the ADA.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

1. Globally, extensive modifications of the Notice of Supplemental Proposed Rulemaking were made in grammar, syntax, word selection, punctuation, word wrap, sentence level word order, and outline hierarchy. All changes covered under this point are structural and are intended to align the rule with current Arizona administrative rule regulatory standards. Substance is not affected.

2. The text of the 1993 49 CFR sections published in the Arizona motor carrier safety rules is updated to reflect changes by the U.S. Department of Transportation to the 1996 version of 49 CFR. These changes are not substantial and align the Arizona rules with the updated language of the federal regulations.

3. A definition of "Commercial driver license" or "CDL" was added to R17-4-435(B) for clarity.

4. The Notice of Supplemental Proposed Rulemaking contains superfluous recommended language changes. The Notice of Final Rulemaking reinstates the original language appearing in the Notice of Proposed Rulemaking and Code of Federal Regulations for the following sections:

R17-4-435.01 (A)(1) "shall be applicable" is restored to read "are applicable."

R17-4-435.01 (E)(1) "shall not apply" is restored to read "do not apply."

R17-4-435.02 (C) (2) "The applicant" is restored to read "The driver applicant."

5. In R17-4-435.02, the provision for deleting 49 CFR 391.2 exceptions for "exempt intracity zone drivers is stricken from the Notice of Final Rulemaking. This is to bring Arizona's rule in line with the 1996 version of 49 CFR which has completely deleted the provision (paragraph d) which was present in the 1993 49 CFR. The remaining R17-4-435.02 subsections are accordingly re-lettered.

6. In response to public comment both in writing and orally at the public hearing conducted on April 26, 1999, the words "for hire" in R17-4-435.01(B)(1)(b) which exist in the current (1993) rule, but were deleted in both the Notice of Proposed Rule Making and Notice of Supplemental Proposed Rulemaking, are reinstated to the Notice of Final Rulemaking. The Department of Public Safety originally requested deletion of the words "for hire." In response to objections by the regulated community that the change would have significant negative economic and environmental impacts, the Department of Public Safety withdrew its request. There is no net change with respect to the clause "for hire" in R17-4-435.01(B)(1)(b).

7. In both the Notice of Proposed Rulemaking and the Notice of Supplemental Proposed Rulemaking, the phrase "in an amount requiring marking or placarding" was struck from R17-4-435.01(B)(1)(c). The stricken language was reinstated in the Notice of Final Rulemaking under advice from the Department of Public Safety. Requiring no marking or placarding for hazardous materials transported below specified benchmark amounts, is preferable as less regulatory to the general public and accordingly bears less negative economic impact on state citizens.

8. In R17-4-435.03, clerical changes were made to the Division's amendment of 49 CFR 382.115. The changes clarify the Division's amendment of the federal regulation.

9. In R17-4-435.04, provision for amendment to 49 CFR 392.30 was deleted altogether. The amendment was appropriate for the 1993 49 CFR incorporation by reference. The 1996 49 CFR has completely eliminated § 392.30. It is not, therefore necessary or possible to amend non-existent language. A.R.S. § 28-922 covers Arizona's requirement for moving vehicles to have lighted lamps from sunset to sunrise. The striking of this section in the Notice of Final Rulemaking did not previously appear in the Notice of Supplemental Proposed Rulemaking. Rule outline hierarchical lettering is modified to reflect the change.

10. The insulin-dependent commercial driver license waiver pilot study program was originally included in R17-4-435.02 in the Notice of Proposed Rulemaking. For clarity purposes, the pilot study was separated under its own section, R17-4-435.06. Additionally, text blocks were rearranged to facilitate logical flow and cross references were incorporated from R17-4-435.02 constituting standard required driver qualifications for insulin-dependent applicants as well.

11. A statutory citation was included in R17-4-435.06 to clarify the definition of "serious traffic violation."

12. In R17-4-435.06(F)(4), reference to the "last 3 year period" was moved into the Subsection leader to make the provision applicable to all requirements under subsection (4).

11. A summary of the principal comments and the agency response to them:

A concerned member of the regulated community inquired whether a primary care physician could be consulted in lieu of an endocrinologist to meet the insulin-dependent pilot program requirements under Subsection (E). The issue was raised as a matter of expediency for the potential benefit of waiver seeking persons residing in rural areas who might not have easy access to certified endocrinologists. The agency responded in the negative. Only a certified endocrinologist's reporting of examination and test results would be acceptable for valid waiver application.

