

# 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 6. ECONOMIC SECURITY

#### CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY DEVELOPMENTAL DISABILITIES

##### PREAMBLE

**1. Sections Affected**

R6-6-2101  
R6-6-2103  
R6-6-2104  
R6-6-2105  
R6-6-2109  
R6-6-2110  
R6-6-2111  
R6-6-2113  
R6-6-2114  
R6-6-2115  
R6-6-2116  
R6-6-2117  
R6-6-2118  
R6-6-2119

**Rulemaking Action**

Amend  
New Section  
New Section  
New Section  
New Section

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

Authorizing statute: A.R.S. § 41-1954(A)(1)(h)

Implementing statutes: A.R.S. §§ 36-557 and 36-2959

**3. The effective date of the rules:**

October 9, 2003

**4. A list of all previous notices appearing in the Register addressing the exempt rules:**

Not applicable

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

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**6. An explanation of the rules, including the agency's reasons for initiating the rules, including the statutory citation to the exemption from regular rulemaking procedures:**

The rules are being amended to accomplish the following major changes: 1) reformat and clarify the appeals process, 2) require the Division to provide information to assist the Applicant in submitting information to make an application complete and allow applicants to submit audited financial statements versus financial audits, 3) clarify that the consumer and their representative always have the ability to select an Individual Independent Provider as well as a Qualified Vendor to provide services, 4) define consequences and potential actions the Division may take if Qualified Vendors submit materially inaccurate information and fail to correct the situation, and 5) allow the Division to extend

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the period for authorization of emergency services and add Sections to provide for Claims and Controversies involving the Agreement.

Changes included in each of the amended and new rules are as follows:

R6-6-2101: Definitions are amended to align with changes to the Legal and Contractual Remedies Section (R6-6-2115), clarify the definition of Individual Independent Provider, and establish that the web site must identify a Request as "being open."

R6-6-2103: Qualified Vendor Application Process is amended to require the Division to provide information about what information is required to make a Qualified Vendor Application complete. This will result in Applicant's having a clear understanding of what is required to remedy an incomplete application.

R6-6-2104: Criteria for Qualified Vendor Agreements is amended to allow an Applicant to assure that they will possess the needed license or certification by the time of authorization of service is issued and to require audited financial statements rather than financial audits which many potential applicants may not have.

R6-6-2105: Qualified Vendor Agreement is amended to clarify that the Division will specify in the Qualified Vendor Agreement what information will require amendment to the Agreement and to define the consequences are for reporting of materially inaccurate information to the Division. This change will result in Vendors knowing what information can be reported via "notice" to the Division versus an actual Agreement amendment.

R6-6-2109: Consumer Choice is amended to clearly state that consumers and their representatives may also choose to receive services from an Individual Independent Provider as well as a Qualified Vendor and allows the consumer to change Individual Independent Providers at any time.

R6-6-2110: Authorization to Provide Services is amended to provide the ability of the District Program Manager to extend the authorization for emergency services up to 15 additional days and removes the requirement that the District Program Manager's decision is final and not subject to administrative review.

R6-6-2111: Cancellation/Termination of the Qualified Vendor Agreement is amended to use the more appropriate term "Termination" rather than "Cancellation" and to add the general category of "other reasons" for termination.

R6-6-2113: "Consumers" was changed to "consumer's."

R6-6-2114: Rate Setting is amended to use the state-of-the-art term "final proposal revision" versus "best and final offer." The change in terminology does not impact the result or intent of the rule.

R6-6-2115: Legal and Contractual Remedies is reformatted to more clearly define the two-step process, Step 1: the informal optional Request for Problem Solving and Step 2: the formal Notice of Protest. Additionally, the rule is amended to align and make consistent the time-frames within the process.

R6-6-2116: Resolution of Agreement Claims and Controversies is added as a new rule since no provision for Claims and Controversies was included in the original rules.

R6-6-2117: Controversies Involving State Claims Against A Qualified Vendor is added as a new rule since no provision for state claims against Qualified Vendors was included in the original set of rules.

R6-6-2118: Hearing is added as a new rule since no provision for hearing on claims decisions was included in the original set of rules.

R6-6-2119: Appeals to Superior Court is added as a new rule since no provision for action following the Department's Office of Appeals decision was included in the original set of rules.

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

Not applicable

**8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

The rule does not diminish a previous grant of authority of a political subdivision of this state.

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

Small Business: The amendments and new rules will benefit small business by providing more specific information regarding the requirements of a complete Qualified Vendor Application, providing recourse involving claims and controversies under the Agreement, requiring audited financial statements versus financial audits which many small businesses do not have, and allowing extension of the authorization for emergency services, which will allow small businesses to be reimbursed when providing short-term emergency services. There are no negative impacts on small businesses as a result of the amendments or new rules included herein.

Consumers: Consumers of community developmental disability services will benefit from these rules as a result of clarifying that consumers and their representatives can always choose Individual Independent Providers as well as

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Qualified Vendors to deliver their services and by specifying that consumers can change Individual Independent Providers any time. Additionally, consumers will benefit from the ability to extend emergency services for an additional 15 days, resulting in continuity service in the existing service setting even when consumer needs have changed. Additionally consumer protection from receiving inaccurate information about providers of service is enhanced since the consequence of a Qualified Vendor providing materially inaccurate information can be termination of the Agreement.

