

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

[R08-170]

PREAMBLE

1. Sections Affected

R4-19-101
R4-19-102
Table 1
R4-19-206
R4-19-401
R4-19-402
R4-19-402
R4-19-403
R4-19-404
R4-19-405
R4-19-509
R4-19-814

Rulemaking Action

Amend
Amend
Amend
Amend
Repeal
New Section
Amend
Amend
New Section
Amend
Amend

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

Authorizing statutes: A.R.S. §§ 32-1606(A)(1), 32-1606(A)(3), (B)(12), and 32-1664

Implementing statutes: A.R.S. §§ 41-1073, 32-1601(6), (15), (16), 32-1601(7), 32-1601(12), 32-1601(13), 32-1662, 32-1663 and 32-1664

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 13 A.A.R. 2267, June 29, 2007

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

Name: Pamela K. Randolph RN, MS
Associate Director of Education and Evidence-based Regulation

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

The Arizona State Board of Nursing is amending rules in both Articles 1 and 4 as a result of two five-year rule reviews, one approved in July 12, 2005 (Articles 1 and 8) and another approved December 5, 2006 (Articles 4, 6 and 7). Additional Sections in Articles 2 and 8 are being amended to delete definitions that are moved to Article 1 and add preceptorship rules for nursing education programs. One Section in Article 5 is being amended to reflect renumbering of rules by the Arizona Medical Board referenced in the Section. In the five-year rule review submitted in 2005 the Board intended to submit an amended Article 1 by June, 2006. In the five-year rule report approved December 5, 2006, the Board planned to submit an amended Article 4 by December, 2007. Delays in submission occurred because

of other rulemaking priorities, frequent stakeholder meetings to discuss the contents of these amendments and demands of the agency. The Board identified the reasons for amending these rules in each five-year report. Some additional definitions were proposed in the 2005 five-year report that were not actually incorporated into this rule-making package because they were deemed no longer necessary or pertinent. An explanation of the changes to each rule is provided here.

R4-19-101. Definitions

Several definitions were amended to improve clarity and consistency. Definitions not contained in any current rule or currently in statute were deleted. The following definitions were added: applicant, assign, client, clinical instruction, direct supervision, dual relationship, episodic care, failure to maintain professional boundaries, independent nursing activities, LPN, nursing diagnosis, nursing program administrator, nursing program faculty, onsite supervision, patient, preceptor, proposal approval, provisional approval, reinstatement, resident, RN, standards related to scope of practice, traineeship, and unlicensed assistive personnel.

R4-19-102. Time-frames for Licensure, Certification, or Approval

The Board amended this Section to include the following definitions: administrative completeness or administratively complete, application packet, comprehensive request for additional information, deficiency notice, overall time-frame, and substantive review time-frame. The definition of applicant was expanded and moved to R4-19-101. The Board authority to deny a request to withdraw an application if the applicant is the subject of a current complaint was clarified. The time-frame table was amended to clarify the license types that are subject to licensing time-frame rules.

R4-19-206. Curriculum

Amendments in this Section include deleting the definition of “clinical instruction” because it was moved to R4-19-101. Recent research (NCSBN. *A National Survey on Elements of Nursing Education, July 2006*) regarding best practices in nursing education was reviewed. The study concluded that students with nursing faculty available to them during clinical experiences reported less difficulty in client assignments after graduation. Additionally, one Arizona program reported that having all clinical instruction delivered by preceptors contributed to poor program outcomes including a low pass rate on the national licensing exam (NCLEX-RN). After careful review of this information, the Board decided to promulgate rules for preceptorships. The provisions adopted are based on the Board’s advisory opinion entitled “Preceptorship for Pre-licensure Nursing Students in a Professional Nursing Program” first approved by the Board on June 5, 2002.

R4-19-401. Standards Related to Licensed Practical Nurse Scope of Practice and

R4-19-402. Standards Related to Registered Nurse Scope of Practice

The titles of these rules were changed to better describe their contents as they relate to the statutory definitions of practical and professional nursing (A.R.S. §§ 32-1601(12) and (13). The Sections were then re-written using a nursing process framework to provide a logical means of comparing the differing standards for practical and registered/professional nursing. Subsections include standards for conduct, assessing, planning, implementing, evaluating, teaching, and delegating.

R4-19-403. Unprofessional Conduct

The Board recently (2005) amended this Section and made no substantial changes. The definitions of “Failure to maintain professional boundaries” and “Dual relationships” are deleted and moved to R4-19-101.

R4-19-404. Reinstatement or Issuance of License or Certificate

The Board is amending this Section to clarify the requirements for reinstating a license or certificate that was revoked or voluntarily surrendered, re-issuing a license or certificate that was suspended, and issuing a license that was previously denied. The Board prescribes the conditions for licensure under these circumstances in subsection (A) and details the process in subsection (C). The Board is amending subsection (B) to allow it to enter into a voluntary agreement with a nurse to allow for reinstatement in less than the five years if, in the opinion of the Board, the nurse has the potential to safely return to nursing practice in less than five years.

R4-19-405. Board Ordered Evaluations

After receiving a request from the public and consultation with the Governor’s Regulatory Review Council (G.R.R.C.) staff, the Board is adding this rule for Board ordered evaluations to provide the public with the criteria and process for Board ordered evaluations. In this Section, the Board specifies the types of evaluations it may order, the criteria for ordering an evaluation, and the criteria used to determine if an evaluator is qualified.

R4-19-509. Delegation to Medical Assistants

This rule is being amended for the sole purpose of renumbering the referenced rules of the Arizona Medical Board so that they refer to the current medical board rules regarding medical assistants.

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

This Section of the rules for certified nursing assistants and R4-19-403, regarding nurses, were opened for the sole purpose of deleting the definitions of “failure to maintain professional boundaries” and “dual relationships” because the definitions were consolidated and moved to R4-19-101. The Board last amended this Section in 2005.

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

The Board used *A National Survey on Elements of Nursing Education* by S. Li and K. Kenward, published by the National Council of State Boards of Nursing, July 2006 to support its rules on preceptorships in nursing programs. Copies of the study may be obtained from the person identified in this preamble. Data and other materials related to the study may be obtained from the National Council of State Boards of Nursing, 111 E. Wacker, Suite 2900, Chicago, IL 60601-4277.

7. 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:

Not applicable

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

The proposed amendments and new Sections to Articles 1 and 4 and R4-19-206 and R4-19-814 are not expected to have a major economic impact on any regulated entity, the Board, or small businesses.

The Arizona State Board of Nursing licenses approximately 63,000 registered nurses and 11,000 practical nurses and certifies approximately 21,000 nursing assistants. Additionally the Board oversees 29 in-state nursing programs and approximately 130 nursing assistant programs. The Board has granted approval for four out-of-state nursing programs to conduct clinical classes in Arizona. The Board also regulates advanced practice registered nursing (APRN) in the categories of registered nurse practitioner (a.k.a. nurse practitioner) including nurse midwife and clinical nurse specialist. Currently the Board certifies approximately 3000 nurse practitioners and 150 clinical nurse specialists.

The amendments to the definitions in R4-19-101 are not expected to have any direct economic impact on the Board, the regulated community, or the public.

The amendments to R4-19-102 regarding time-frames are not expected to have a substantial economic impact on the regulated community or the public. Amendments to Article 2 are not expected to have a major economic impact on existing Arizona-based nursing programs as these programs limit preceptorships to the last semester of the program. There is one out-of-state program that may be affected (University of Wisconsin—Oshkosh). University of Wisconsin currently has one clinical student in Arizona and has had two Arizona graduates since approval in May 2003. Research indicates (NCSBN, *A National Survey on Elements of Nursing Education, July 2006*) that preceptorship programs such as University of Wisconsin—Oshkosh do not prepare students as well for clinical practice as programs that provide for direct supervision of students by nursing faculty during clinical experiences. The availability of clinical faculty to assist with skills is predictive of difficulty with current care assignments of newly licensed nurses (NCSBN, 2006, p. 5). One Arizona program also instituted this model with poor outcomes in terms of quality of clinical experiences and passing rates on the national licensing exam. While University of Wisconsin will be negatively affected by this rulemaking, the benefit to Arizona citizens and employers of having expert faculty directly supervise clinical experiences outweigh the potential loss of a very small number of Arizona students. University of Wisconsin may elect to modify its clinical instruction to conform to the regulations. The Board would continue to allow a currently enrolled student to complete the program in Arizona.

Amendments to Article 4 are not expected to have any direct economic impact on the regulated community, the Board, or the public. The detailed standards for the practice of nursing will benefit the regulated community and the public by providing clear differentiation of RN and LPN roles and delineating standards expected of all licensed nurses. Nurses seeking to reinstate their license will benefit from the increased specificity in R4-19-404. The regulated public will benefit from the Board establishing the conditions for ordering an evaluation and the qualifications of an evaluator in R4-19-405.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

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10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceed-

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ing is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

The Board will hold an oral proceeding on July 9, 2008 at 1:00 p.m. in the Board offices at 4747 N. 7th St., Suite 200, Phoenix, AZ 85014. The Board will accept written comments submitted to Pamela Randolph, Associate Director of Education and Evidence-based Regulation, 4747 N. 7th St., Suite 200, Phoenix, AZ 85014 until the close of record at 5:00 p.m. July 9, 2008.