An Arizona utility company raised an objection to proposed omission of the words "for hire" in R17-4-435.01 (B)(1)(b) as restrictive to the company's program of internal medical examination and certification of intrastate drivers. The agency responded that the deletion of the words "for hire" under this Subsection would not be incorporated into this rulemaking.

The above were the only public comments received.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

R17-4-435 incorporates by reference the October 1, 1996 edition of Title 49 of the Code of Federal Regulations, Parts 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399.

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION

ARTICLE 4. MOTOR CARRIERS

Section

- R17-4-435. Motor Carrier Safety: Adoption of Federal Regulations; Definitions; Application
- R17-4-435.01. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General Applicability and Definitions; General Requirements and Information
- R17-4-435.02. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers
- R17-4-435.03. Motor Carrier Safety: 49 CFR 382 - Controlled Substances and Alcohol Use and Testing ~~49 CFR 391 Subpart H - Controlled Substance Testing~~
- R17-4-435.04. Motor Carrier Safety: Amendments to 49 CFR 392 ~~and 397~~
- R17-4-435.05. Civil Penalties
- R17-4-435.06. Insulin-dependent Commercial Driver License Waiver Pilot Study Program

ARTICLE 4. MOTOR CARRIERS

R17-4-435. Motor Carrier Safety: Adoption of Federal Regulations; Definitions; Application

- A. The ~~Motor Vehicle~~ Division adopts 49 CFR ~~40, 382,~~ 390, 391, 392, 393, 395, 396, 397, and 399 published October 1, ~~1996, 1993~~ (and no later amendments or editions), incorporated by reference and on file with the Federal Highway Administration, Office of Motor Carriers, the Division, and the Office of the Secretary of State, as amended by ~~these rules~~ R17-4-435 through R17-4-435.06.
- B. The following definitions apply for purposes of R17-4-435 through R17-4-435.06 unless indicated otherwise. ~~Definitions:~~
 - 1. "Bureau of Motor Carrier Safety" means the United States Department of Transportation.
 - 2. "Co-applicant" means an employer or potential employer.
 - 3. "Commercial driver license" or "CDL" has the meaning prescribed in A.R.S. § 28-3001 (2).
 - 4. ~~3-~~"Division" or "MVD" means the Motor Vehicle Division, Arizona Department of Transportation.
 - 5. ~~4-~~"Division Director" means the Assistant Director of the Arizona Department of Transportation for the Motor Vehicle Division or the Assistant Director's designated agent.
 - 5. ~~"Waiver Board" means 4 individuals appointed by the Division Director to make recommendations on applications for intrastate waivers.~~
 - 6. "49 CFR" means Title 49, Code of Federal Regulations.
- C. ~~Application.~~ The regulations of 49 CFR, incorporated by subsection (A), apply as amended by R17-4-435.01 through R17-4-435.06 to:
 - 1. Motor Carriers as defined in A.R.S. § 28-~~5201~~ 2401 except motor carriers transporting passengers for hire in a vehicle with a design capacity of 6 or fewer persons ~~individuals~~.
 - 2. All vehicles owned or operated by the state, a political subdivision, or a public authority of the state, which are used to transport hazardous materials in an amount requiring the vehicle to be marked or placarded as prescribed in ~~pursuant to~~ R17-4-436.

R17-4-435.01. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General Applicability and Definitions; General Requirements and Information

49 CFR 390, as incorporated in these rules, is amended as follows:

A. ~~49 CFR 390.3 General applicability-~~ is amended as follows:

1. ~~a-~~ Paragraph (a) is amended to read:

The regulations adopted in this rule are applicable to all motor carriers operating in Arizona and all vehicles owned or operated by the state, a political subdivision, or a public authority of the state, which are used to transport hazardous materials in an amount requiring the vehicle to be marked or placarded as prescribed in ~~pursuant to~~ R17-4-436.

2. ~~b-~~ Paragraph (~~c~~ b) is amended by adding the following sentence at the end of the paragraph:

In addition to the requirements specified in 49 CFR 383, motor carrier drivers domiciled in Arizona who operate Commercial Motor Vehicles as defined in A.R.S. § 28-~~402~~ 3001 shall comply with the requirements of A.R.S. Title 28, Chapter 8 ~~Chapter 4~~ and any rules made promulgated under that Chapter.

