

NOTICES OF EXEMPT RULEMAKING

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

NOTICE OF EXEMPT RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 21. DEPARTMENT OF HEALTH SERVICES

MENTAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

PREAMBLE

- 1. Sections Affected**

R9-21-101	<u>Rulemaking Action</u>
R9-21-106	Amend
	Amend
- 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. §§ 36-136(F), 36-550.01(C), 36-3403(A)(5)

Implementing statutes: A.R.S. §§ 41-3803, 41-3804, Laws 2000, Chapter 261, Section 3
- 3. The effective date of the rules:**

July 17, 2001
- 4. A list of all previous notices appearing in the Register addressing the exempt rule:**

None
- 5. The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name:	Alice Prather, Rules Legal Analyst
Address:	2122 E. Highland, Suite 100 Phoenix, AZ 85053
Telephone:	(602) 381-8999
Fax:	(602) 553-9141
or	
Name:	Kathleen Phillips, Rules Administrator
Address:	1740 W. Adams, Suite 102 Phoenix, AZ 85007
Telephone:	(602) 542-1264
Fax:	(602) 364-1150
- 6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:**

The purpose of these rules is to implement A.R.S. §§ 41-3803 and 41-3804. During the 44th legislature, second regular session, the legislature made changes to A.R.S. §§ 41-3803 and 41-3804, requiring revisions to R9-21-101 and R9-21-106. These required revisions include altering the required membership of human rights committees, permitting human rights committees to review client records for official purposes, and adding oversight of the human rights of children to the responsibilities of human rights committees. By session law, Laws 2000, Chapter 261, Section 3, the legislature mandated that the Department revise its rules relating to persons with serious mental illness to conform with the act and provided for an exemption to the regular rulemaking process to facilitate those revisions.

Arizona Administrative Register
Notices of Exempt Rulemaking

- 7. 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
- 8. The summary of the economic, small business, and consumer impact:**
Pursuant to Laws 2000, Chapter 261, Section 3, the Department is exempt from the requirement to complete an economic, small business, and consumer impact statement.
- 9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
Not applicable
- 10. A summary of the principal comments and the agency response to them:**
Not applicable
- 11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable
- 12. Incorporations by reference and their location in the rules:**
None
- 13. Was this rule previously adopted as an emergency rule?**
No
- 14. The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

CHAPTER 21. DEPARTMENT OF HEALTH SERVICES

MENTAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

ARTICLE 1. GENERAL PROVISIONS

R9-21-101. Definitions

- A.** In this Chapter, unless the context otherwise requires, the terms defined in A.R.S. § 36-501 shall have the meaning set forth in that Section
- B.** In this Chapter, unless the context otherwise requires:
 1. "Abuse" means, with respect to a client, the infliction of, or allowing another person to inflict or cause, physical pain or injury, impairment of bodily function, disfigurement or serious emotional damage which may be evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior. Such abuse may be caused by acts or omissions of an individual having responsibility for the care, custody or control of a client receiving behavioral health services under this Chapter. Abuse shall also include sexual misconduct, assault, molestation, incest, or prostitution of, or with, a client under the care of personnel of a mental health agency.
 2. "Agency director" means the person primarily responsible for the management of an outpatient or inpatient mental health agency, service provider, regional authority or the deputy director of the division, or their designees.
 3. "AHCCCSA" means the Arizona Health Care Cost Containment System Administration.
 4. "ASH" means the Arizona State Hospital.
 5. "Burden of proof" means the necessity or obligation of affirmatively proving the fact or facts in dispute.
 6. "Case manager" means the person responsible for locating, accessing and monitoring the provision of services to clients in conjunction with a clinical team.
 7. "Client" means an individual who is seriously mentally ill and is being evaluated or treated for a mental disorder by or through a regional authority.
 8. "Client record" means the written compilation of information that describes and documents the evaluation, diagnosis or treatment of a client.
 9. "Client who needs special assistance" means a client who has been:
 - a. Deemed by a qualified clinician, case manager, clinical team, or regional authority to need special assistance in participating in the ISP or ITP process, which may include, but is not limited to:
 - i. A client who requires 24-hour supervision;
 - ii. A client who is, in fact, incapable of making or communicating needs but is without a court-appointed fiduciary; or
 - iii. A client with physical disabilities or language difficulties impacting the client's ability to make or communicate decisions or to prepare or participate in meetings; or