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

<b>Section Number</b>	<b>Proposed Rule Prior to Public Hearing</b>	<b>Change as a result of written and public comment</b>
R6-6-2105	“If the Division finds that information provided in the original Application or as an update to the Application is inaccurate and the Qualified Vendor fails to correct such information with the time specified in any notice from the Division, such failure shall be cause for termination of the Qualified Vendor Agreement in whole or in part. The Division may remove the information from the Qualified Vendor directory until a remedy is provided or the Qualified Vendor Agreement is terminated.”	The rule has been changed as a result of public comment as follows: “materially” has been inserted before inaccurate; “shall” be cause for termination has changed to “may” and “remedy” has been changed to “correction.”
R6-6-2110	The District Program manager’s decision is final and not subject to administrative review.	Based on public comment, this sentence has been removed.
R6-6-2110	A Qualified Vendor providing services may request an informal review by the Division of the number of units of service or type of services authorized for a specific consumer by submitting a written request for review to the Division District Program Manager.	Based on public comment, this language has been removed and the language that the District Program Managers decision is final has been removed.
R6-6-2114	The proposed rule had no provision for the Qualified Vendor to take an action if no response was received to their Request for Problem Solving or Notice of Protest.	The rule has been amended to indicate “if a response is not received by the protester within the required 21 days, the protester may proceed to the next level of appeal.”
R6-6-2115	The protester shall include the following information in the Request for Problem Solving.	Protester has been changed to Qualified Vendor or Qualified Vendor Applicant since at this step they are not formally “protesting.”
R6-6-2115	To pursue further review, the protester shall file a Notice of Protest with the Department procurement officer within 7 days of the issuance of verification.	The rule has been changed to allow 14 days to file a Notice of Protest.
R6-6-2115	The protester shall file the Notice of Protest with the Department procurement officer within 21 days of the date the protester receives notice of the action or with 7 days of receipt of the verification of non-resolution through the problem Solving process from the Assistant Director.	The 7 day time-frame has changed to 14 days and the term “receipt” has been changed to “issuance.”
R6-6-2116	Claims under Qualified Vendor Agreements shall be filed with the Department procurement officer within 12 months after the claim arises.	The rule has been revised to state: “within 12 months of the date the Department has denied the payment.”
R6-6-2117	All claims asserted by the state against a Qualified Vendor that are not resolved by mutual agreement shall promptly be referred by the Department procurement officer to the Department’s Office of Appeals for a hearing without regard to the procedures set forth in these rules.	A statement has been added the provides notice to the Qualified Vendor that the Department procurement officer has determined that the issue cannot be resolved by mutual agreement and is being referred to the Office of Appeals.

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R6-6-2116 through R6-6-2122		These rules were reformatted to be consistent with the formatting of the Legal and Contractual Remedies rule.
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**11. A summary of the comments made regarding the rules and the agency response to them:**

A list of comments made regarding the rules and the agency response to them is on file with the agency and the office of the Secretary of State.

**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:**

Not applicable

**14. Were these rules previously made as emergency rules?**

No, these rules were not previously made as emergency rules.

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

**TITLE 6. ECONOMIC SECURITY**

**CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY  
DEVELOPMENTAL DISABILITIES**

**ARTICLE 21. DIVISION PROCUREMENT AND RATE SETTING – QUALIFIED VENDORS**

Section

- R6-6-2101. Definitions
- R6-6-2103. Qualified Vendor Application Process
- R6-6-2104. Criteria for Qualified Vendor Agreements
- R6-6-2105. Qualified Vendor Agreement
- R6-6-2109. Consumer Choice
- R6-6-2110. Authorization to Provide Services
- R6-6-2111. ~~Cancellation~~ Termination of the Qualified Vendor Agreement
- R6-6-2113. Transition to the Qualified Vendor Process
- R6-6-2114. Rate Setting
- R6-6-2115. Legal and Contractual Remedies
- R6-6-2116. Resolution of Agreement Claims and Controversies
- R6-6-2117. Controversies Involving State Claims Against a Qualified Vendor
- R6-6-2118. Hearing
- R6-6-2119. Appeals to Superior Court

**ARTICLE 21. DIVISION PROCUREMENT AND RATE SETTING – QUALIFIED VENDORS**

**R6-6-2101. Definitions**

The following definitions apply to this Article:

1. “Agreement file” means the public, documented record of procurement transactions that is maintained by and available at the Division contracts management office.
2. “AHCCCS” means the Arizona Health Care Cost Containment System as established by A.R.S. § 36-2901 et seq.
3. “Application” means the Qualified Vendor application, including any amendments, supplements, or updates submitted by the applicant.
4. “Assistant Director” means the Assistant Director of the Department of Economic Security, Division of Developmental Disabilities.
5. “Authorization” means the approval by the Division or its designee identifying the type and number of units of service a Qualified Vendor is authorized to provide to a specific consumer.
6. “Community developmental disability services” means any service or support the Division is authorized to purchase under A.R.S. § 36-557 on behalf of individuals with developmental disabilities and their families or guardians.
7. “Conflict of interest” means that a Qualified Vendor applicant, a Qualified Vendor, or an officer or employee of a Qualified Vendor applicant or Qualified Vendor has a relative as defined in A.R.S. § 38-502 who is an employee of the Division with direct or indirect responsibility for purchasing, authorizing, monitoring or evaluating community developmental disability services or vendors.