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

Not applicable

12. Any material incorporated by reference and its location in the rules:

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

ARTICLE 1. DEFINITIONS AND TIME-FRAMES

Section	
R4-19-101.	Definitions
R4-19-102.	Time-frames for Licensure, Certification, or Approval
Table 1.	Time-frames

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Section	
R4-19-206.	Curriculum

ARTICLE 4. REGULATION

Section	
R4-19-401.	Scope of Practice for a Practical Nurse <u>Standards Related to Licensed Practical Nurse Scope of Practice</u>
R4-19-402.	Scope of Practice for a Professional Nurse <u>Standards Related to Registered Nurse Scope of Practice</u>
R4-19-403.	Unprofessional Conduct
R4-19-404.	Reinstatement or Issuance of License <u>or Certificate</u>
R4-19-405.	Repeated <u>Board-ordered Evaluations</u>

ARTICLE 5. ADVANCED PRACTICE NURSING

Section	
R4-19-509.	Delegation to Medical Assistants

ARTICLE 8. CERTIFIED NURSING ASSISTANTS

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

ARTICLE 1. DEFINITIONS AND TIME-FRAMES

R4-19-101. Definitions

In addition to the definitions in A.R.S. § 32-1601, in this Chapter:

“Abuse” means a misuse of power or betrayal of trust, respect, or intimacy by a nurse, ~~or~~ nursing assistant, or applicant that causes or is likely to cause physical, mental, emotional, or financial harm to a client.

“Administer” means the direct application of a medication to the body of a patient by a nurse, whether by injection, inhalation, ingestion, or any other means.

~~“Administrator” means a nurse educator with the administrative responsibility and authority for the direction of a nursing program.~~

“Applicant” means a person seeking licensure, certification, prescribing, or prescribing and dispensing privileges, or an entity seeking approval or re-approval of a:

Advanced practice registered nursing program,

Credential evaluation service,

Nursing assistant training program.

Nursing program.

Nursing program change, or

Refresher program.

“Approved national nursing accrediting agency” means an organization recognized by the Department of Education as an accrediting agency for a nursing program.

“Assign means a nurse designates nursing activities to be performed by another nurse that are consistent with the other nurse’s scope of practice.

“Certificate or diploma in practical nursing” means the document awarded to a graduate of an educational program in practical nursing.

“Client” means a recipient of care and may be an individual, family, group, or community.

“Clinical instruction” means the guidance and supervision provided by a nursing program faculty member or NAT-CEP instructor while a student is providing client care.

~~“Clinical nurse specialist” means a nurse who, through study, and supervised practice at the graduate level, and is expert in a selected clinical area of nursing.~~

“CNA” means a certified nursing assistant.

“Collaborate” means to establish a relationship for consultation or referral with one or more licensed physicians on an as-needed basis. ~~Direct or onsite supervision~~ Supervision of the activities of a registered nurse practitioner by the collaborating physician is not required.

“Contact hour” means a unit of organized learning, which may be either clinical or didactic and is 50 minutes of participation in a continuing education activity relating to nursing practice either 60 minutes in length or is otherwise defined by an organization recognized by the Board.

“Continuing education activity” means a course of study related to nursing practice that is awarded ~~credit~~ contact hours by an organization recognized by the Board, or academic credits or units in nursing or medicine by an accredited organization a college or university.

“CRNA” means a certified registered nurse anesthetist who provides anesthesia services under A.R.S. § 32-1661.

“DEA” means the federal Drug Enforcement Administration.

“Dispense” means to ~~issue package, label, and deliver~~ one or more doses of a prescription-only medication in a suitable container for subsequent use by a patient.

“Dual relationship” means a nurse or CNA simultaneously engages in both a professional and nonprofessional relationship with a patient that is avoidable, non-incidental, and results in the patient being exploited financially, emotionally, or sexually.

“Endorsement” means the procedure for granting an Arizona nursing license to an applicant who is already licensed as a nurse in another state or territory of the United States ~~or foreign country~~ and has passed an exam as required by A.R.S. § 32-1633 or 32-1638 or an Arizona nursing assistant certificate to an applicant who is already listed on a nurse aide register in another state or territory of the United States.

“Episodic care” means nursing care at nonspecific intervals that is focused on the current needs of the individual.

“Failure to maintain professional boundaries” means any conduct or behavior of a nurse or CNA that, regardless of the nurse’s or CNA’s intention, is likely to lessen the benefit of care to a patient or a patient’s family or places the patient or the patient’s family at risk of being exploited financially, emotionally, or sexually.

“Full approval” means the status granted ~~in writing~~ by the Board when a nursing program, ~~upon~~ after graduation of its first class, demonstrates the ability to provide and maintain a program in accordance with the standards provided by A.R.S. § 32-1601 et seq. and these rules Title 32, Chapter 15 and this Chapter.

“Good standing” means the license of a nurse, ~~either practical or professional,~~ or the certificate of a nursing assistant, is current, and the nurse or nursing assistant is not presently subject to any disciplinary action, consent order, or settlement agreement.

“Independent nursing activities” means nursing care within an RN’s scope of practice that does not require authorization from another health professional.

“Initial approval” means the permission, granted ~~in writing~~ by the Board, to an institution entity to establish a nursing assistant training program, after the Board determines that the program ~~proposal~~ meets the standards provided by ~~the law and these rules~~ A.R.S. Title 32, Chapter 15 and this Chapter.

~~“Licensed practical nurse” means a practical nurse licensed under this Chapter.~~

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“Licensure by examination” means the granting of permission to practice nursing based on an individual’s passing of a prescribed examination and meeting all other licensure requirements.

“LPN” means licensed practical nurse.

“NATCEP” means Nurse Aide Training and Competency Evaluation Program and includes both the nursing assistant training program and the required certification exam.

“NCLEX” means the National Council Licensure Examination.

“Nurse” means a licensed practical or ~~professional~~ registered nurse.

“Nursing diagnosis” means a clinical judgment, based on analysis of comprehensive assessment data, about a client’s response to actual and potential health problems or life processes. Nursing diagnosis statements include the actual or potential problem, etiology or risk factors, and defining characteristics, if any.

“Nursing practice” means assisting individuals or groups to maintain or attain optimal health, implementing a strategy of care to accomplish defined health goals, and evaluating responses to care and treatment.

“Nursing process” means applying problem-solving techniques that require technical and scientific knowledge, good judgment, and decision-making skills to assess, plan, implement, and evaluate a plan of care.

“Nursing program” means a formal course of instruction designed to prepare its graduates for licensure as ~~professional~~ registered or practical nurses.

“Nursing program administrator” means a nurse educator who meets the requirements of this Chapter and has the administrative responsibility and authority for the direction of a nursing program.

“Nursing program faculty member” means an individual working full or part time within a nursing program who is responsible for either developing, implementing, teaching, evaluating, or updating nursing knowledge, clinical skills, or curricula.

“Nursing-related activities or duties” means client care tasks for which education is provided by a basic ~~NATCEP~~ nursing assistant training program.

“P & D” means prescribing and dispensing.

“Parent institution” means the educational institution in which a nursing program or nursing assistant training program is conducted.

“Patient” means individual recipient of care.

“Pharmacology” means the science that deals with the study of drugs.

“Physician” means a person licensed under A.R.S. Title 32, Chapters 7, 8, 11, 13, 14, 17, or 29, or by a state medical board in the United States.

“Preceptor” means a ~~qualified person~~ registered nurse or other medical professional who meets the requirements of this Chapter who instructs, supervises and evaluates a licensee, ~~an advanced practice clinical nurse specialist, nurse practitioner or pre-licensure nursing student, or a pre-licensure nursing student~~ over an extended period.

“Preceptorship” means a clinical learning experience by which a learner enrolled in a ~~NATCEP, registered~~ nursing program, nurse refresher program, clinical nurse specialist, or nurse practitioner course of study or as part of a Board order provides nursing ~~or nurse assistant services~~ care while assigned to a health ~~care worker~~ professional who holds a license or certificate equivalent to or higher than the level of the learner’s program or in the case of a nurse under Board order, meets the qualifications in the Board order.

“Prescribe” means to order a medication, medical device, or appliance for use by a patient.

~~“PRN” means as needed.~~

“Proposal approval” means that an institution has met the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter to proceed with an application for provisional approval to establish a pre-licensure nursing program.

“Provisional approval” means that an institution has met the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter to implement a pre-licensure nursing program in Arizona.

“Refresher program” means a formal course of instruction designed to provide a review and update of nursing theory and practice ~~to professional or practical nurses preparing to re-enter nursing practice.~~

“Regionally accredited” means an educational institution is accredited by the New England Association of Schools and Colleges, Middle States Association of Colleges and Secondary Schools, North Central Association of Colleges and Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, or Western Association of Schools and Colleges.

“Register” means a listing of Arizona certified nursing assistants maintained by the Board that includes the following about each nursing assistant:

Identifying demographic information;

Date placed on the register;

Date of initial and most recent certification, if applicable; and

Status of the nursing assistant certificate, including findings of abuse, neglect, or misappropriation of property made by the Arizona Department of Health Services, sanctions imposed by the United States Department of Health and Human Services, and disciplinary actions by the Board.

“Reinstatement” means the process of restoring a license or certificate to an individual whose license or certificate was revoked or voluntarily surrendered.

“Resident” means a patient who receives care in a long-term care facility or other residential setting.

“RN” means registered nurse.

“RNP” means a registered nurse practitioner.

“SBTPE” means the State Board Test Pool Examination.

“Self-study” means a written self-evaluation conducted by a nursing program to assess the compliance of the program with the standards listed in R4-19-201 through R4-19-206.

“School nurse” means a ~~professional~~ registered nurse who is certified under R4-19-308.

“Standards related to scope of practice” means the expected actions of any nurse who holds the identified level of licensure.

“Supervision” means the direction and periodic consultation provided to an individual to whom a nursing task or patient care activity is delegated.

“Traineeship” means a clinical learning experience where a student enrolled in an approved nursing assistant training program provides care for residents in a long-term care facility while working with a CNA employed by the facility under the supervision of an RN or LPN.

“Unlicensed assistive personnel” or “UAP” means any unlicensed person, regardless of title, to whom nursing tasks are delegated.

R4-19-102. Time-frames for Licensure, Certification, or Approval

A. In this Section:

~~1. “Applicant” means a person or entity seeking licensure, certification, approval to prescribe and dispense drugs or approval of a nursing assistant program, a nursing program, a refresher program, or a nurse practitioner course of study.~~

1. “Administrative completeness” or “administratively complete” means Board receipt of all application components required by statute or rule and necessary to begin the substantive review time-frame.

2. “Application packet” means a Board-approved application form issued by the Board and the documentation necessary to establish an applicant’s qualifications for licensure, certification, or approval.