3. ~~e-~~ Paragraph (~~d~~ e) is amended to read:

Motor carriers operating in Arizona in ~~the~~ furtherance of a commercial enterprise, shall comply with the financial responsibility requirements specified in A.R.S. Title 28, Chapter 9 ~~7~~, Article 2 ~~7~~, and 49 CFR 387.

- B.** ~~2-~~ 49 CFR 390.5 Definitions. The definitions listed in 49 CFR 390.5 are amended as follows:
- ~~1. a-~~ If the term “Commercial Motor Vehicle” or “CMV” is used in reference to the controlled substances and alcohol use and testing requirements of 49 CFR 382, the term has the meaning prescribed in 49 CFR 382. If the term “Commercial Motor Vehicle” or “CMV” is used in reference to the licensing requirements of either 49 CFR 383 or A.R.S. § 28-3001 402, the term has the meaning ~~set forth~~ at 49 CFR 383 or A.R.S. § 28-3001 402. If the term “Commercial Motor Vehicle” or “CMV” is not used in reference to the controlled substances and alcohol use and testing requirements of 49 CFR 382 or the licensing requirements of 49 CFR 383 or A.R.S. § 28-3001 402, the term means a self-propelled, motor-driven vehicle or vehicle combination, used on a public highway in this state in ~~the~~ furtherance of a commercial enterprise, which:
 - ~~a. i-~~ Has a gross vehicle weight rating (GVWR) as a single vehicle or a combination gross vehicle weight rating (CGVWR) of 18,001 ~~declared gross weight of 20,001~~ pounds or more; or
 - ~~b. ii-~~ Transports passengers for hire and has a design capacity of 7 or more persons ~~individuals~~; or
 - ~~c. iii-~~ Transports hazardous materials in an amount requiring marking or placarding as prescribed in ~~pursuant to~~ R17-4-436.
 - ~~2. b-~~ “Exempt intracity zone” is deleted from R17-4-435.01 through R17-4-435.04 and has no application in these rules.
 - ~~3. e-~~ “For-hire motor carrier,” “private motor carrier,” “private motor carrier of passengers (business)” and “private motor carrier of passengers (nonbusiness)” “private motor carrier of passengers,” and “private motor carrier of property” are deleted from R17-4-435.01 through R17-4-435.04 and the term “motor carrier” is used.
 - ~~4. d-~~ Combination gross vehicle weight rating (CGVWR) and gross vehicle weight rating (GVWR) have the meaning prescribed in 49 CFR 390.5, Definitions. “Gross combination weight rating” (GCWR) and “Gross vehicle weight rating” (GVWR) ~~mean declared gross weight as defined in A.R.S. § 28-206.~~
 - ~~5. e-~~ “Regional Director” means the Division Director.
 - ~~6. f-~~ “Special agent” means an officer or agent of the Department of Public Safety, the ~~Motor Vehicle~~ Division, or of a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona’s Motor Carrier Safety requirements.
 - ~~7. g-~~ “State” means a state of the United States and the District of Columbia.
- C.** ~~3-~~ 49 CFR 390.15 Assistance in investigations and special studies. Paragraph (a) is amended to read:
A motor carrier shall make all records and information pertaining to an accident available to a special agent upon request or as part of any inquiry within the time the request or inquiry specifies. A motor carrier shall give a special agent all reasonable assistance in the investigation of any accident including providing a full, true, and correct answer to any question of the inquiry.
- D.** ~~4-~~ 49 CFR 390.21 Marking of commercial motor vehicles. Paragraph (a) is amended to read:
This Section applies to all motor carrier vehicles operated in Arizona. A motor carrier ~~that is~~ not subject to the marking requirements of the U.S. Department of Transportation, shall mark its vehicles with the company name or business trade name and the city and state, the letters “AZ” and its Arizona Use Fuel/Motor Carrier account number. ~~No identification number marking shall be required for a motor carrier exempt from the Use Fuel/Motor Carrier License requirement.~~
- E.** ~~5-~~ 49 CFR 390.23 Relief from regulations.
- ~~1. a-~~ Paragraph (a) is amended to read:
The regulations contained in 49 CFR 390 through 397 do not apply to a motor carrier that is not subject to federal jurisdiction and that operates a commercial motor vehicle used or designated to provide relief during an emergency.
 - ~~2. b-~~ Paragraphs (a)(1), (a)(1)(A), (a)(1)(B), and (a)(1)(B)(ii) are deleted.
 - ~~3. e-~~ Paragraph (a)(2)(A) is amended as follows:
An emergency has been declared by a federal, state, or local government official having authority to declare an emergency; and
 - ~~4. d-~~ Paragraph (a)(2)(B) is amended as follows:
The Arizona Department of Public Safety, Special Services Region, determines ~~that~~ a local emergency exists that justifies an exemption from any or all of these Parts. If the Arizona Department of Public Safety, Special Services Region determines ~~that~~ relief from these regulations is necessary to provide vital service to the public, relief shall be granted with any restrictions the Arizona Department of Public Safety considers necessary.
 - ~~5. e-~~ Paragraph (b) is amended as follows:
“Interstate commerce” means in the furtherance of a commercial enterprise.
- F.** ~~6-~~ 49 CFR 390.25 Extensions of relief from regulations - emergencies is amended as follows:
A motor carrier seeking to extend a period of relief from these regulations shall obtain approval from the Arizona Department of Public Safety, Special Services Region. The motor carrier shall give full details of the additional relief requested. Taking into account the severity of the emergency and the nature of the relief services to be provided by the motor carrier, the Arizona Department of Public Safety shall extend a period of relief with any restrictions considered ~~deemed~~ necessary.
- G.** ~~7-~~ 49 CFR 390.27 Locations of regional motor carrier safety offices is amended to read:
To make a request for relief from these regulations, the motor carrier requesting relief shall contact the Arizona Department of Public Safety, Special Services Region, Telephone (602) 223-2212.