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8. "Consumer" means an individual authorized to receive community developmental disability services from the Division.
9. "Consumer and family choice" means the consumer's or consumer's representative's expressed preference to receive services from a specific provider.
10. "Contract list" means a roster of agencies, organizations, and professional independent providers who, on January 1, 2003 have a valid contract or agreement with the Division to provide community developmental disability services.
11. "Day" means calendar day unless otherwise specified.
12. "Department" means the Arizona Department of Economic Security.
13. "Department procurement officer" means the person, or his or her designee, authorized by the Department to make written determinations with respect to purchasing processes or agreements authorized under A.R.S. § 36-557.
14. "Division" means the Division of Developmental Disabilities of the Department of Economic Security.
15. "Division web site" means the Division of Developmental Disabilities internet web site.
16. "Emergency need" means a situation that requires an immediate change in services, in service providers, or in both services and service providers, and is necessary for the health or safety of the consumer.
17. "Independent assessment" means a review by a third party of an authorization decision.
18. "Independent rate model" means a methodology for rate development that includes the definition of the cost components and assumptions used in the development of a reimbursement rate.
19. "Individual Independent Provider" means a person who is qualified to provide service, has a provider identification number and an individual service agreement or a qualified vendor agreement with the Division to provide ~~services to community~~ developmentally disabled individuals.
20. "Individual service agreement" means the legally binding contract between the Division and an individual independent provider to provide community developmental disability services.
21. "Individual support plan" or "ISP" means a written statement of services to be provided to an individual with developmental disabilities including habilitation goals and objectives and a listing of the services, if any, the consumer is authorized to receive. The ISP incorporates and replaces the Individual Program Plan, the placement evaluation, the individualized service program plan and the service program plan used in A.R.S. § 36-557, and for the purposes of these rules incorporates the Individual Family Service Plan (IFSP) as defined in Section 809.1 of the Division of Developmental Disabilities Policy and Procedures Manual.
22. "Individual support plan team" or "ISP Team" means a group of persons including the consumer, the consumer's representative, and other persons selected by the consumer, assembled by the Division and coordinated by the consumer's support coordinator in compliance with A.R.S. §§ 36-551 and 36-560 to develop the consumer's individual support plan.
23. "Itemized service budget" means a description of the cost of services and includes documentation that results in a defined unit rate.
24. "List serv" means an electronic mailing list maintained by the Division for purposes of sending information via electronic mail to a predefined directory of intended recipients.
25. "Negotiated rate" means the amount per unit of service a provider will be paid for services rendered based on successful negotiation of a price with the Division.
26. "Network development plan" means the annual plan developed by the Division that identifies the services and supports anticipated to be needed by consumers throughout the state.
27. "Non-identifying information" means a description that does not provide information that could lead the recipient of the information to recognize a consumer.
- ~~28.~~ "Notice of Intent to File a Protest and Request for Problem Solving" means a written document, signed by the ~~protestor and submitted to the Division to protest a procurement process or decision under this Article that requests informal problem solving actions be taken by the Division.~~
- ~~29.~~28. "Notice of Protest" means a written document signed by the ~~protestor~~ protester and submitted to the Department procurement officer to protest a procurement process or decision under this Article.
- ~~30.~~29. "Open and continuous process" means that responses to a Request for Qualified Vendor Applications may be submitted by an applicant to the Division at any time during the time period the Request is posted to the Division web site and identified as being open.
- ~~31.~~30. "Personal financial statement" means documentation of the applicant's financial status for the past three years as represented by copies of federal income tax statements, an accountant's statement of assets and liabilities or other similar documentation of financial status.
- ~~32.~~31. "Professional Independent Provider" means a person who is licensed or certified under Title 32, Arizona Revised Statutes, who provides services for consumers as a Qualified Vendor and is not an employee or subcontractor of a provider agency.
- ~~33.~~32. "Program plan" means a response to a requirement specified in the Qualified Vendor application that identifies the services to be provided and the service specific methodology to be followed by the applicant.
- ~~34.~~33. "Provider" means a Qualified Vendor or an Individual Independent Provider.

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- 35-34. "Provider organization" means a corporation, professional corporation, partnership, limited liability company, or joint venture that is or applies to be a Qualified Vendor.
- 36-35. "Published rate" means the payment amount per unit of service established by the Division for the purchase of a community developmental disability service.
- 37-36. "Qualified Vendor" means a provider of community developmental disability services that has applied for Qualified Vendor status, meets the criteria for Qualified Vendor status, and has entered into a Qualified Vendor Agreement with the Division.
- 38-37. "Qualified Vendor Agreement" means the legal, binding document between the Division and a Qualified Vendor describing the services the Qualified Vendor is qualified to provide and the terms and conditions governing the relationship between the Division and the Qualified Vendor including any amendments, attachments, schedules, or exhibits.
- 39-38. "Qualified vendor list" means the roster of vendors who have entered into Qualified Vendor Agreements with the Division.
- 40-39. "Quality management plan" means the procedures used to monitor service and system performance and to define and implement actions that will result in service and system improvements.
40. "Request for Problem Solving" means a written document, signed by the protester and submitted to the Division to protest a procurement process or decision under this Article that requests informal problem solving actions be taken by the Division.
41. "Request for Qualified Vendor Applications" means a notice issued by the Division requesting vendors to apply to be Qualified Vendors for the delivery of community developmental disability services.
42. "Vendor Call for Services" means a notice from the Division inviting Qualified Vendors and individual independent providers to submit a response indicating their availability to provide services for a specific consumer or specific group of consumers, based on the requirements defined in the consumer's ISP.
43. "Vendor Call Response" means a response to a Vendor Call for Services that indicates the provider's availability to provide the requested service or services and describes how the provider proposes to meet the special accommodations needed for a specific consumer or specific group of consumers, based on the consumer's ISP.
44. "Title XIX" means that section of the federal Social Security Act that authorizes the provision of Medicaid services including acute care and long-term care services.