3. “Comprehensive request for additional information” means a Board notification made after the administrative completeness review time-frame that:

a. Contains a list of information required by statute or rule and necessary before the Board can grant the license; and

b. Suspends the running of days within the time-frames.

4. “Deficiency notice” means written communication by the Board to an applicant in person or at the mailing or electronic address identified on the application notifying the applicant that additional information is needed to complete the application. The Board may notify the applicant at the applicant’s electronic address only if the applicant provides that address in the application. The notice is effective:

a. On the date of its postmark, if mailed.

b. On the date of delivery, if delivered in person by a Board employee or agent.

c. On the date of delivery to the electronic address if delivered electronically.

5. “Overall time-frame” has the same meaning as A.R.S. § 41-1072(2).

6. “Substantive review time-frame” has the same meaning as A.R.S. § 41-1072(3).

B. In computing the time-frames in this Section, the day of the act or event from which the designated period begins to run is not included. The last day of the period is included unless it is a Saturday, Sunday, or official state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or official state holiday.

C. For each type of licensure, certification, or approval issued by the Board, the overall time-frame described in A.R.S. § 41-1072(2) is listed in Table 1. ~~The applicant and the Executive Director of the Board may agree in writing to extend the overall time-frames in Table 1. An applicant may submit a written request to the Board for an extension of time in which to provide a complete application. The request for an extension of time shall be submitted to the Board office before the~~

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deadline for submission of a complete application and shall state the reason that the applicant is unable to comply with the time-frame requirements in Table 1 and the amount of additional time requested. The Board may grant an extension of time if the Executive Director of the Board finds that the reason the applicant was unable to comply with the time-frame was due to circumstances beyond the applicant's control and that compliance can reasonably be remedied during the extension of time. The overall time-frame and the substantive review time-frame described in A.R.S. § 41-1072(3) may not be extended by more than 25% of the overall time frame.

- D. For each type of licensure, certification, or approval issued by the Board, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is listed in Table 1 and begins to run when the Board receives an application packet.
1. If the application packet is not administratively complete, the Board shall send a deficiency notice to the applicant. The time for the applicant to respond to a deficiency notice begins to run on the ~~postmark~~ date of the deficiency notice.
 - a. The deficiency notice shall list each deficiency.
 - b. The applicant shall submit to the Board the missing information or ~~the documentation~~ documents listed in the deficiency notice within the period specified in Table 1 for responding to a deficiency notice. The time-frame for the Board to complete the administrative review is suspended until the Board receives the missing information or documentation.
 - c. ~~If the an applicant fails to provide the missing information or the documentation documents listed in the deficiency notice within the period specified in Table 1, the Board shall may consider the application packet with-
drawn withdraw the application, and shall send the applicant a notice of withdrawal. If the Board withdraws the application, the Board shall close the applicant's file and send a notice to the applicant either by U.S. mail or electronically, if an electronic address is included in the application.~~
 - d. If the applicant is the subject of an investigation, the Board may continue to process the application. Failure of the applicant to supply the requested information or documents may result in denial of the license or certificate based on information gathered during the investigation.
 2. If the application packet is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
 3. If the Board issues a license, certificate, or approval during the administrative completeness review time-frame, the Board shall not send a separate written notice of administrative completeness.
- E. For each type of licensure, certification, or approval issued by the Board, the substantive review time-frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins to run on the postmark date of the notice of administrative completeness.
1. During the substantive review time-frame, an applicant may make a request to withdraw an application packet. The Board may deny the request to withdraw an application packet if the applicant is the subject of an investigation, based on information gathered during the investigation.
 2. If an applicant discloses or the Board receives allegations of unprofessional conduct as described in A.R.S. § 32-1601 or this Chapter, the The Board may shall review the allegations and may investigate an applicant who discloses prior unprofessional conduct defined in A.R.S. § 32-1601 and the applicant. The Board may require the applicant to provide additional information or documentation as prescribed in subsection (E)(3) if the Board believes that based on its assessment of whether the conduct is or might be harmful or dangerous to the health of a patient client or the public.
 3. During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The applicant shall submit the additional information or documentation within the period specified in Table 1. The time-frame for the Board to complete the substantive review of the application packet is suspended from the postmark date of the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.
 4. If the applicant fails to provide the additional information or documentation identified in the comprehensive written request within the time specified in Table 1, the Board ~~shall may~~ consider the application withdrawn and ~~shall may~~ send a notice of withdrawal to the applicant depending on whether the applicant is the subject of an investigation. If the applicant is the subject of an investigation, failure to supply the requested information or documents may result in denial of the license or certificate based on information gathered during the investigation.
 5. The Board shall grant licensure, conditional licensure, certification, or approval to an applicant:
 - a. Who meets the substantive criteria for licensure, certification, or approval required by ~~the Board~~ law; and
 - b. Whose licensure, certification, or approval is in the best interest of the public.
 6. The Board shall deny licensure, certification, or approval to an applicant:
 - a. Who fails to meet the substantive criteria for licensure, certification, or approval required ~~by the Board~~; or
 - b. Who has engaged in unprofessional conduct as ~~defined~~ described in A.R.S. § 32-1601 or this Chapter; and
 - c. Whose licensure, certification, or approval is not in the best interest of the public.
 7. The Board's written order of denial shall meet the requirements of A.R.S. § 41-1076. The applicant may request a hearing by filing a written request with the Board within 30 days of receipt of the Board's order of denial. The Board

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shall conduct hearings in accordance with A.R.S. ~~§ 41-1092 et seq.~~, Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Table 1. Time-frames

Time-frames (in days)								
Type of License, Certificate, or Program Approval	Applicable Section	Board Overall Time-frame Without Investigation	Board Overall Time-frame With Investigation	Board Administrative Completeness Time-frame	Applicant Time to Respond to Deficiency Notice	Board Substantive Review Time-frame Without Investigation	Board Substantive Review Time-frame With Investigation	Applicant Time to Respond to Comprehensive Written Request
Initial Approval of Nursing Programs <u>Nursing Program Proposal</u>	R4-19-207	150	Not applicable	60	180	90	Not applicable	120
Provisional Approval of a Nursing Program	R4-19-207	150	Not applicable	60	180	90	Not applicable	120
Full Approval or Re-approval of a Nursing Programs Program	R4-19-208 R4-19-210	150	Not applicable	60	180	90	Not applicable	120
Nursing Program Change	R4-19-209	150	Not applicable	60	180	90	Not applicable	120
Approval or Re-approval of a Refresher Programs Program	R4-19-214	150	Not applicable	60	180	90	Not applicable	120
CNS or RNP Nursing Program	R4-19-503	150	Not applicable	60	180	90	Not applicable	120
Approval or Re-approval of a Credential Evaluation Service	R4-19-303	150	Not applicable	60	180	90	Not applicable	120
Licensure by Exam	R4-19-301	150	270	30	270	120	240	150
Licensure by Endorsement	R4-19-302	150	270	30	270	120	240	150
Temporary License	R4-19-303	60	90	30	60	30	60	90
License Renewal	R4-19-304	120	270	30	270	90	240	150
School Nurse Certification	R4-19-308	150	270	30	270	120	240	150
Reinstatement of License	R4-19-404	150	270	30	270	120	240	150
Nurse Practitioner Program Approval	R4-19-503	150	Not applicable	60	270	90	Not applicable	120
Nurse Practitioner Certification	R4-19-504	150	270	30	180	120	240	150
Prescribing and Dispensing Approval	R4-19-507	150	270	30	270	120	240	150
Clinical Nurse Specialist Certification	R4-19-511	150	270	30	270	120	240	150
Prescribing Authority of a Certified Registered Nurse Anesthetist	R4-19-513	150	270	30	270	120	240	150
Approval of Nursing Assistant Training Programs; New and Renewal	R4-19-803 R4-19-804	120	Not applicable	30	180	90	Not applicable	120
Renewal of Approval of Nursing Assistant Training Programs	R4-19-804	120	Not applicable	30	180	90	Not applicable	120
Nursing Assistant Certification by Examination	R4-19-806	150	270	30	270	120	240	150
Nursing Assistant Certification by Endorsement	R4-19-807	150	270	30	270	120	240	150
Temporary Certificate	R4-19-808	60	Not applicable	30	60	30	Not applicable	60
Nursing Assistant Renewal	R4-19-809	120	270	30	270	90	240	150

Notices of Proposed Rulemaking

Reinstatement or Issuance of a Nursing Assistant Certificate	R4-19-815	150	270	30	270	120	240	150
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ARTICLE 2. PROFESSIONAL AND PRACTICAL NURSING PROGRAMS; REFRESHER PROGRAMS

R4-19-206. Curriculum

- ~~A.~~ For the purposes of this Section, “clinical instruction” means the guidance and supervision provided by a qualified faculty member or designee while a nursing student is providing patient care.
- ~~B.~~A. A nursing program shall develop and implement a curriculum that includes level objectives, course objectives, measurable learning outcomes for each class session, and course content outlines for each course that:
 1. Reflect its mission and goals;
 2. Are logically consistent between and within courses;
 3. Are designed so that a student who completes the program will have the knowledge and skills necessary to function in accordance with the definition and scope of practice specified in A.R.S. § 32-1601(12) and R4-19-401 for a practical nurse or A.R.S. § 32-1601(13) and R4-19-402 for a registered nurse.
- ~~C.~~B. A nursing program shall provide for progressive sequencing of classroom and clinical instruction sufficient to meet the goals of the program.
 1. A registered nursing (RN) program shall provide clinical instruction that includes, at a minimum, selected and guided experiences that develop a student’s ability to apply core principles of nursing in varied settings when caring for:
 - a. Adult and geriatric patients with acute, chronic, and complex, life-threatening, medical and surgical conditions;
 - b. Patients experiencing pregnancy and ~~delivery~~ labor;
 - c. Neonates, infants, and children;
 - d. Patients with mental, psychological, or psychiatric conditions; and
 - e. Patients with wellness needs.
 2. A practical nursing program (PN) shall provide clinical instruction that includes, at minimum, selected and guided experiences that develop an understanding of physiological, psychological, pathological, and basic nursing care needs when caring for:
 - a. Patients with medical and surgical conditions throughout the life span;
 - b. Patients experiencing pregnancy and ~~delivery~~ labor; and
 - c. Neonates, infants, and children in varied settings.
- ~~D.~~C. A nursing program shall maintain at least a 75% NCLEX® passing rate for graduates taking the NCLEX-PN® or NCLEX-RN® for the first time within 12 months of graduation. The Board shall issue a notice of deficiency to any program that has a NCLEX® passing rate that is less than 75% for two consecutive calendar years.
- D. A professional nursing program may provide precepted clinical instruction during the last session of the program and for the purpose of preparing a student for transition to practice as a registered nurse.
 1. A professional nursing program shall promulgate and adhere to policies that require preceptors to:
 - a. Hold a license in good standing as a registered nurse or multi-state privilege to practice in Arizona under A.R.S. Title 32, Chapter 15 and meet criteria for safe practice established by the nursing program under R4-19-203(C)(6); and
 - b. Possess clinical expertise that enables the preceptor to accomplish the goals of the preceptorship.
 2. A professional nursing program shall promulgate and adhere to policies that require a faculty member of the program to:
 - a. Supervise the clinical instruction according to the provisions of R4-19-204(C) and (D), and
 - b. Maintain accountability for student education and evaluation.