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R17-4-435.02. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers

49 CFR 391, as incorporated in these rules, is amended as follows:

1. 49 CFR 391.2 General exemptions. The exceptions for “exempt intracity zone drivers” in paragraph (d) are deleted.

A. 2-49 CFR 391.11 Qualifications of drivers. Paragraph (b)(1) is amended to read:

Is at least 21 years of age for interstate operation; and at least 18 years of age for operations restricted to intrastate transportation not involving the transportation of reportable quantities of hazardous substances, hazardous wastes required to be manifested, or hazardous materials in an amount requiring the vehicle to be marked or placarded as prescribed in ~~pur-~~
~~suant to~~ R17-4-436.

B. 3-49 CFR 391.49 Waiver of certain physical defects.

1. ~~a.~~ Paragraph (a) is amended by adding:

A person ~~An individual who is~~ not physically qualified to drive as prescribed in ~~under~~ 49 CFR 391.41(b)(1), (b)(2), (b)(3), or (b)(10) but who is otherwise qualified to drive a motor vehicle, may drive a motor vehicle in intrastate commerce if the Division Director grants ~~has granted~~ an intrastate waiver to the person ~~individual~~. Application for an intrastate waiver shall be submitted in accordance with subsection (C 4). If granted, an intrastate waiver shall be for a period not exceeding 2 years. A person ~~An individual~~ granted an intrastate waiver may transfer the intrastate waiver from an original employer to a new employer upon written notification to the Division Director stating the name of the new employer and the type of equipment to be driven.

2. ~~b.~~ Paragraph (b) is amended by adding:

To obtain an intrastate waiver, an applicant or an applicant and co-applicant shall submit a letter of application for an intrastate waiver of a physical qualification. The application shall be addressed to the Motor Vehicle Division, Medical Review Program, P.O. Box 2100, Mail Drop 818Z 531 M, Phoenix, Arizona 85001-2100. The ~~driver~~ applicant shall comply with all the requirements of 49 CFR 391.49 (c), “Waiver of certain physical defects”, except paragraphs (c)(1)(i) and (c)(1)(iii). The driver applicant shall respond to the requirements of 49 CFR 391.49 (c)(2)(ii) through (c)(2)(v), if the information is known.

3. ~~e.~~ Paragraph (c)(1)(iv) is amended to read:

A description of the driver applicant’s limb or visual impairment for which waiver is requested.