**R6-6-2103. Qualified Vendor Application Process**

- A. The Division shall post the following information on the Division web site:
1. All Requests for Qualified Vendor Applications;
  2. A description of the Division's anticipated service needs;
  3. The Qualified Vendor application form or forms, if any, including a description of the information and documents that must be submitted by an applicant to complete the application, and any assurances, representations or warranties that must be made by an applicant;
  4. Instructions for completing the application as described in subsection (D),
  5. The Qualified Vendor Agreement, including all terms and conditions, amendments, schedules and attachments; and
  6. Any other information reasonably necessary to advise an applicant of application requirements, as deemed necessary by the Division to evaluate the applications.
- B. The Division may send written or electronic notice of the Request for Qualified Vendor Applications to all providers on the Division's contract list, Qualified Vendor List and any party not on the contract list who has notified the Division business office in writing that it wishes to receive notification.
- C. Providers and other interested parties are responsible for making themselves aware of the opportunities posted to the Division web site.
- D. The Division shall include the following instructions and information as part of the Request for Qualified Vendor Applications:
1. The acceptable methods for transmitting the application to the Division, such as e-mail, fax, or mail delivery;
  2. The due date, if any, for applications to be considered by the Division;
  3. The street address, mailing address, e-mail address and facsimile number of the Division office to which applications are to be sent;
  4. The term of the Qualified Vendor Agreement and the renewal options as established by the Division;
  5. A description of the service or services for which Qualified Vendors are requested, including the covered populations, the service need by geographic area, service specifications, a delivery or performance schedule and any other information that the Division finds necessary or appropriate;
  6. Whether the payment for each service will be a negotiated rate or a published rate;
  7. The published rate tables as appropriate to the services requested in the Request for Qualified Vendor Applications;
  8. A description of the factors to be used in the evaluation of the application;
  9. The location and method for obtaining documents that are incorporated by reference in the Request for Qualified Vendor Applications including, as applicable, the Division internet address;

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10. The requirement that the applicant acknowledge receipt of all amendments to the Request for Qualified Vendor Applications issued by the Division; and
  11. A description of the minimum information that an applicant must submit.
- E. The Division shall advise each Qualified Vendor applicant in writing whether the application is complete within 30 days of receipt of the application and shall identify the information or documentation that is missing or incomplete in the application.
1. The Division may conduct discussions with applicants to provide information about the completeness of the application and the information needed to make the application complete.
  2. The Division shall specify the time-frame in which the applicant must provide the missing information.
  3. The Division shall deny the application if the applicant does not provide the additional information within the time-frame defined by the Division.
- F. The Division shall notify a Qualified Vendor applicant in writing whether the applicant has been accepted as a Qualified Vendor within 60 days of receipt of a complete application.
- G. For negotiated rate agreements, the Division may extend the 60 day time-frame defined at R6-6-2103(F).
- H. The Division shall evaluate applications for Qualified Vendor Agreements based upon the criteria defined at R6-6-2104.
- I. The Division shall accord all applicants the same opportunity for discussion of the application completeness and revision to the application information.

**R6-6-2104. Criteria for Qualified Vendor Agreements**

- A. To obtain a Qualified Vendor Agreement, an applicant shall submit a complete application to the Division that includes:
1. Identification of the services the applicant proposes to provide;
  2. Identification of current ~~location or~~ and proposed locations at which service, administrative or monitoring activities are conducted;
  3. A description of staff qualifications if requested by the Division in the Request for Qualified Vendor Applications;
  4. Corporate structure demonstrating ownership and corporate affiliations, if applicable;
  5. A program plan to be included in the Directory of Qualified Vendors in a format prescribed by the Division;
  6. ~~Documentation Assurance that the applicant holds the appropriate current Arizona license or certification to provide developmental disability services and that the license or certification is in good standing with the licensing or certification organization;~~
    - a.  Holds the appropriate current Arizona license or certification to provide developmental disability services, and
    - b.  That the license or certification is in good standing with the licensing or certification organization, or
    - c.  Will possess the appropriate license or certification by the time of authorization of service;
  7. A description of the applicant's quality management plan;
  8. A declaration of any potential conflict of interest with any Division employee;
  9. Assurances required by the Division as part of the application and documentation to support such assurances, if specifically requested by the Division in the Request for Qualified Vendor Applications;
  10. Certification that the submission of the application does not involve collusion or other anti-competitive practice; and
  11. Documentation of financial stability, including:
    - a. For a Qualified Vendor Agreement for services requiring a negotiated rate, the applicant shall submit a program budget and a proposed rate. The program budget information shall include:
      - i. An itemized service budget in a format prescribed by the Division;
      - ii. An income statement or statement of revenue by fund source for the applicant's current fiscal year to date and for each of the previous three fiscal years;
      - iii. A statement of expenditures by fund source for the applicant's current fiscal year to date and for each of the previous three fiscal years; and
      - iv. An audited financial statement or a financial audit for the prior fiscal year, if available.
    - b. For a Qualified Vendor Agreement for services that have a published rate, the applicant shall submit ~~their~~ its audited financial statement audit for the prior year. In the absence of an audited financial statement, the applicant may submit quarterly or an audited financial statement statements for the prior year, including revenues and expenditures for the prior year.
    - c. Applicants who do not have ~~a~~ an audited financial audit statement or quarterly financial statement statements shall submit a personal financial statement of the Director or Chief Executive Officer or if a corporation, the corporate business plan.
    - d. A newly formed corporation shall submit the corporate business plan and personal financial statements of the Director or Chief Executive Officer.
    - e. Additional financial information may be required by the Request for Qualified Vendor Applications.
- B. The Division shall consider the following factors in determining if an applicant is a Qualified Vendor and eligible to enter into a Qualified Vendor Agreement:
1. Ability of the applicant to meet the need for services based on performance, including compliance with licensing and certification requirements; program monitoring, agreement monitoring, or contract monitoring reports; and corporate