ARTICLE 4. REGULATION

R4-19-401. ~~Scope of Practice for a Practical Nurse~~ Standards Related to Licensed Practical Nurse Scope of Practice

- ~~A.~~ A licensed practical nurse shall ~~provide nursing care~~ engage in practical nursing as defined in A.R.S. § 32-1601 only under the supervision of a ~~professional~~ registered nurse or licensed physician.
- ~~B.~~ The scope of practice for a licensed practical nurse shall include ~~planning, implementation, documentation, and evaluation of the following:~~
 1. ~~Providing for the emotional and physical comfort of patients;~~
 2. ~~Observing, recording and reporting the condition of the patients including signs and symptoms which may be indicative of change in the patient’s condition to the nurse’s immediate supervisor;~~
 3. ~~Performing those nursing activities for which the licensed practical nurse has been prepared through basic education and those additional skills which are obtained through approved continued education programs.~~
 4. ~~Assisting with the rehabilitation of patients in accordance with the patient’s care plan.~~
- B. A LPN’s nursing practice is limited to those activities for which the LPN has been prepared through basic practical nurs-

ing education in accordance with A.R.S. § 32-1637(1) and those additional skills which are obtained through subsequent nursing education and within the scope of practice of a LPN as determined by the Board.

C. A LPN shall:

1. Practice within the legal boundaries of practical nursing within the scope of practice authorized by A.R.S. Title 32, Chapter 15 and 4 A.A.C. 19;
2. Demonstrate honesty and integrity;
3. Base nursing decisions on nursing knowledge and skills, the needs of clients, and LPN scope of practice;
4. Accept responsibility for individual nursing actions, decisions, and behavior in the course of practical nursing practice;
5. Maintain competence through ongoing learning and application of knowledge in nursing practice;
6. Protect confidential information unless obligated by law to disclose the information;
7. Report unprofessional conduct as defined in A.R.S. § 32-1601(16), and R4-19-403 and R4-19-814 of RNs, LPNs, and CNAs to the Board;
8. Respect a client's rights, concerns, decisions, and dignity;
9. Maintain professional boundaries; and
10. Respect a client's property and the property of others.

D. In participating in the nursing process and implementing client care across the lifespan, a LPN shall:

1. Contribute to the assessment of the health status of clients by:
 - a. Recognizing client characteristics that may affect the client's health status;
 - b. Gathering and recording assessment data;
 - c. Demonstrating attentiveness by observing, monitoring, and reporting signs, symptoms, and changes in client condition in an ongoing manner to the supervising registered nurse or physician;
2. Contribute to the development and modification of the plan of care by:
 - a. Planning episodic nursing care for a client whose condition is stable or predictable;
 - b. Assisting the registered nurse or supervising physician in identification of client needs and goals; and
 - c. Determining priorities of care together with the supervising registered nurse or physician;
3. Implement aspects of a client's care consistent with the LPN scope of practice in a timely and accurate manner including:
 - a. Following nurse and physician orders and seeking clarification of orders when needed;
 - b. Administering treatments, medications, and procedures;
 - c. Attending to client and family concerns or requests;
 - d. Providing health teaching to clients as directed by the supervising RN or physician or according to an established teaching plan;
 - e. Promoting a safe client environment;
 - f. Communicating relevant and timely client information with other health team members regarding:
 - i. Client status and progress,
 - ii. Client response or lack of response to therapies,
 - iii. Significant changes in client condition, and
 - iv. Client needs and special requests; and
 - g. Documenting the care the LPN provided;
4. Contribute to evaluation of the plan of care by:
 - a. Gathering, observing, recording, and communicating client responses to nursing interventions; and
 - b. Modifying the plan of care in collaboration with a registered nurse based on an analysis of client responses.

E. A LPN assigns and delegates nursing activities. The LPN shall:

1. Assigns nursing care within the LPN scope of practice to other LPNs;
2. Delegates nursing tasks to unlicensed assistive personnel (UAPs), including CNAs. In maintaining accountability for the delegation, the LPN shall ensure that the:
 - a. UAP has the education, legal authority, and demonstrated competency to perform the delegated task;
 - b. Tasks delegated are consistent with the UAP's job description and can be safely performed according to clear, exact, and unchanging directions;
 - c. Results of the task are reasonably predictable;
 - d. Task does not require assessment, interpretation or independent decision making during its performance or at completion;
 - e. Selected client and circumstances of the delegation are such that delegation of the task poses minimal risk to the client and the consequences of performing the task improperly are not life-threatening;
 - f. LPN personally provides clear directions and guidelines regarding the delegated task or, for routine tasks on stable clients, verifies that the UAP follows each written facility policy or procedure when performing the delegated task;
 - g. LPN provides supervision and feedback to the UAP; and

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h. LPN observes and communicates the outcomes of the delegated task.

R4-19-402. Scope of Practice for a Professional Nurse Standards Related to Registered Nurse Scope of Practice

- A.** The scope of practice for a professional nurse shall include the following:
1. Performing those nursing activities for which the professional nurse has been prepared through basic education and additional skills which are obtained through approved continuing education programs;
 2. Providing the nursing supervision in the planning for and provision of nursing care to patients and the directing and evaluating of nursing care provided by other licensed nurses and other personnel;
 3. Providing patient education, both individualized and to the public;
 4. Assessing the patients needs, planning for, implementing, evaluating, and documenting the nursing care being provided to each patient.
- B.** A professional nurse shall be responsible both for the nursing care directly provided by the nurse and the care provided by others who are under the professional nurse's supervision.
- A.** A registered nurse (RN) shall perform only those nursing activities for which the RN has been prepared through basic professional nursing education and those additional skills which are obtained through subsequent nursing education and within the scope of practice of a RN as determined by the Board.
- B.** A RN shall:
1. Practice within the legal boundaries of registered nursing within the scope of practice authorized by A.R.S. Title 32, Chapter 15 and 4 A.A.C. 19;
 2. Demonstrate honesty and integrity;
 3. Base nursing decisions on nursing knowledge and skills, the needs of clients, and registered nursing standards;
 4. Accept responsibility for individual nursing actions, decisions, and behavior in the course of registered nursing practice;
 5. Maintain competence through ongoing learning and application of knowledge in nursing practice;
 6. Protect confidential information unless obligated by law to disclose the information;
 7. Report unprofessional conduct, as defined in A.R.S. § 32-1601(16), and further specified in R4-19-403 and R4-19-814 to the Board;
 8. Respect a client's rights, concerns, decisions, and dignity;
 9. Maintain professional boundaries;
 10. Respect a client's property and the property of others; and
 11. Advocate on behalf of a client to promote the client's best interest.
- C.** In utilizing the nursing process to plan and implement nursing care for clients across the life-span, a RN shall:
1. Conduct a nursing assessment of a client in which the nurse:
 - a. Recognizes client characteristics that may affect the client's health status;
 - b. Gathers or reviews comprehensive subjective and objective data and detects changes or missing information;
 - c. Applies nursing knowledge in the integration of the biological, psychological, and social aspects of the client's condition; and
 - d. Demonstrates attentiveness by providing ongoing client surveillance and monitoring;
 2. Use critical thinking and nursing judgment to analyze client assessment data to:
 - a. Make independent nursing decisions and formulate nursing diagnoses; and
 - b. Determine the clinical implications of client signs, symptoms and changes, as either expected, unexpected, or emergent situations;
 3. Based on assessment and analysis of client data, plan strategies of nursing care and nursing interventions in which the nurse:
 - a. Identifies client needs and goals;
 - b. Formulates strategies to meet identified client needs and goals;
 - c. Modifies defined strategies to be consistent with the client's overall health care plan; and
 - d. Prioritizes strategies based on client needs and goals;
 4. Provide nursing care within the RN scope of practice in which the nurse:
 - a. Administers prescribed aspects of care including treatments, therapies, and medications;
 - b. Clarifies health care provider orders when needed;
 - c. Implements independent nursing activities consistent with the RN scope of practice;
 - d. Institutes preventive measures to protect client, others and self;
 - e. Intervenes on behalf of a client when problems are identified;
 - f. Promotes a safe client environment;
 - g. Attends to client concerns or requests;
 - h. Communicates client information to health team members including:
 - i. Client concerns and special needs,
 - ii. Client status and progress.