4. ~~d.~~ Paragraph (d)(3)(i) is amended to read:

The medical evaluation summary for a driver applicant disqualified as prescribed in ~~under~~ 49 CFR 391.41 (b)(1) or (b)(10) shall include:

5. ~~e.~~ Paragraph (d)(3)(i)(B) is amended by adding:

Or a statement by the examiner that an ~~the~~ applicant for an intrastate waiver has distant visual acuity of at least 20/40 (Snellen), with or without a corrective lens, in 1 eye; a field of vision of at least 70 degrees peripheral measurement in ~~in~~ ~~1 direction and 35 degrees in the other direction~~ of the horizontal meridian of the applicant’s dominant eye; and the ability to distinguish the colors of traffic signals and devices showing standard red, green, and amber.

6. ~~f.~~ Paragraph (d)(3)(iii) is added:

The medical evaluation for a driver applicant disqualified as prescribed in 49 CFR 391.41(b)(3) shall include the requirements found in 49 CFR 391.64.

7. ~~g.~~ Paragraph (j) is amended by adding:

A person with a distant visual acuity of less than 20/40 (Snellen), with or without a corrective lens, in 1 eye; a field of vision of less than 70 degrees peripheral measurement of the horizontal meridian of the person’s dominant eye; and the inability to distinguish the colors of traffic signals and devices showing standard red, green and amber, shall not transport any amount of hazardous materials required to be marked or placarded as prescribed in R17-4-436 nor operate a vehicle for the purpose of transporting passengers as prescribed in R17-4-435.

C. 4-Waiver procedures for intrastate drivers.

1. ~~a.~~ The Division Director shall appoint the Division’s Medical Review Officer to review requests for physical waivers. ~~review and approve or deny each waiver application.~~

i. ~~Appoint a Waiver Board consisting of the Division’s Driver Waiver Program Manager or designated alternate, the Division’s Medical Review Officer and 2 other individuals to consider requests for physical waivers; and~~

ii. ~~Approve or deny a physical waiver after consideration of the recommendation submitted by the Waiver Board.~~

2. The Medical Review Officer shall:

~~b. The Waiver Board shall:~~

~~i. Meet within not less than 20 or more than 30 days of receipt of an intrastate waiver application;~~

~~ii. Review an ~~the~~ application to ensure that all provisions of 49 CFR 391.49 are met;~~

~~iii. Take necessary testimony and accept documentation and information about ~~pertinent to the application~~ applications ;~~

~~iv. Ensure that a driver ~~drivers~~ applying for an intrastate waiver of the visual requirements:~~

~~i. (4)Has ~~Have~~ driven the type of vehicle to be operated as prescribed in ~~under~~ the waiver for at least 2 of the pre-~~