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or individual experience providing community developmental disability services or similar services in Arizona and in other states;

2. Whether the applicant has met the requirements of the Qualified Vendor application process;
3. Whether the application is consistent with the Division's network development plan or other documentation of projected service need;
4. Financial stability of the applicant as demonstrated by the financial information provided in the application;
5. The rate proposal for a negotiated rate agreement; and
6. Any other criteria deemed relevant by the Division and included as part of the Request for Qualified Vendor Applications.

C. The Division shall document the results of its evaluation of the applications in the Division agreement file.

**R6-6-2105. Qualified Vendor Agreement**

A. The Division shall enter into Qualified Vendor Agreements with an applicant that:

1. Meets the requirements defined of R6-6-2104,
2. Accepts the published rate or agreed upon negotiated rate, and
3. Accepts the terms and conditions of the Qualified Vendor Agreement as defined by the Division in the Request for Qualified Vendor Applications and any amendments to the Request for Qualified Vendor Applications.

B. The Division shall enter into only one Qualified Vendor Agreement per applicant, which may be amended as needed.

C. The Division shall specify in the Qualified Vendor Agreement what information updates to the application will require an agreement amendment.

~~C.D.~~ A Qualified Vendor shall update the assurances, financial information, ~~and~~ conflict of interest statement, and other information provided in the application when there is a change or at the request of the Division.

~~D.E.~~ A Qualified Vendor may update the Qualified Vendor's program plan at any time to reflect a change in services, methodology or locations of service delivery, for inclusion in the Qualified Vendor Directory. The Division shall review all changes submitted by the Qualified Vendor for consistency with the Qualified Vendor Agreement.

F. If the Division finds that information provided in the original application or as an update to the application is materially inaccurate, and the Qualified Vendor fails to correct such information within the time specified in a notice from the Division, such failure may be cause for termination of the Qualified Vendor Agreement in whole or in part. The Division may remove the information from the Qualified Vendor Directory until a correction is provided or the Qualified Vendor Agreement is terminated.

~~E.G.~~ A Qualified Vendor may submit an amended application to request that additional services be added to the Qualified Vendor Agreement at any time a service is posted to the Division web site page as an open and continuous Request for Qualified Vendor Applications. The Division shall respond to a request for an amendment to Qualified Vendor Agreements based on the criteria defined at R6-6-2103 and R6-6-2104.

~~F.H.~~ Prior to the effective date of the Qualified Vendor Agreement, the Division shall not disclose any information identified by the applicant as confidential business information or proprietary information without first notifying the applicant in writing and allowing the applicant opportunity to respond or protest the planned disclosure.

**R6-6-2109. Consumer Choice**

A. In support of a consumer-responsive service delivery system, the Division shall provide a consumer or the consumer's representative the opportunity to express and document their interest in utilizing services from a specific Qualified Vendor or Individual Independent Provider through the ISP process.

B. At the annual review of the ISP, the consumer or the consumer's representative may express a preference to utilize a different Qualified Vendor, without explanation. The Division shall accommodate the request to the extent appropriate and practical, as determined solely by the Division.

C. If the consumer or the consumer's representative expresses a preference to utilize a different Qualified Vendor between annual reviews of the ISP, the consumer or the consumer's representative must state in writing or must report to the support coordinator, for incorporation into ISP notes, the rationale for changing providers and a description of the opportunities given to the current Qualified Vendor to address the consumer's concerns. The consumer may change Individual Independent Providers at any time.

D. The Division shall accommodate the requested change if the consumer and the current Qualified Vendor are unable to resolve the consumer's concerns, the change is reasonable, and another Qualified Vendor or Individual Independent Provider, identified through the Vendor Call for Services process or the consumer's or the consumer's representative's choice or Individual Independent Provider, indicates that it is available to provide services for the consumer.

**R6-6-2110. Authorization to Provide Services**

A. The Division shall issue authorizations to the Qualified Vendors selected by the consumer, the consumer's representative or the Division to provide the needed services.

B. The Division shall pay a Qualified Vendor based on the rates established in the Qualified Vendor Agreement and the units of service documented on the invoices submitted for valid authorizations issued for individual consumers.