- iii. Client response or lack of response, and
 - iv. Significant changes in client condition; and
 - i. Documents the nursing care the RN has provided;
 - 5. Evaluate the impact of nursing care including the:
 - a. Client's response to interventions,
 - b. Need for alternative interventions,
 - c. Need to communicate and consult with other health team members, and
 - d. Need to revise the plan of care;
 - 6. Provides comprehensive nursing and health care education in which the RN:
 - a. Assesses and analyzes educational needs of learners,
 - b. Plans educational programs based on learning needs and teaching-learning principles,
 - c. Ensures implementation of an educational plan either directly or by delegating selected aspects of the education to other qualified persons, and
 - d. Evaluates the education to meet the identified goals;
 - D.** An RN assigns and delegates nursing activities. The RN shall:
 - 1. Assign care within an RN's scope of practice to other RNs;
 - 2. Assign nursing care to a LPN within the LPN's scope of practice based on the RN's assessment of the client and the LPN's ability;
 - 3. Supervise, monitor, and evaluate the care assigned to a LPN; and
 - 4. Delegate nursing tasks to UAPs including CNAs. In maintaining accountability for the delegation, an RN shall ensure that the:
 - a. UAP has the education, legal authority, and demonstrated competency to perform the task;
 - b. Tasks delegated are consistent with the UAP's job description and can be safely performed according to clear, exact, and unchanging directions;
 - c. Results of the task are reasonably predictable;
 - d. Task does not require assessment, interpretation, or independent decision making during its performance or at completion;
 - e. Selected client and circumstances of the delegation are such that delegation of the task poses minimal risk to the client and the consequences of performing the task improperly are not life-threatening;
 - f. RN personally provides clear directions and guidelines regarding the delegated task or, for routine tasks on stable clients, verifies that the UAP follows each written facility policy or procedure when performing the delegated task;
 - g. RN provides supervision and feedback to the UAP; and
 - h. RN observes and communicates the outcomes of the delegated task.

R4-19-403. Unprofessional Conduct

- A.** For the purpose of this Section:
 - 1. "Failure to maintain professional boundaries" means any conduct or behavior of a nurse that, regardless of the nurse's intention, is likely to lessen the benefit of care to a patient, resident, or the family of a patient or resident and places the patient, resident, or family of the patient or resident at risk of being exploited financially, emotionally, or sexually; and
 - 2. "Dual relationship" means a nurse simultaneously engages in both a professional and nonprofessional relationship with a patient that is avoidable, non incidental, and results in the patient being exploited financially, emotionally, or sexually.
- B.** No change
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Notices of Proposed Rulemaking

- 13. No change
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- 29. No change:
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 - b. No change
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- 30. No change
- 31. No change

R4-19-404. Reinstatement or Issuance of License or Certificate

- A.** ~~A nurse licensee or certificate holder whose license or certificate to practice nursing has been suspended for a period of time shall be reinstated reissued at termination of after the period of suspension if only upon submission to and acceptance by the Board of documentation which evidences that the conditions of the order have been met. the licensee or certificate holder provides written evidence that all requirements or conditions prescribed or ordered by the Board have been met to the satisfaction of the Board. The Board shall prescribe the requirements or conditions a nurse or certificate holder must fulfill for reinstatement or reissuance of a license or certificate and may issue a conditional license or certificate. The license or certificate for of a nurse or certificate holder who fails to provide such documentation evidence shall remain on suspended status until such submission and acceptance by the Board.~~
- B.** ~~A nurse whose license to practice nursing has been denied or revoked in accordance with A.R.S. § 32-1663 may make application to the Board, after a period of 5 years subsequent to the date the license was revoked or last denied, for the issuance or reissuance of a license under the following terms and conditions:~~
 - ~~1. An application shall be submitted in writing, verified under oath, and shall contain therein or have attached thereto substantial evidence that the basis for denial or revocation has been removed and that the issuance of license will no longer constitute a threat to the public health or safety. The Board may require physical, psychological, or psychiatric evaluations, reports, and affidavits. These conditions shall be met before an application is considered.~~
 - ~~2. The Board shall consider the application and may designate a time for the applicant to appear at a regularly scheduled meeting of the Board so that evidence of qualification and competency to practice can be presented.~~
 - ~~3. After reviewing the evidence and deliberating the matter, the Board may:~~
 - ~~a. Grant the applicant a temporary permit to complete a specified period of supervised practice. On completion of the supervised practice period, the Board shall consider the evaluation of the applicant's performance and shall approve or deny the application or extend the period of supervised practice.~~
 - ~~b. Deny the application. An applicant who is denied issuance or reissuance of a license shall have 10 days from the date of receipt of the notice of denial from the Board to file a request for hearing, in writing, with the Board. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 6.~~
- B.** A person whose nursing license or advanced practice certificate was denied, revoked, or voluntarily surrendered under A.R.S. § 32-1663 may apply to the Board to issue or reinstate the license:
 - 1. Five years from the date of denial or revocation, or
 - 2. In accordance with the terms of a voluntary surrender agreement.
- C.** A person who applies for issuance or reinstatement of a license or advanced practice certificate under the conditions of subsection (B) is subject to the following terms and conditions:

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1. The person shall submit a written application for reissuance that contains substantial evidence that the basis for surrendering, denying, or revoking the license or advanced practice certificate has been removed and that the issuance or reinstatement of the license will not be a threat to public health or safety.
2. The Board may require physical, nursing competency, psychological, or psychiatric evaluations, or any combination of evaluations, reports, and affidavits that the Board considers necessary to determine the person's safety to practice nursing.
3. After receipt of the application, the information required under subsection (C)(2), and the completion of an investigation, the Board will place the application on the agenda of a regularly scheduled Board meeting.
4. After consideration of the application and any information required under subsection (C)(2), the Board may:
 - a. Grant the license or advanced practice certificate with or without conditions;
 - b. Grant a temporary license or advanced practice certificate with or without conditions, if other licensure or certification requirements are met, for the sole purpose of allowing the applicant to successfully complete an approved nurse refresher course or for advanced practice certification, meet the educational requirements of R4-19-506; or
 - c. Deny the application if the Board determines that the applicant is unsafe, not competent to practice nursing, that the basis for the original Board action still exists, or that granting a license or advanced practice certificate is likely to cause harm to a client or the public.
5. Following the completion of the requirements of subsection (C)(1) and (2), the Board shall consider the applicant's performance in an approved refresher course or for advanced practice applicants, performance in meeting educational requirements of R4-19-506 and any other evidence, if available, of the applicant's safety to practice, and either deny the application or issue any combination of the following:
 - a. An unrestricted license,
 - b. An unrestricted advanced practice certificate,
 - c. A conditional license,
 - d. A conditional advanced practice certificate,
 - e. A limited license, or
 - f. A limited advanced practice certificate.
6. An applicant who is denied issuance or reinstatement of a license shall have 30 days from the date of issuance of the notice of denial from the Board to file a written request for hearing with the Board. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

R4-19-405. ~~Repealed~~ Board-ordered Evaluations

- A.** Under A.R.S. § 32-1664(F), the Board may order a licensee or certificate holder to undergo an evaluation by an independent qualified evaluator for the purposes of determining the licensee's safety and competence to practice. Evaluations may be in the areas of:
 1. Nursing knowledge or skills or both;
 2. Mental functioning, including but not limited to neuropsychological evaluation, and other cognition evaluations;
 3. Medical status including but not limited to medical review of drug screen results, chronic pain evaluation, physical examination, and biological testing;
 4. Psychiatric or psychological status including but not limited to substance abuse evaluation, boundary or sexual misconduct evaluations, and psychological testing; or
 5. Other similar evaluations that the Board determines are necessary to evaluate a licensee or certificate holder's ability to safely practice.
- B.** Before making the decision to order the evaluation, the Board shall review the allegations and investigative findings.
- C.** The Board retains the discretion to use an evaluator based on the evaluator's licensure history, the Board's past experience with the evaluator, and the quality of the evaluation provided. Before conducting a Board-ordered evaluation, a potential evaluator shall submit documentation that the evaluator:
 1. Possesses expertise and educational credentials in the area that the Board has ordered an evaluation;
 2. Holds a license or certificate in good standing with a licensing or certifying board located in the United States and disclose all past licensure disciplinary actions and criminal history;
 3. Will provide equipment and environmental conditions necessary to conduct a valid evaluation;
 4. Has no current or past treatment, collegial, or social relationship with the licensee or certificate holder, any family member of the licensee or certificate holder, or the licensee or certificate holder's legal counsel;
 5. Will not enter into a treatment relationship with the licensee or certificate holder unless the relationship is unavoidable due to geographical location or the specific expertise of the evaluator; and
 6. Agrees to keep information provided by the Board under subsection (D) confidential as evidenced by a signed confidentiality agreement provided by the Board.
- D.** Upon receipt of the evaluator's signed confidentiality agreement, the Board may provide confidential investigative information and documents to the evaluator for the purpose of disclosing the reason for the evaluation, the focus of the evaluation, and the conduct causing the Board to order the evaluation including:

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1. The complaint and all information that has been received during the investigation of the complaint. Documents may include but are not limited to employment records, medical records, arrest records, conviction and sentencing records, excluding FBI fingerprint results, drug screen results, pharmacy profiles, witness statements, past licensure history, and a summary of information obtained during investigative interviews; and
2. The specific questions for which the Board is seeking answers; and

E. The evaluator shall provide the following information to the Board:

1. A professional report that is objective, thorough, timely, accurate and defensible;
2. Evaluation findings including diagnosis if appropriate and assessment of ability to practice safely;
3. Recommendations for further evaluation, treatment, and remediation; and
4. Suggestions for assuring safe practice and compliance with treatment/remediation recommendations, if any.

ARTICLE 5. ADVANCED AND EXTENDED NURSING PRACTICE

R4-19-509. Delegation to Medical Assistants

- A.** Under A.R.S. § 32-1601(15), an RNP may delegate patient care to a medical assistant in an office or outpatient setting. The RNP shall verify that a medical assistant to whom the RNP delegates meets at least one of the following qualifications:
1. Completed an approved medical assistant training program as defined in ~~R4-16-301~~ A.A.C. R4-16-401;
 2. If a graduate of an unapproved medical assistant training program, passed the medical assistant examination administered by either the American Association of Medical Assistants or the American Medical Technologists;
 3. Completed an unapproved medical assistant training program and was employed as a medical assistant on a continuous basis since completion of the program before February 2, 2000;
 4. Was directly supervised by the same registered nurse practitioner for at least 2000 hours before February 2, 2000; or
 5. Completed a medical services training program of the Armed Forces of the United States.
- B.** A medical assistant may perform, under the delegation and onsite supervision of a registered nurse practitioner, those acts authorized under ~~R4-16-303~~ A.A.C. R4-16-402.