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- vious 5 years, and
- ii. ~~(2)~~ Will not transport passengers for hire or to transport reportable quantities of hazardous substances, hazardous wastes required to be manifested, or hazardous material required to be marked or placarded as prescribed in pursuant to R17-4-436;
 - v. ~~Submit a written recommendation to the Division Director to approve or deny the waiver; and~~
- d. ~~vi.~~ Notify the applicant by mail of:
- i. To contact the nearest CDL examiner to schedule a time to take the CDL pre-inspection, off-road, and on-road tests within 60 days from date of notice.
 - ii. Of the decision to approve or deny the waiver within 10 days of the decision.
 - (a) The date, time, and place of the review at least 5 days before the review; and
 - (b) The results of the Division Director's decision concerning approval or denial of the waiver within 10 days of the decision.
3. e. The applicant:
- i. ~~shall~~ shall submit an application to the Division as prescribed in pursuant to 49 CFR 391.49 (a), (b), (c) and (d) as amended by this rule; and
 - ii. May request a summary review or may appear in person or through counsel at the review.
4. ~~d.~~ Waiver form.
- a. ~~i.~~ The Division shall ensure that the waiver form shall reflect the terms, conditions, or limitations of the waiver.
 - b. ~~ii.~~ The Division shall maintain the original waiver form.
 - c. ~~iii.~~ The motor carrier shall retain a legible copy of the waiver form as long as the driver is employed as a driver and for 3 years thereafter.
 - d. ~~iv.~~ A driver granted to whom a waiver form has been granted shall keep have a legible copy of the waiver form in the driver's possession when driving a commercial motor vehicle.
5. e. Hearings and appeals. If the Division Director denies a waiver application, the applicant may request a hearing with the MVD Executive Hearing Office within 15 days from the date of the notice as prescribed in R17-4-901 through R17-4-912.
6. ~~d.~~ The Division Director may suspend for life the commercial vehicle operating privilege of any driver who, after issuance of a waiver as prescribed in this Section, fails to meet the conditions imposed by this Section, or is found to have committed a serious traffic violation as described under A.R.S. § 28-3312 (E) or is involved in a reportable accident related to the driver's medical condition.
7. e. The provisions of this Section are not valid if enforcement of these provisions would result in the loss of or the disqualification of federal funding for any state agency or program.
- D.** 5. Subpart F - Files and Records. 49 CFR 391.51 Driver qualification files. Paragraph (b)(2) is amended by adding the following text:
or the Division Director's Waiver Board's letter of notification, granting an intrastate waiver of physical disqualification, if a waiver is granted as prescribed in pursuant to this rule.
- E.** The following sections are deleted:
- 1. 49 CFR 391.68 Private motor carrier of passengers (nonbusiness).
 - 2. 49 CFR 391.69 Drivers operating in Hawaii.
 - 3. 6. Subpart G - Limited Exemptions 49 CFR 391.71 Intrastate drivers of commercial motor vehicles transporting Class 3 combustible liquids, exemptions in this Section are deleted.
 - 4. 49 CFR 391.73 Private motor carrier of passengers (business).
- R17-4-435.03. Motor Carrier Safety: ~~49 CFR 391 Subpart H - Controlled Substance Testing~~ 49 CFR 382 - Controlled Substances and Alcohol Use and Testing**
- A.** 49 CFR 382.103 Applicability. Paragraph (a)(1) is amended to read:
The commercial driver's license requirements of the State of Arizona.
- B.** 49 CFR 382.115 Starting date for testing programs. Paragraph (a) is amended to read:
The controlled substance and alcohol use and testing requirements commence for all motor carriers on the date this rule goes into effect.
- C.** Paragraphs (b) through (f) are deleted.
- A.** 49 CFR 391 as incorporated in these rules is amended as follows:
- 1. 49 CFR 391.81 Purpose and scope. Paragraph (b) is amended by deleting "Federal".
 - 2. 49 CFR 391.83 Applicability. Paragraph (a) is amended to read:
This subpart applies to all motor carriers as defined in A.R.S. § 28-2401, operating commercial motor vehicles as defined in subsection (3) of this rule.
 - 3. 49 CFR 391.85 Definitions. The definition for "Commercial motor vehicle" in this section is amended to read:
"Commercial motor vehicle" means a motor vehicle operated by a motor carrier which either:
 - a. Has a declared gross weight of 26,001 or more pounds;
 - b. Is designed to transport 16 or more people, including the driver; or

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- e. ~~Is used in the transportation of hazardous materials in an amount which requires the vehicle to be placarded under R17-4-436.49.~~
- 4. ~~CFR 391.87 Notification of test results and recordkeeping. In paragraph (g), the term "federal highway administrator" means the Division Director.~~

R17-4-435.04. Motor Carrier Safety: Amendments to 49 CFR 392 and 397

~~49 CFR 392 and 397 as incorporated in these rules are amended as follows:~~

- 1. ~~49 CFR 392.5 Alcohol prohibition Intoxicating beverage. Paragraph (e) is amended to read: Drivers who violate the terms of an out-of-service order as prescribed in under this Section are shall be subject to the provisions and sanctions of A.R.S. § 28-5232 2404.~~
- 2. ~~49 CFR 392.30 Lighted lamps; moving vehicles. Paragraph (a) is amended to read: During the period from sunset to sunrise;~~
- 3. ~~Section 397.5 Attendance and surveillance of motor vehicles. Paragraph (d)(3) is amended to read: A safe haven is an area specifically approved in writing by state or federal governmental authorities for the parking of unattended vehicles containing Class A or Class B explosives as defined in 49 CFR 173.53 "Definition of Class A explosives" and 173.88 "Definition of Class B explosives".~~

R17-4-435.05. Civil Penalties

~~To determine For the purpose of determining the amount of civil penalty for repeat findings of responsibility for the same class of violations involving vehicles which are required to be placarded, the higher level of civil penalty as prescribed in pursuant to A.R.S. § 28-5238 2406 applies. shall apply.~~

R17-4-436.06. Insulin-Dependent Commercial Driver License Waiver Pilot Study Program