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- C. The Division shall modify authorizations based on changes in the needs of consumers as documented in the ISP by the ISP Team and as applicable, approved by the Division.
- D. The Division shall not provide reimbursement for services that have not been authorized except in an emergency situation, as determined by the Division.
- E. A Qualified Vendor may provide short-term emergency services and, if the services are approved by the Division, the Division shall pay for the short-term emergency services.
  - 1. The Qualified Vendor shall notify the Division of the emergency situation within one working day of implementing the emergency services.
  - 2. The Division shall ~~only~~ approve payment for emergency services for up to five days. Upon verbal or written request from the Qualified Vendor, the District Program Manager may approve an additional emergency period for up to 15 days. The District Program Manager shall approve any extension of the emergency period in writing.
  - 3. The Division shall review the consumer's needs through the ISP process and document as appropriate the revised authorization level.
- F. A Qualified Vendors providing service may request an informal review by the Division of the number of units of service or type of services authorized for a specific consumer by submitting a written request for review to the Division District Program Manager.
  - 1. The District Program Manager:
    - a. Shall conduct a review of the authorized units of service and issue a determination within 10 days of receipt of the request for review; or
    - b. May, at the sole discretion of the Division, arrange for an independent assessment of the service authorization by an external party selected from a list of independent assessors approved by the Division. The independent assessor shall review the service authorization and provide a written assessment to the District Program Manager within 30 days of the request for an assessment.
  - 2. The District Program Manager shall issue a decision including the reasons for the decision within 10 days of receiving the independent assessment.
  - 3. ~~The District Program Manager's decision is final and not subject to administrative review.~~

**R6-6-2111. ~~Cancellation~~ Termination of the Qualified Vendor Agreement**

The Division shall ~~cancel~~ terminate a Qualified Vendor Agreement and shall remove a provider from the Qualified Vendor List for any of the following reasons:

- 1. Upon request of the vendor,
- 2. When the Qualified Vendor Agreement has expired,
- 3. When a vendor no longer meets the criteria defined in the Request for Qualified Vendor Applications,
- 4. For non-compliance with the Qualified Vendor Agreement requirements,
- 5. For failure to maintain a valid license, AHCCCS registration or Division certification, as appropriate, ~~or~~
- 6. As determined by the Division after the Qualified Vendor has been given notice and opportunity to be heard in accordance with R6-6-2115, or
- 7. For other reasons, such as lack of available funds.

**R6-6-2113. Transition to the Qualified Vendor Process**

- A. Prior to July 1, 2003, the Division shall review the ISPs for all consumers receiving community developmental disability services and shall review the Qualified Vendor Agreements to determine if the current provider is a Qualified Vendor and can meet the ~~consumers'~~ consumer's needs based on the consumer's ISP and the services described in the Qualified Vendor Agreement.
- B. The current provider of service shall provide written assurances to the Division in a manner prescribed by the Division confirming that the consumer's needs, as described in the ISP, are being met.
- C. The Division shall issue an authorization effective July 1, 2003 to the current provider if it is determined that the program plan matches the consumer needs as defined in the ISP, the current provider is a Qualified Vendor and the current provider provides written assurance that the consumer's needs, as described in the ISP, are being met.
- D. The Division shall post to its web site a Vendor Call for Services and notify Qualified Vendors via list serv if it determines that the current provider cannot continue to meet the needs of the consumer based on the ISP, that the current provider is not a Qualified Vendor, or the current provider does not provide written assurance that the consumer's needs, as described in the ISP, are being met.

**R6-6-2114. Rate Setting**

- A. The Division may establish a rate structure for community developmental disability ~~development~~ services, including the rate structure for provider organizations, professional independent providers and individual independent providers. Each fiscal year, the Division shall review the reimbursement rates for Arizona long-term care services and state only programs and may update the rate structure.
  - 1. The Division shall contract with an independent consulting firm for an annual review of the adequacy and appropriateness of reimbursement rates to providers of community developmental disability services.

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2. The Division shall complete a study of reimbursement rates for each community developmental disability service contracted for by the Division no less than once every five years.
  3. The Division may require, and Qualified Vendors and Individual Independent Providers shall provide, financial data to the Division in the form and format prescribed by the Division to assist in the annual review. The Division shall seek provider recommendations regarding the form and format.
  4. The Division shall annually establish a schedule that identifies which community developmental disability services will be reviewed for adequacy and appropriateness, and which community developmental disability services will be included in the rate reimbursement study.
  5. The Department shall determine if the independent consulting firm shall perform one or more of the following activities to measure the adequacy and appropriateness of the reimbursement rates:
    - a. Review the Department's current rate structure,
    - b. Conduct a provider cost survey,
    - c. Compare the Department's rates to rates for similar services used by other state agencies, and
    - d. Develop independent rate models for community developmental disabilities services.
  6. The Assistant Director may consider evidence of the adequacy and appropriateness of the Division's reimbursement rates gathered from R6-6-2114(5)(a) through (d), the rate study, or other relevant data sources to determine whether a new rate needs to be created or an existing rate needs to be revised.
  7. After considering the evidence in the adequacy and appropriateness review, the Assistant Director may establish a rate change for each service reviewed, based on the availability of funds.
  8. After considering the evidence in the study of reimbursement rates and independent rate models, the Assistant Director may propose a new rate.
  9. The Division shall provide public notice if rates for a community developmental disability service are to be established or revised. The Division shall include in the notice the proposed rate or rate change, the effective date of the rate change, where those rates shall be available for review and, if a rate for a service is being established for the first time, any phase-in schedule for the rate change.
  10. The Division may provide a public comment period regarding the rate change.
  11. The Assistant Director shall review any public comments received about the proposed rate, rate change or phase-in schedule, existing service history or current purchase of service information about the rates and any other information and may make adjustments to the proposed rate, rate change or phase-in schedule prior to finalizing the rate and the phase-in schedule.
  12. The Division shall provide public notice of the final rates and phase-in schedule.
  13. The Division shall adjust rates in accordance with legislatively mandated and appropriated increases or decreases.
  14. The Division shall maintain rate schedules for providers of community developmental disability services at the central office of the Division for reference use during customary business hours.
- B.** When the rate for a service is established for the first time, the Assistant Director may implement the rate through a phase-in schedule not to exceed three years in duration.
1. When current rates are below the newly established rate, the Division may phase in the implementation of the new rates as follows:
    - a. In the first and second year of the new rate, providers may receive an incremental increase of the difference between their prior rate and the new rate;
    - b. In the third year, the providers shall receive the full rate.
  2. When current rates are above the newly established rate, the Division may phase in the implementation of the new rates as follows:
    - a. In the first and second year of the new rate, providers may receive an incremental rate decrease from their prior rate to the new rate;
    - b. In the third year, the providers shall receive the new rate.
- C.** For a negotiated rate agreement, the Division may:
1. Hold discussions with any or all applicants regarding their offers; ~~and~~
  2. Issue ~~one or more a written requests request~~ request for a ~~best and final offer~~ final proposal revision to responsive applicants, which shall set forth the date, time, and place for the submission of the ~~best and final offer~~ final proposal revision. If the applicant does not submit a notice of withdrawal or a ~~best and final offer~~ final proposal revision in response to the Division's request, the Division shall use the applicant's most recent offer as the ~~best and final offer~~ final proposal revision; ~~and~~
  3. Determine that an additional final proposal revision is needed.
- D.** The Division shall include in a negotiated rate agreement the effective date of the negotiated rate.