Arizona Administrative Register
Notices of Exempt Rulemaking

- b. Otherwise deemed by a program director, the deputy director of the Division, or a hearing officer to need special assistance to effectively file a written grievance, to understand the grievance and investigation procedure, or to otherwise effectively participate in the grievance process under this Chapter.
10. "Clinical team" refers to the interdisciplinary team of persons who are responsible for providing continuous treatment and support to a client and for locating, accessing and monitoring the provision of mental health services. A clinical team consists of a psychiatrist, case manager, vocational specialist, psychiatric nurse, and other professionals or paraprofessionals, such as a psychologist, social worker, consumer case management aide, or rehabilitation specialist, as needed, based on the client's needs. The team shall also include a team leader who is a certified behavioral health supervisor under Laws 1992, Ch. 310.
11. "Community services" means community mental health services required to be provided under A.R.S. § 36-550 et seq. and includes, but is not limited to, clinical case management, outreach, housing and residential services, crisis intervention and resolution services, mobile crisis teams, day treatment, vocational training and opportunities, rehabilitation services, peer support, social support, recreation services, advocacy, family support services, outpatient counseling and treatment, transportation, and medication evaluation and maintenance.
12. "Condition requiring investigation" means, within the context of the grievance and investigation procedure set forth in Article 4 of this Chapter, an incident or condition which appears to be dangerous, illegal, or inhumane, including a client death.
13. "County Annex" means the Maricopa County Psychiatric Annex of the Maricopa Medical Center.
14. "Court-ordered treatment" means treatment ordered by the court under A.R.S. Title 36, Chapter 5.
15. "Court-ordered evaluation" means evaluation ordered by the court under A.R.S. Title 36, Chapter 5.
16. "Crisis services" or "emergency services" means immediate and intensive, time-limited, crisis intervention and resolution services which are available on a 24-hour basis and may include information and referral, evaluation and counseling to stabilize the situation, triage to an inpatient setting, clinical crisis intervention services, mobile crisis services, emergency crisis shelter services, and follow-up counseling for clients who are experiencing a psychiatric emergency.
17. "Dangerous" as used in Article 4 of this Chapter means a condition that poses or posed a danger or the potential of danger to the health or safety of any client.
18. "Department" means the Arizona Department of Health Services.
19. "Designated representative" means a parent, guardian, relative, advocate, friend, or other person, designated by a client or guardian who, upon the request of the client or guardian, assists the client in protecting the client's rights and voicing the client's service needs
20. "Discharge plan" means a hospital or community treatment and discharge plan prepared pursuant to Article 3 of these rules.
21. "Division" means the Division of Behavioral Health Services of the Department.
22. "DSMI" means the latest edition of the "Diagnostic and Statistical Manual of Mental Disorders," edited by the American Psychiatric Association.
23. "Enrolled Children" means persons under the age of 18 who receive mental health services by or through a regional authority.
- ~~23-24.~~ "Exploitation" means the illegal or improper use of a client or a client's resources for another's profit or advantage.
- ~~24-25.~~ "Frivolous," as used in this Chapter, means a grievance that is devoid of merit. Grievances are presumed not to be frivolous unless the program director has good reason to believe that the grievance:
- a. Involves conduct that is not within the scope of this Chapter,
 - b. Is impossible on its face, or
 - c. Is substantially similar to conduct alleged in two previous grievances within the past year that have been determined to be unsubstantiated as provided in this Chapter.
- ~~25-26.~~ "Generic services" means services other than mental health services for which clients may have a need and includes, but is not limited to, health, dental, vision care, housing arrangements, social organizations, recreational facilities, jobs, and educational institutions.
- ~~26-27.~~ "Grievance" means a complaint regarding an act, omission or condition, as provided in this Chapter.
- ~~27-28.~~ "Guardian" means an individual appointed by court order pursuant to A.R.S. Title 14, Chapter 5 or Title 36, Chapter 5, or similar proceedings in another state or jurisdiction where said guardianship has been properly domesticated under Arizona law.
- ~~28-29.~~ "Hearing officer" refers to an impartial person designated by the director to hear a dispute and render a written decision.
- ~~29-30.~~ "Human rights advocate" means the human rights advocates appointed by the director under R9-21-105.
- ~~30-31.~~ "Human rights committee" means the human rights committee established under R9-21-106 by the Department or by a regional authority.