ARTICLE 8. CERTIFIED NURSING ASSISTANTS

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

~~**A.** For the purpose of this Section:~~

1. ~~“Failure to maintain professional boundaries” means any conduct or behavior by a nursing assistant, regardless of the nursing assistant’s intention, that is likely to lessen the benefit of care to a patient, resident, or their family, and places the patient, resident, or their family, at risk of being exploited financially, emotionally, or sexually; and~~
2. ~~“Dual relationship” means a nursing assistant simultaneously engages in a professional and a nonprofessional relationship with a patient, resident, or their family that is avoidable, non-incidental, and places the patient or resident at risk for financial, emotional, or sexual exploitation.~~

~~**B.** For purposes of A.R.S. § 32-1601(16), a practice or conduct that is or might be harmful or dangerous to the health of a patient or the public and constitutes a basis for disciplinary action on a certificate includes the following:~~

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- 23. No change
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- 27. No change
 - a. No change
 - b. No change
 - c. No change
- 28. No change
 - a. No change
 - b. No change
 - c. No change
- 29. No change

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

[R08-172]

PREAMBLE

1. Sections Affected

R4-23-110
Article 12.
R4-23-1201
R4-23-1202
R4-23-1203
R4-23-1204
R4-23-1205
R4-23-1206
R4-23-1207
R4-23-1208
R4-23-1209
R4-23-1210
R4-23-1211

Rulemaking Action

Amend
New Article
New Section
New Section
New Section
New Section
New Section
New Section
New Section
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 statutes: A.R.S. §§ 32-1904(A)(1) and 32-1904(B)(3)

Implementing statutes: A.R.S. § 32-1909

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 12 A.A.R. 3812, October 13, 2006

Notice of Proposed Rulemaking: 13 A.A.R. 942, March 23, 2007

Notice of Termination of Rulemaking: 13 A.A.R. 4375, December 14, 2007

Notice of Rulemaking Docket Opening: 13 A.A.R. 4412, December 14, 2007

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

Name: Dean Wright, Compliance Officer

Address: Board of Pharmacy
1700 W. Washington St., Suite 500

Notices of Proposed Rulemaking

Phoenix, AZ 85007

Telephone: (602) 771-2744

Fax: (602) 771-2749

E-mail: dwright@azpharmacy.gov

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

The 47th Legislature passed H.B. 2382 to specify creation of a prescription medication donation program. The bill requires the Board to write rules, in consultation with the Director of the Department of Health Services, implementing a prescription medication donation program in Arizona. The rules will add necessary new definitions to R4-23-110 (Definitions), including "health care institution" and "licensed health care professional." The rules will include a new Article 12 (Prescription Medication Donation Program) and new Sections within the Article that specify the requirements described in A.R.S. § 32-1909. The rules will include format, style, and grammar necessary to comply with the current rules of the Secretary of State and Governor's Regulatory Review Council.

The Board believes that approval of these rules benefits the public and the pharmacy community by clearly establishing the standards for a prescription medication donation program.

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

The agency did not review or rely on any study relevant to these rules.

7. 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:

Not applicable

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

The rules will impact the Board, pharmacies, physicians, health care institutions, and the public. The rules' impact on the Board will be the usual rulemaking-related costs, which are minimal. The Board estimates the rules will have moderate economic impact on Board office operations through increased staff time to perform compliance inspections of prescription medication program participants.

The Board estimates the rules have the potential to reduce the public's drug cost by allowing the use of previously dispensed but unused prescription medications that are donated to participating physician offices, pharmacies, or health care institutions for dispensing to uninsured qualifying individuals. The Board estimates that hundreds of thousands of dollars worth of unused prescription medications are destroyed annually because the medication is stopped by the physician, the patient no longer needs the medication, or similar other reasons. The Arizona Legislature felt that patients should be allowed to donate these unused prescription medications to a program that would dispense the prescription medication to individuals who might not otherwise be able to afford prescription medication, thus reducing the needless loss of perfectly good prescription medication. The rules allow a participating physician's office, pharmacy, or health care institution to charge a nominal (no more than \$4.50) per prescription handling fee to cover the costs of inspecting, stocking, and dispensing the donated prescription medication. The public benefits from a program that provides otherwise unused prescription medication to individuals who otherwise could not afford treatment, and who without treatment could become a burden on the public health care system.

The public, Board, pharmacies, physicians, and health care institutions benefit from rules that are clear, concise, and understandable. The rules benefit the public and the pharmacy community by clearly establishing the standards for a prescription medication donation program.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Dean Wright, Compliance Officer

Address: Board of Pharmacy
1700 W. Washington St., Suite 500
Phoenix, AZ 85007

Telephone: (602) 771-2744

Fax: (602) 771-2749

E-mail: dwright@azpharmacy.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Comments may be written or presented orally. Written comments must be received by 5:00 p.m., Monday, July 14, 2008. An oral proceeding is scheduled for:

Date: July 14, 2008
Time: 10:00 a.m.
Location: 1700 W. Washington St., 3rd Floor Board Room
Phoenix, AZ 85007
Nature: Public Hearing
Close of Record: 5:00 p.m. on July 14, 2008

A person may request information about the oral proceeding by contacting the person listed above.

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. Any material incorporated by reference and its location in the rule:

None

13. The full text of the rule follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 1. ADMINISTRATION

Section
R4-23-110. Definitions

ARTICLE 12. PRESCRIPTION MEDICATION DONATION PROGRAM

Section
R4-23-1201. Eligibility Requirements for Participation in the Program
R4-23-1202. Donating Medications
R4-23-1203. Eligible Prescription Medications
R4-23-1204. Eligibility Requirements to Receive Donated Prescription Medications
R4-23-1205. Donor Form
R4-23-1206. Recipient Form
R4-23-1207. Recordkeeping
R4-23-1208. Handling Fee
R4-23-1209. Policies and Procedures
R4-23-1210. Dispensing Donated Prescription Medications
R4-23-1211. Responsibilities of the Physician-in-charge or Pharmacist-in-charge of a Participating Physician's Office, Pharmacy, or Health Care Institution

ARTICLE 1. ADMINISTRATION

R4-23-110. Definitions

In addition to definitions in A.R.S. § 32-1901, the following definitions apply to 4 A.A.C. 23:

“Active ingredient” No change

“AHCCCS” means the Arizona Health Care Cost Containment System.

“Alternate physician” No change

“Annual family income” means the combined yearly gross earned income and unearned income of all adult individuals within a family unit.

“Approved course in pharmacy law” No change

“Approved Provider” No change

“Authentication of product history” No change

“Automated storage and distribution system” No change

“Batch” No change

“Beyond-use date” No change

- “Biological safety cabinet” No change
“Care-giver” No change
“Community pharmacy” No change
“Component” No change
“Compounding and dispensing counter” No change
“Computer system” No change
“Computer system audit” No change
“Contact hour” No change
“Container” No change
“Continuing education” No change
“Continuing education activity” No change
“Continuing education unit” or “CEU” No change
“Correctional facility” No change
“CRT” No change
“Current good compounding practices” No change
“Current good manufacturing practice” No change
“Cytotoxic” No change
“Day” No change
“DEA” No change
“Delinquent license” No change
“Dietary supplement” No change
“Digital signature” No change
“Dispensing pharmacist” No change
“Drug sample” No change
“Drug therapy management” No change
“Drug therapy management agreement” No change
“Earned income” means monetary payments received by an individual as a result of work performed or rental property owned or leased by the individual, including:
 Wages,
 Commissions and fees,
 Salaries and tips,
 Profit from self-employment,
 Profit from rent received from a tenant or boarder, and
 Any other monetary payments received by an individual for work performed or rental of property.
“Electronic signature” No change
“Eligible patient” No change
“Extreme emergency” No change
“Family unit” means:
 A group of individuals residing together who are related by birth, marriage, or adoption; or
 An individual who:
 Does not reside with another individual; or
 Resides only with another individual or group of individuals to whom the individual is unrelated by birth, marriage, or adoption.
“FDA” No change
“Health care decision maker” has the same meaning as in A.R.S. § 12-2291.
“Health care institution” has the same meaning as in A.R.S. § 36-401.
“Immediate notice” No change

“Inactive ingredient” No change

“Internal test assessment” No change

“ISO Class 5 environment” No change

“ISO Class 7 environment” No change

“Licensed health care professional” means an individual who is licensed and regulated under A.R.S. Title 32, Chapter 7, 11, 13, 14, 15, 16, 17, 18, 25, 29, or 35.

“Limited-service correctional pharmacy” No change

“Limited-service long-term care pharmacy” No change

“Limited-service mail-order pharmacy” No change

“Limited-service nuclear pharmacy” No change

“Limited-service pharmacy permittee” No change

“Limited-service sterile pharmaceutical products pharmacy” No change

“Long-term care consultant pharmacist” No change

“Long-term care facility” or “LTCF” No change

“Lot” No change

“Lot number” or “control number” No change

“Low-income subsidy” means Medicare-provided assistance that may partially or fully cover the costs of drugs and is based on the income of an individual and, if applicable, the individual’s spouse.

“Materials approval unit” No change

“Mechanical counting device for a drug in solid, oral dosage form” No change

“Mechanical storage and counting device for a drug in solid, oral dosage form” No change

“Mediated instruction” No change

“Medicare” means a federal health insurance program established under Title XVIII of the Social Security Act.