**R6-6-2115. Legal and Contractual Remedies**

- ~~A. An applicant may protest the posting of a Request for Qualified Vendor Applications by filing a written Notice of Protest with the Department procurement officer.~~

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- ~~B.A.~~ The remedies in this Section apply to protests of the posting of a Request for Qualified Vendor Applications, the denial of a Qualified Vendor Application in its entirety, or denial of one or more services included in the Qualified Vendor Application. An applicant or Qualified Vendor may protest the denial of a Qualified Vendor application in its entirety, or for one or more services included in the application, by filing:
1. ~~A~~ a written Notice of Intent to File a Protest and Request for Problem Solving with the Division Assistant Director, or
  2. ~~A~~ a Notice of Protest with the Department procurement officer.
- ~~C.~~ If the protestor does not request problem solving, the protestor shall file a Notice of Protest with the Department procurement officer.
- ~~D.B.~~ Request for Problem Solving The protestor shall include the following information in the Notice of Intent to File a Protest and Request for Problem Solving or in the Notice of Protest
1. The Qualified Vendor or Qualified Vendor Applicant shall include the following information in the Request for Problem Solving:
    - 1-a. Name, address, and telephone number of the protestor,
    - 2-b. Signature of the ~~protestor~~ protestor or its representative,
    - 3-c. Identification of the adverse action by the Division that is in dispute,
    - 4-d. A statement of the legal and factual grounds of the intended protest, including copies of any relevant documents, and
    - 5-e. The relief requested.
  2. ~~The Qualified Vendor or Qualified Vendor Applicant~~ protestor shall file the ~~Notice of Intent to File a Protest and Request for Problem Solving with the Division or the Notice of Protest with the Department procurement officer~~ within 21 days of the date after the ~~protestor~~ Qualified Vendor or Applicant receives notice of the adverse action.
  3. ~~The Notice of Intent to File a Protest and Request for Problem Solving is deemed filed when the Division receives the written document.~~
- ~~G.~~ The Notice of Protest is deemed filed when the Department procurement officer receives the written document.
- ~~H.~~ If a Notice of Protest is filed before the award of Qualified Vendor Agreements, the Division may enter into Qualified Vendor Agreements unless the Department procurement officer makes a written determination that there is reasonable probability that the protest will be sustained and that delay is consistent with the best interests of the state.
4. ~~Within 30~~ 21 days of the filing the ~~Notice of Intent to File a Protest and Request for Problem Solving~~, the Assistant Director shall reach resolution or determine that resolution cannot be reached.
  5. ~~If~~ resolution is reached and documented, the ~~Qualified Vendor or Qualified Vendor Applicant~~ protestor shall not be entitled to pursue further legal remedies with regard to the protested issue.
  6. ~~If~~ resolution cannot be reached, the Assistant Director shall issue written verification to the ~~protestor~~ Qualified Vendor or Qualified Vendor Applicant that the matter was not resolved. To pursue further review, the ~~protestor~~ Qualified Vendor or Applicant shall file a Notice of Protest with the Department procurement officer, within ~~30~~ 14 days of the issuance of verification.
- C. Notice of Protest
1. ~~The~~ protestor shall include the following information in the Notice of Protest: ~~a copy of the original intent to File a Protest and Request for Problem Solving documentation and of the verification from the Assistant Director.~~
    - a. Name, address, and telephone number of the protestor,
    - b. Signature of the protestor or its representative,
    - c. Identification of the action by the Division that is in dispute,
    - d. A statement of the legal and factual grounds of the intended protest including copies of any relevant documents, and
    - e. The relief requested.
  2. The protestor shall file the Notice of Protest with the Department procurement officer within 21 days of the date the protester receives notice of the action or within 14 days of issuance of the verification of non-resolution through the Problem Solving process from the Assistant Director.
  3. The Notice of Protest is deemed filed when the Department procurement officer receives the written document.
  4. If a Notice of Protest is filed before the award of Qualified Vendor Agreements, the Division may enter into Qualified Vendor Agreements unless the Department procurement officer makes a written determination that there is reasonable probability that the protest will be sustained and that delay is consistent with the best interests of the state.
  5. If applicable, the protestor shall include in the Notice of Protest a copy of the original Request for Problem Solving documentation and of the verification from the Assistant Director.
- ~~M.6.~~ If the Department procurement officer sustains the protest in whole or part, and determines that the Request for Qualified Vendor Applications, proposed Qualified Vendor Agreement, or Qualified Vendor Agreement denial does not comply with applicable statutes and rules, the Department procurement officer shall implement an appropriate remedy as prescribed in subsection ~~§~~ (⊖) of this rule.
- ~~N.7.~~ In determining the appropriate remedy, the Department procurement officer shall consider the following:
- 1-a. Circumstances surrounding the procurement or proposed procurement,