~~The Division shall create a pilot study program for insulin-dependent diabetics to process, monitor, and evaluate the feasibility of establishing a waiver program for intrastate drivers who are disqualified as prescribed in the provisions of 49 CFR 391.41 (b)(3), but who are otherwise qualified. All requirements of R17-4-435.02 apply except subsections (B)(3) and (B)(4).~~

- 1. The Medical Review Officer, authorized to approve or deny waiver applications, shall administer the pilot study program.
- 2. The study program begins on the effective date of this rule and terminates 2 years from that date.
- 3. All waivers issued through the study program terminate upon the expiration of the study program.
- 4. The Division Director may extend the study or establish a permanent waiver process after review of the study program results.
- 5. An insulin-dependent diabetic may apply for a waiver, restricted to the State of Arizona, for participating in the 2-year pilot study if:
 - a. The applicant submits blood glucose logs to the endocrinologist or medical examiner at an annual examination or at any time as directed by the medical review section.
 - b. The applicant has a driving record meeting the minimum requirements of safe driving as specified in applicable federal and state safety regulations and has no serious traffic violation as described under A.R.S. § 28-3312(E), no period of driver disqualification, and no reportable accident for the 3-year period before submitting the waiver application.
 - c. A separate signed statement from an examining ophthalmologist is submitted that the applicant has been examined and does not have unstable proliferative diabetic retinopathy, unstable advancing disease of blood vessels in the retina, and has stable acuity of at least 20/40 Snellen in each eye, with or without corrective lenses.
- 6. An insulin dependent diabetic commercial driver license applicant shall provide:
 - a. A board-certified or board-eligible endocrinologist with a complete medical history including the date insulin use began, all hospitalization reports, consultation notes for diagnostic examinations, special studies pertaining to the diabetes and follow-up reports, and reports of any hypoglycemic insulin reactions within the prior 12 months or from the date the applicant started using insulin, whichever is later.
 - b. An examination by a board-certified or board-eligible endocrinologist. The complete medical examination shall consist of a comprehensive evaluation of the applicant's medical history and current status, including a review of:
 - i. Fasting blood studies glucose, glycosylated hemoglobin/Hb Alc I including lab reference page and urinalysis performed during the last 6 months; and
 - ii. Insulin dosages and types, diet utilized for control, and any significant factors such as smoking, alcohol use, and other medications, or drugs taken.
 - c. A statement prepared and signed by the examining endocrinologist whose status as board-certified or board-eligible is indicated. The signed statement shall include separate declarations indicating the following medical determinations:
 - i. The endocrinologist is familiar with the applicant's medical history for the past 12 months whether through actual treatment over that time or through consultation with a physician who has treated the applicant during that time.

- ii. The applicant is free from insulin reactions including severe hypoglycemia and hypoglycemia awareness, and has had no more than 1 documented hypoglycemic reaction per month in the previous 12 months or from the date the applicant started using insulin injections, whichever is later.
- iii. The applicant does not have severe hypoglycemia episodes of altered consciousness requiring the assistance of another person to regain control.
- iv. The applicant does not have hypoglycemia unawareness or the inability to recognize the early symptoms of hypoglycemia such as sweating, anxiety, forceful heartbeat, and light-headedness.
- v. The applicant's diabetic condition will not adversely affect the applicant's ability to operate a commercial motor vehicle; and
- vi. The applicant is educated in diabetes and its management and is thoroughly informed of and understands procedures to follow to monitor and manage the applicant's diabetes and procedures to follow if complications arise.
- d. An insulin-dependent applicant for a commercial driver license waiver shall meet the following requirements for the last 3 years before application:
 - i. Have a driving record that contains no suspension or revocation of the applicant's driver license for the operation of any motor vehicle, including personal vehicles, except a suspension or revocation due to nonpayment of fines;
 - ii. Have no involvement in an accident as defined in 49 CFR 390.5 for which the applicant received a citation for a moving traffic violation while operating a commercial motor vehicle;
 - iii. Have no conviction for a disqualifying offense described in 49 CFR 383.51, or more than 1 serious traffic violation as described in 49 CFR 383.51 and A.R.S. § 28-3312 (E) while operating a commercial motor vehicle; and
 - iv. Have no more than 2 convictions for any non-serious moving traffic violations while operating a commercial motor vehicle.
- e. The applicant shall immediately report any arrest, citation, or conviction to the MVD Medical Review Program. Failure to do so may result in denial or rescission of the waiver.