“MPJE” No change

“NABP” No change

“NABPLEX” No change

“NAPLEX” No change

“Order” No change

“Other designated personnel” No change

“Outpatient” No change

“Outpatient setting” No change

“Patient profile” No change

“Pharmaceutical patient care services” No change

“Pharmaceutical product” No change

“Pharmacist-administered immunizations training program” No change

“Pharmacy counter working area” No change

“Pharmacy law continuing education” No change

“Pharmacy permittee” No change

“Physician” means a medical practitioner licensed under A.R.S. Title 32, Chapter 13 or 17.

“Physician-in-charge” means a physician who is responsible to the Board for all aspects of a prescription medication donation program required in A.R.S. § 32-1909 and operated in the physician’s office or in a health care institution.

“Poverty level” means the annual family income for a family unit of a particular size, as specified in the poverty guidelines updated annually in the *Federal Register* by the U.S. Department of Health and Human Services.

“Prepackaged drug” No change

“Prep area” No change

“Primary care provider” means the medical practitioner who is treating an individual for a disease or medical condition.

- “Proprietor” No change
- “Provider pharmacy” No change
- “Radiopharmaceutical” No change
- “Radiopharmaceutical quality assurance” No change
- “Radiopharmaceutical services” No change
- “Red C stamp” No change
- “Refill” No change
- “Remodel” No change
- “Remote drug storage area” No change
- “Resident” means:
- ~~a person~~ An individual admitted to and ~~residing~~ living in a long-term care facility.
 - An individual who has a place of habitation in Arizona and lives in Arizona as other than a tourist, or
 - A person who owns or operates a place of business in Arizona.
- “Responsible person” No change
- “Score transfer” No change
- “Security paper” No change
- “Shared order filling” No change
- “Shared order processing” No change
- “Shared services” No change
- “Sight-readable” No change
- “Single-drug audit” No change
- “Single-drug usage report” No change
- “Standard-risk sterile pharmaceutical product” No change
- “Sterile pharmaceutical product” No change
- “Strength” No change
- “Substantial-risk sterile pharmaceutical product” No change
- “Supervision” No change
- “Supervisory physician” No change
- “Supplying” No change
- “Support personnel” No change
- “Tourist” means an individual who is living in Arizona but maintains a place of habitation outside of Arizona and lives outside of Arizona for more than six months during a calendar year.
- “Transfill” No change
- “Unearned income” means monetary payment received by an individual that are not compensation for work performed or rental of property owned or leased by the individual, including:
- Unemployment insurance.
 - Workers’ compensation.
 - Disability payments.
 - Payments from the Social Security Administration.
 - Payments from public assistance.
 - Periodic insurance or annuity payments.
 - Retirement or pension payments.
 - Strike benefits from union funds.
 - Training stipends.
 - Child support payments.
 - Alimony payments.
 - Military family allotments.

Regular support payments from a relative or other individual not residing in the household.

Investment income.

Royalty payments.

Periodic payments from estates or trusts, and

Any other monetary payments received by an individual that are not:

As a result of work performed or rental of property owned by the individual.

Gifts.

Lump-sum capital gains payments.

Lump-sum inheritance payments.

Lump-sum insurance payments, or

Payments made to compensate for personal injury.

“Verified signature” or “signature verifying” No change

“Veteran” means an individual who has served in the United States Armed Forces.

“Wholesale distribution” No change

“Wholesale distributor” No change

ARTICLE 12. PRESCRIPTION MEDICATION DONATION PROGRAM

R4-23-1201. Eligibility Requirements for Participation in the Program

A physician’s office, a pharmacy, or a health care institution may participate in the prescription medication donation program, under A.R.S. § 32-1909, if all of the following requirements, as applicable, are met:

1. The physician-in-charge of the participating physician’s office has a current license issued under A.R.S. Title 32, Chapter 13 or 17;
2. The pharmacy has a current permit issued under A.R.S. Title 32, Chapter 18;
3. The health care institution has a current license issued under A.R.S. Title 36, Chapter 4 and has a physician-in-charge or pharmacist-in-charge of dispensing; and
4. The physician’s office, the pharmacy, or the health care institution complies with all federal and state drug laws, rules, and regulations.

R4-23-1202. Donating Medications

A. The following may donate an eligible prescription medication, as specified in R4-23-1203, to a physician’s office, a pharmacy, or a health care institution that participates in the prescription medication donation program:

1. An individual for whom the prescription medication was prescribed on a patient-specific prescription order or that individual’s health care decision maker;
2. A manufacturer that has a current permit issued under A.R.S. Title 32, Chapter 18; or
3. A health care institution that has a current license issued under A.R.S. Title 36, Chapter 4.

B. An individual or health care decision maker electing to donate an eligible prescription medication shall not have taken possession of the prescription medication before the donation and shall make the donation through a medical practitioner, pharmacy, or health care institution.

R4-23-1203. Eligible Prescription Medications

A prescription medication may be donated to a physician’s office, a pharmacy, or a health care institution that participates in the prescription medication donation program if the prescription medication:

1. Is not a:
 - a. Controlled substance;
 - b. Drug sample; or
 - c. Drug that can only be dispensed to a patient registered with the drug’s manufacturer, because donation could prevent the manufacturer from maintaining required patient registration data;
2. Is in its original sealed and tamper-evident unit dose packaging that is unopened or has only its outside packaging opened and its single unit dose packaging undisturbed;
3. Has been in the possession of a licensed health care professional, manufacturer, pharmacy, or health care institution and not in the possession of the individual specified in R4-23-1202(A)(1);
4. Has been stored according to federal and state drug law and the requirements of the manufacturer’s package insert;
5. Has an expiration date or beyond-use-date later than six months after the date of donation;
6. Is in packaging that shows the lot number and expiration date or beyond-use-date of the prescription medication;
7. Does not have any physical signs of tampering or adulteration; and
8. Is in packaging that does not have any physical signs of tampering, except for the outside packaging as specified in

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subsection (2).

R4-23-1204. Eligibility Requirements to Receive Donated Prescription Medications

An individual is eligible to receive donated prescription medications from the prescription medication donation program if the individual:

1. Is a resident of Arizona;
2. Has an annual family income that is less than or equal to 300% of the poverty level;
3. Satisfies one of the following:
 - a. Has no health insurance coverage;
 - b. Has health insurance coverage that does not pay for the prescription medication prescribed;
 - c. Is an American or Alaska Native who:
 - i. Is eligible for, but chooses not to use, the Indian Health Service to receive prescription medications; and
 - ii. Either has no other health insurance coverage or has health insurance coverage that does not pay for the prescription medication prescribed; or
 - d. Is a veteran who:
 - i. Is eligible for, but chooses not to use, Veterans Health Administration benefits to receive prescription medications; and
 - ii. Either has no other health insurance coverage or has health insurance coverage that does not pay for the prescription medication prescribed;
4. Is ineligible for enrollment in AHCCCS; and
5. If eligible for Medicare, is ineligible for a full low-income subsidy.

R4-23-1205. Donor Form

A. Before donating a prescription medication, a donor shall sign a form that includes:

1. A statement attesting that the donor is one of the entities identified in R4-23-1202(A) and intends to voluntarily donate the prescription medication to the prescription medication donation program;
2. If the donor is the individual named on the prescription or the individual's health care decision maker:
 - a. The individual's name and address;
 - b. The name of the individual's health care decision maker, if applicable;
 - c. The name of the medical practitioner, pharmacy, or health care institution through which the donation is being made;
 - d. The following information about the donated prescription medication:
 - i. The brand name or generic name of the prescription medication donated;
 - ii. If a generic medication, the name of the manufacturer or the national drug code number of the prescription medication donated;
 - iii. The strength of the prescription medication donated;
 - iv. The quantity of the prescription medication donated;
 - v. The lot number of the prescription medication donated; and
 - vi. The expiration date or beyond-use-date of the prescription medication donated;
 - e. A statement attesting that the individual or the individual's health care decision maker has not had possession of the donated prescription medication;
 - f. The dated signature of the individual or the individual's health care decision maker;
 - g. If the donation is an ongoing donation as authorized under subsection (B), a statement that conforms to subsection (B);
 - h. A statement by the medical practitioner, pharmacy, or health care institution attesting that the medical practitioner, pharmacy, or health care institution through which the donation is being made has stored the donated prescription medication as required in R4-23-1203(4); and
 - i. The dated signature of the medical practitioner or of an authorized agent for the pharmacy or health care institution through which the donation is being made;
3. If the donor is a manufacturer:
 - a. The name and address of the manufacturer;
 - b. The information about the donated prescription medication specified in subsection (A)(2)(d);
 - c. A statement by the manufacturer that the manufacturer has stored the donated prescription medication as required in R4-23-1203(4); and
 - d. The dated signature of the manufacturer's authorized agent; and
4. If the donor is a health care institution:
 - a. The name and address of the health care institution;
 - b. The information about the donated prescription medication specified in subsection (A)(2)(d);
 - c. A statement attesting that the health care institution has stored the donated prescription medication as required in

R4-23-1203(4); and

d. The dated signature of the health care institution's authorized agent.

B. An individual who resides in a health care institution, or the individual's health care decision maker, may elect to make an ongoing donation of future unused eligible prescription medication:

1. When future unused eligible prescription medication is a result of the individual's prescription medication being changed or discontinued by the individual's primary care provider; and
2. By indicating the following on a donor form that complies with subsection (A): "From this day forward, I wish to donate all my remaining unused prescription medications that are eligible, under R4-23-1203, to the prescription medication donation program."

C. To stop an ongoing donation, an individual who resides in a health care institution, or the individual's health care decision maker, shall submit written notice to the receiving physician's office, pharmacy, or health care institution indicating the individual's, or the health care decision maker's, desire to stop the ongoing donation.

R4-23-1206. Recipient Form

Before receiving a donated prescription medication from the prescription medication donation program, a recipient of a donated prescription medication shall sign a form:

1. Identifying the physician's office, pharmacy, or health care institution that is dispensing the donated prescription medication;
2. Stating that the recipient understands the immunity provisions of the program under A.R.S. § 32-1909(E) and (F);
3. Attesting that the recipient meets the eligibility requirements specified in R4-23-1204; and
4. Including the following:
 - a. The brand name or generic name of the prescription medication received;
 - b. If a generic medication, the name of the manufacturer or the national drug code number of the prescription medication received;
 - c. The strength of the prescription medication received;
 - d. The quantity of the prescription medication received;
 - e. The recipient's name and address; and
 - f. The dated signature of the recipient.