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- 2-b. The seriousness of the procurement deficiency,
  - 3-c. The degree of prejudice to other interested parties,
  - 4-d. The degree of prejudice to the integrity of the procurement system,
  - 5-e. The good faith of the parties,
  - 6-f. The extent of performance,
  - 7-g. The costs to the state,
  - 8-h. The urgency of the procurement, and
  - 9-i. The impact of the relief on the Department's mission.
- ~~8.~~ **8.** The Department procurement officer may consider the following actions, alone or in combination, as an appropriate remedy:
- 1-a. Decline to exercise an option to renew under the Qualified Vendor Agreement,
  - 2-b. Terminate the Qualified Vendor Agreement,
  - 3-c. Reissue the Request for Qualified Vendor Applications,
  - 4-d. Issue a new Request for Qualified Vendor Applications,
  - 5-e. Include the Qualified Vendor in the list of respondents to a Vendor Call for Services,
  - 6-f. Award a Qualified Vendor Agreement as provided in these procurement rules, or
  - 7-g. Any other remedial action that is reasonable and appropriate under the circumstances.
- ~~9.~~ **9.** Within ~~45~~ 21 days of receipt of the Notice of Protest, the Department procurement officer shall send a written decision to the ~~protestor~~ protester by certified mail, return receipt requested, or by any other method that provides evidence of receipt and shall send a copy of the decision to the Division. The Department procurement officer shall explain the reasons for the conclusions reached in the decision.
- ~~10.~~ **10.** Upon receipt of the decision from the Department procurement officer, the protester may file an appeal with the Department's Office of Appeals as authorized in A.R.S. §§ 41-1991, 41-1992(A) through (C), excluding any references to review by the Appeals Board, and A.R.S. § 41-1993(A).
11. The protester may proceed to the next level of appeal if the protester does not receive a response within 21 days.
- ~~12.~~ **12.** Upon receipt of the decision from the Department's Office of Appeals, the protester may seek relief through the Superior Court as provided in A.R.S. § 12-901 et seq.

**R6-6-2116. Resolution of Agreement Claims and Controversies**

- A.** Claims under Qualified Vendor Agreements shall be filed with the Department procurement officer within 12 months of the date the Department has denied payment.
- B.** The Department procurement officer shall have the authority to settle and resolve Qualified Vendor Agreement claims subject to subsection (C). Appeals from decisions of the Department procurement officer may be made to the Department Office of Appeals as authorized in A.R.S. §§ 41-1991, 41-1992(A) through (C), excluding any references to review by the Appeals Board, and A.R.S. § 41-1993(A).
- C.** The settlement or resolution of a claim in excess of \$10,000 requires the prior written approval of the Department Director.
- D.** If a claim cannot be resolved by mutual agreement, the Department procurement officer shall, upon a written request by the Qualified Vendor for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the Department procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.
- E.** The Department procurement officer shall furnish a copy of the decision to the Qualified Vendor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The decision shall include:
  - 1. A description of the claim;
  - 2. A reference to the pertinent Qualified Vendor Agreement provision;
  - 3. A statement of the factual areas of agreement or disagreement;
  - 4. A statement of the Department procurement officer's decision, with supporting rationale; and
  - 5. A statement of the Qualified Vendor's Appeal Rights and required time-frame for appeal.
- F.** The Department's procurement officer may extend the time limit for decisions set forth in R6-6-2116(D) for a reasonable time not to exceed 30 days. The Department procurement officer shall notify the Qualified Vendor in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
- G.** If the Department procurement officer fails to issue a decision within 60 days after the request is filed or within the time prescribed under subsection (F) of this rule, the Qualified Vendor may proceed as if the Department procurement officer had issued an adverse decision.
- H.** Upon receipt of the decision from the Department procurement officer, the protester may file an appeal with the Department's Office of Appeals as authorized in A.R.S. §§ 41-1991, 41-1992(A) through (C), excluding any references to review by the Appeals Board, and A.R.S. § 41-1993(A).

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**R6-6-2117. Controversies Involving State Claims Against a Qualified Vendor**

All claims asserted by the state against a Qualified Vendor that are not resolved by mutual agreement shall promptly be referred by the Department procurement officer to the Department's Office of Appeals for a hearing without regard to the procedures set forth in these rules. The Department procurement officer shall provide notice to the Qualified Vendor that the claim has not been resolved by mutual agreement and is being referred to the Department's Office of Appeals.

**R6-6-2118. Hearing**

Hearings on appeals of claims decisions shall be conducted as contested cases pursuant to these rules and the Arizona Administrative Procedure Act (Title 41, Chapter 6, Article 1, Arizona Revised Statutes).

**R6-6-2119. Appeals to Superior Court**

Upon receipt of the decision from the Department's Office of Appeals, the protester may seek relief through the Superior Court as provided in A.R.S. § 12-901 et seq.