Arizona Administrative Register
Notices of Exempt Rulemaking

- ~~31-32.~~ “Illegal” means, within the context of the grievance and investigation procedure set forth in Article 4 of this Chapter, an incident or occurrence which is or was likely to constitute a violation of a state or federal statute, regulation, court decision or other law, including the provisions of these Articles.
- ~~32-33.~~ “Individual service plan” or “ISP” means the written plan for services to a client, prepared in accordance with Article 3 of this Chapter.
- ~~33-34.~~ “Inhumane” as used in Article 4 of this Chapter means an incident, condition or occurrence that is demeaning to a client, or which is inconsistent with the proper regard for the right of the client to humane treatment.
- ~~34-35.~~ “Inpatient facility” means the Arizona State Hospital, the County Annex, or any other inpatient treatment facility licensed or funded by or through the Department to provide mental health services, including psychiatric health facilities, licensed psychiatric hospitals, licensed psychiatric units in general hospitals, and licensed inpatient or behavioral health facilities in jails.
- ~~35-36.~~ “Inpatient treatment and discharge plan” or “ITDP” means the written plan for services to a client prepared and implemented by an inpatient facility in accordance with Article 3 of this Chapter.
- ~~36-37.~~ “Likelihood of serious physical harm” means either
- a. A substantial and imminent risk that serious physical harm will be inflicted by a client upon himself, as evidenced by threats or attempts to commit suicide or to inflict physical harm on himself; or
 - b. A substantial and imminent risk that serious physical harm will be inflicted by a client upon another as evidenced by previous behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm. Substantial and imminent risk shall be interpreted to include only those instances where there is the present ability to enact serious physical harm or where there is a realistic perception of such ability.
- ~~37-38.~~ “Long-term view” means a planning statement that identifies, from the client’s perspective, what the client would like to be doing for work, education, and leisure and where the client would like to be living for up to a three-year period. The long-term view is based on the client’s unique interests, strengths, and personal desires. It includes predicted times for achievement.
- ~~38-39.~~ “Mechanical restraint” means the use of any article, device, or garment that restricts a client’s freedom of movement or a portion of a client’s body, and cannot be easily removed by the client, and is used for the purpose of confining the client’s mobility but does not include such a device used for orthopedic or surgical reasons or other medical device necessary to allow a client to heal from a medical condition or to participate in a treatment program.
- ~~39-40.~~ “Meeting” means an encounter or assembly of individuals which may be conducted in person or by telephone.
- ~~40-41.~~ “Mental health agency” includes a regional authority, service provider, inpatient facility, or an agency licensed to conduct screening, evaluation and treatment under this Chapter.
- ~~41-42.~~ “Mental health services” include community services and psychiatric hospitalization.
- ~~42-43.~~ “Party” or “parties” as used in Articles 3 and 4 of these rules means the person filing a grievance under this Chapter, the agency director who issued any final resolution or decision of such a grievance, the person whose conduct is complained of in the grievance, any client or applicant who is the subject of the request or grievance, the legal guardian of client or applicant, and, in selected cases, the appropriate human rights committee.
- ~~43-44.~~ “Pharmacological restraint” means the use of a psychopharmacologic drug for discipline of the person or convenience of the staff and not solely required to treat medical symptoms identified by staff and recorded in the person’s medical record:
- a. In response to a likelihood of serious harm, or
 - b. In such a manner as to unreasonably restrict a client’s movement.
- ~~44-45.~~ “Physical restraint” means the use of bodily force to restrict the client’s freedom of movement but does not include the firm but gentle holding of a client for less than five minutes with no more force than ~~than~~ is necessary to protect the client or others from harm.
- ~~45-46.~~ “PRN order” or “Pro re rata medication” means medication given as needed.
- ~~46-47.~~ “Program director” means the person with the day-to-day responsibility for the operation of a programmatic component of a service provider, such as a specific residential, vocational, or case management program.
- ~~47-48.~~ “Qualified clinician” means a behavioral health professional who is licensed or certified under A.R.S. Title 32, or a behavioral health technician who is supervised by a licensed or certified behavioral health professional.
- ~~48-49.~~ “Region” means the geographical region designated by the Department in its contract with the regional authority.
- ~~49-50.~~ “Regional authority” means the regional behavioral health authority under contract with the Department to organize and administer the delivery of mental health services to clients and enrolled children within a defined geographic area.
- ~~50-51.~~ “Restraint” means physical, mechanical or pharmacological restraint.
- ~~51-52.~~ “Seclusion” means restricting a client to a room or area through the use of locked doors or any other device or method which precludes a client from freely exiting the room or area or which a client reasonably believes precludes his unrestricted exit. In the case of an inpatient facility, confining a client to the facility, the grounds of the facility, or a ward of the facility does not constitute seclusion. In the case of a community residence, restricting a

Arizona Administrative Register
Notices of Exempt Rulemaking

client to the residential site, pursuant to specific provisions of an individual service plan or court order, does not constitute seclusion.

~~52-53.~~ “Seriously mentally ill” means a person 18 years of age or older who is either seriously mentally ill or chronically mentally ill as those terms are defined in A.R.S. § 36-550.

~~53-54.~~ “Service provider” means an agency, inpatient facility or other mental health provider funded by or through, under contract or subcontract with, licensed by, certified by, approved by, registered with, or supervised by, the Department, or receiving funds under Title XIX, to provide mental health services.

~~54-55.~~ “State Protection and Advocacy System” means the agency designated as the Protection and Advocacy System for individuals with mental illness, pursuant to 42 U.S.C. 10801-51.

~~55-56.~~ “Title XIX” means Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq.

~~56-57.~~ “Treatment team” means the multidisciplinary team of persons who are responsible for providing continuous treatment and support to a client who is a current resident of an inpatient facility.

R9-21-106. Human Rights Committees

- A. Pursuant to A.R.S. § 41-3803 and 3804, the Department shall establish a human rights committees to provide independent oversight to ensure that the rights of clients and enrolled children are protected. ~~with statewide jurisdiction which shall advise the Director. In addition, each regional authority~~ The Department shall establish at least one regional human rights committee for each 2,500 clients in that region and the Arizona State Hospital. ASH and each regional authority shall establish at least one human rights committee. Each ASH and regional human rights committee shall report to the statewide human rights committee regarding its policies and procedures and methods of Upon the establishment of a human rights committee, if more than 2500 clients reside within a region, the Department shall establish additional human rights committees until there is one human rights committee for each 2500 clients in a region.
- B. Each human rights committee shall be composed of at least 7 and not more than 15 members. At least two members of the committee shall be clients or former clients, at least two members shall be relatives of clients, two members shall be parents of enrolled children and at least three members shall have expertise in the one of the following areas: ~~of~~ psychology, law, medicine, education, special education, social work or mental health services.
- C. The director shall appoint the initial members ~~to the statewide committee. The director of each regional authority shall appoint the initial members of~~ to each regional committee and the human rights committee for the Arizona State Hospital. Thereafter, the committees will select or remove their own members, pursuant to their own rules. The Director shall appoint members to fill vacancies on a human rights committee, subject to the approval of the committee.
- D. Each committee shall meet at least ~~six~~ four times each year. Within three months of its formation, each committee shall establish written ~~policies~~ guidelines governing the committee’s operations. These ~~policies~~ guidelines shall be consistent with this rule and shall set forth the terms of membership, quorum and attendance requirements, and procedures for conducting committee business. A.R.S. §§ 41-3803 and 41-3804. The adoption and amendment of the committee’s ~~policies~~ guidelines shall be by a majority vote of the committee and shall be ~~filed with the Division and, in the case of a regional committee, they shall also be filed with the regional authority.~~ submitted to the Director for approval.
- E. No employee of the Department, regional authority or service provider may be a voting member of a committee.
- F. Each committee shall, within its respective jurisdiction, provide independent oversight and review of:
1. Allegations of illegal, dangerous or inhumane treatment of clients and enrolled children;
 2. ~~Monthly~~ Reports filed with the committee under R9-21-203 and R9-21-204 concerning the use of seclusion, restraint, abuse, neglect, exploitation, mistreatment, accidents and injuries;
 3. The provision of services to clients identified under R9-21-301 in need of special assistance;
 4. ~~Rights violations~~ Violations of rights of clients and enrolled children and conditions requiring investigation under Article 4 of this Chapter;
 5. Research in the field of mental health pursuant to A.R.S. § 41-3804(E)(2); and
 - 5-6. Any other issue affecting the human rights of clients and enrolled children.
- G. The agency director shall provide notice to the ~~appropriate human rights office~~ human rights advocates provided by the Department whenever a client is determined to need special assistance pursuant to R9-21-301.
1. The appropriate human rights advocate shall maintain a current list of all such clients.
 2. The human rights committee shall make special efforts to monitor the program’s compliance with Department rules for all such clients. Such efforts shall include regular visits to the residential environment where such clients live, meetings with clients to determine their satisfaction with the program, and inspection of relevant records or other documents, except as prohibited by A.R.S. §§ 36-445 et seq., 36-107, 36-504, 36-507, 36-509, and 36-517.01, and the client’s right to privacy. Committee members ~~shall obtain written consent from the client prior to inspecting~~ may inspect client records and shall sign a written statement agreeing to adhere to all applicable laws regarding the ~~confidentiality of such records.~~ pursuant to A.R.S. §§ 36-509(A)(35) and 41-3804(D).
- H. A committee may request the services of a consultant or staff person to advise the committee on specific issues. The cost of the consultant or staff person shall be assumed by the Department or regional authority subject to the availability of funds specifically allocated for that purpose. A consultant or staff person may, in the sole discretion of the committee,

Arizona Administrative Register
Notices of Exempt Rulemaking

be a member of another committee or an employee of the Department, regional authority, or service provider. No committee consultant or staff person shall vote or otherwise direct the committee's decisions.

- I. Committee members and committee consultants and staff persons shall have access to client records ~~to the extent necessary to discharge their respective duties, provided they sign a written statement agreeing to adhere to all applicable laws regarding the confidentiality of such records, pursuant to A.R.S. §§ 36-509(A)(35) and 41-3804(I). If a human rights committee's request for information or records is denied, the committee may request a review of the decision to deny the request pursuant to A.R.S. § 41-3804(J).~~ Nothing in this rule shall be construed to require the disclosure of records or information to the extent that such information is protected by A.R.S. § 36-445 et seq.
- J. On the first day of the months of January, April, July, and October of each year, each committee shall issue a quarterly report summarizing its activities for the prior quarter, including any written objections to the Director pursuant to A.R.S. § 41-3804(F), and make any recommendations for changes it believes the Department or regional authorities should implement. In addition, the committee may, as it deems appropriate, issue reports on specific problems or violations of client's rights. The report of a regional committee shall be delivered to the regional authority and the Division. A report of the state committee shall be delivered to the Division and the director.
- K. The Department shall provide training and support to ~~the statewide and regional human rights committees through its office of human rights.~~
- L. A human rights committee may request:
 - 1. An investigation for a client pursuant to Article 4 of this Chapter, or
 - 2. A regional authority or the Arizona State Hospital, as applicable, to conduct an investigation for an enrolled child.
- M. The regional authority or the Arizona State Hospital, as applicable, when requested by a human rights committee, shall conduct an investigation concerning:
 - 1. A client as provided in Article 4 of this Chapter, and
 - 2. An enrolled child.
- N. A human rights committee shall submit an annual report of the human rights committee's activities and recommendations to the Director at the end of each calendar year pursuant to A.R.S. § 41-3804(G).