R4-23-1207. Recordkeeping

A. Before transferring possession of a prescription medication donated by an individual or an individual's health care decision maker, a medical practitioner, pharmacy, or health care institution that has possession of the donated prescription medication and through which the donation is being made shall create an invoice that includes the following:

1. The name and address of the medical practitioner, pharmacy, or health care institution that has possession of the donated prescription medication;
2. The name of the individual who made the donation;
3. The brand name or generic name of the prescription medication transferred;
4. If a generic medication, the name of the manufacturer or the national drug code number of the prescription medication transferred;
5. The strength of the prescription medication transferred;
6. The quantity of the prescription medication transferred;
7. The lot number of the prescription medication transferred;
8. The expiration date or beyond-use-date of the prescription medication transferred;
9. The date the prescription medication is transferred to a participating physician's office, pharmacy, or health care institution; and
10. The name and address of the participating physician's office, pharmacy, or health care institution to which the donated prescription medication is transferred.

B. Before transferring possession of a prescription medication donated by a manufacturer, the manufacturer shall create an invoice that includes the manufacturer's name and address and the information described in subsections (A)(3) through (10).

C. Before transferring possession of a prescription medication donated by a health care institution, the health care institution shall create an invoice that includes the health care institution's name and address and the information described in subsections (A)(3) through (10).

D. A medical practitioner, pharmacy, health care institution, or manufacturer required to create an invoice under subsection (A), (B), or (C) shall:

1. Transmit a copy of the invoice and the donor form required under R4-23-1205 to the participating physician's office, pharmacy, or health care institution to which a donated prescription medication is transferred;
2. Maintain a copy of the invoice for a minimum of three years from the date of the invoice;
3. Maintain a copy of the donor form for a minimum of three years from the date signed; and

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4. Make a copy of the invoice or donor form available upon request for inspection by the Board, its designee, or other authorized officers of the law.
- E.** A physician's office, a pharmacy, or a health care institution that participates in the prescription medication donation program shall:
 1. Maintain:
 - a. The documents required under R4-23-1206 for a minimum of three years from the date signed; and
 - b. Each invoice and donor form received under subsection (D)(1) for a minimum of three years from the date received; and
 2. Make the documents required under R4-23-1206 and subsection (D)(1) available upon request for inspection by the Board, its designee, or other authorized officers of the law.

R4-23-1208. Handling Fee

A physician's office, a pharmacy, or a health care institution that dispenses a donated prescription medication may charge a recipient of a donated prescription medication a handling fee of no more than \$4.50 per prescription to cover inspection, stocking, and dispensing costs.

R4-23-1209. Policies and Procedures

A physician's office, a pharmacy, or a health care institution that participates in the prescription medication donation program shall:

1. Develop, implement, and comply with policies and procedures for the receipt, storage, and distribution of prescription medications donated to the physician's office, the pharmacy, or the health care institution;
2. Review biennially and, if necessary, revise the policies and procedures required under this Section;
3. Document the review required under subsection (2);
4. Assemble the policies and procedures as a written manual or in a readily accessible electronic format;
5. Make the policies and procedures available for reference by physician's office, pharmacy, or health care institution personnel and, upon request, for inspection by the Board or its designee; and
6. Ensure that the written or electronic policies and procedures required under subsection (1) include provisions to ensure:
 - a. That each transferred prescription medication meets the eligibility requirements of Sections R4-23-1202 and R4-23-1203;
 - b. That each individual who receives a donated prescription medication under the prescription medication donation program signs the recipient form specified in R4-23-1206;
 - c. Compliance with the applicable requirements for recordkeeping in Section R4-23-1207;
 - d. Compliance with the requirements of Section R4-23-1210, and
 - e. Compliance with the requirements of Section R4-23-1211.

R4-23-1210. Dispensing Donated Prescription Medications

A. Before dispensing a donated prescription medication under the program, a participating physician's office, pharmacy, or health care institution shall:

1. Obtain and maintain a current drug identification reference or text in hard-copy or electronic media format;
2. Inspect the donated prescription medication to ensure that the prescription medication has not been adulterated;
3. Certify that the donated prescription medication has been stored in compliance with the requirements of the manufacturer's package insert;
4. Comply with all federal and state laws regarding storage and distribution of a donated prescription medication;
5. Obtain a prescription order of a licensed medical practitioner for the recipient to receive the donated prescription medication, and
6. Properly label the donated prescription medication to be dispensed.

B. As specified in subsection (C) a participating physician's office, pharmacy, or health care institution may transfer a prescription medication donated under this Article to another participating physician's office, pharmacy, or health care institution, but the donated prescription medication shall not be resold.

C. A participating physician's office, pharmacy, or health care institution may transfer a donated prescription medication to another participating physician's office, pharmacy, or health care institution, if:

1. The transferring physician's office, pharmacy, or health care institution has available a prescription medication that the receiving physician's office, pharmacy, or health care institution needs;
2. The transferring physician's office, pharmacy, or health care institution prepares an invoice that includes its name and address and the information described in R4-23-1207(B)(3) through (10);
3. A copy of the invoice required in subsection (C)(2) is sent to the receiving physician's office, pharmacy, or health care institution with the transferred prescription medication; and
4. The transferring physician's office, pharmacy, or health care institution and the receiving physician's office, pharmacy, or health care institution each:

- a. Keep a copy of the invoice required in subsection (C)(2) on file for three years from the date of transfer; and
- b. Make the invoice records available, upon request, for inspection by the Board or its designee.

R4-23-1211. Responsibilities of the Physician or Pharmacist-in-charge of a Participating Physician's Office, Pharmacy, or Health Care Institution

The physician-in-charge of a participating physician's office; the pharmacist-in-charge of a participating pharmacy; or the physician-in-charge or pharmacist-in-charge of dispensing for a participating health care institution shall, either personally or through a designee:

- 1. Coordinate the receipt of prescription medications donated by manufacturers or health care institutions or through medical practitioners, pharmacies, or health care institutions from eligible donors;
- 2. Check each donated prescription medication against the invoice and any additional alternate record and resolve any discrepancies;
- 3. Store and secure donated prescription medications as required by federal and state law;
- 4. Inspect each donated prescription medication for adulteration;
- 5. Certify that each donated prescription medication has been stored in compliance with the manufacturer's package insert;
- 6. Ensure that expired, adulterated, or unidentifiable donated prescription medication is not dispensed;
- 7. Ensure that prescription medications identified under subsection (6) are destroyed within 30 days of identification as specified in subsection (9);
- 8. Ensure safety in drug recalls by destroying any donated prescription medication that may be subject to recall if its lot number cannot exclude it from recall;
- 9. Ensure destruction of expired, adulterated, unidentifiable, and recalled donated prescription medication by:
 - a. Following federal, state, and local guidelines for drug destruction;
 - b. Creating a list of expired, adulterated, unidentifiable, or recalled donated prescription medications to be destroyed;
 - c. Following the destruction, signing the list described in subsection (9)(b) and having the list signed by a witness verifying the destruction; and
 - d. Keeping the list described in subsection (9)(b) on file for three years from the date of destruction;
- 10. Redact or remove all previous patient or pharmacy labeling on a donated prescription medication before dispensing the donated prescription medication;
- 11. Ensure that all dispensed donated prescription medications comply with the labeling requirements of A.R.S. § 32-1968(D);
- 12. Place on the label of each dispensed donated prescription medication a beyond-use-date that does not exceed the beyond-use-date or expiration date from the original label of the donated prescription medication or, if the dispensed donated prescription medication comes from multiple packages, the earliest beyond-use-date or expiration date from the donated prescription medication packages; and
- 13. Maintain the records required in this Article.

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

[R08-175]

PREAMBLE

1. Sections Affected

R7-3-105
R7-3-201
R7-3-202
R7-3-203
R7-3-204
R7-3-205
R7-3-303
R7-3-304
R7-3-305
R7-3-306

Rulemaking Action

Amend
Repeal
Repeal
Repeal
Repeal
Repeal
Amend
Amend
Amend
Amend

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R7-3-308	Amend
R7-3-309	Amend
R7-3-403	Amend
R7-3-404	Amend

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. § 15-1852(A)(2)

Implementing Statute: A.R.S. § 15-1852(C)

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

Notice of Ruelamking Docket Opening: 14 A.A.R. 2240, June 6, 2008 (*in this issue*)

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

Name: Dr. April L. Osborn, Executive Director
Address: Commission for Postsecondary Education
2020 N. Central Ave., Suite 650
Phoenix, AZ 85004
Telephone: (602) 258-2435, ext. 106
Fax: (602) 258-2483
E-mail: aosborn@azhighered.gov

or

Name: Hugo Gomes, Program Director
Address: Commission for Postsecondary Education
2020 N. Central Ave., Suite 650
Phoenix, AZ 85004
Telephone: (602) 258-2435, ext. 103
Fax: (602) 258-2483
E-mail: hgomes@azhighered.gov

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

Article 1 pertains to the rulemaking guidelines and its process. Article 2 pertains to Adjudication, which is the determination of a controversy and pronouncement of judgment. The ACPE recommends Article 2 be deleted in its entirety from the ACPE Administrative Code due to the fact that the federal mandate for each state to provide a state postsecondary review entity (SPRE) was not funded and the language should be removed from the A.A.C.

Article 3 consists of the requirements, allocation, award procedures & alterations, and costs associated with the Arizona Leveraging Educational Assistance Partnership Program (LEAP). These changes include both recommendations of constituent institutions as well as programmatic changes necessary to follow federal guidelines.

LEAP funds are proportionally disbursed to institutions on the basis of funds available and student FTSE at each institution. The most significant change proposed would replace the distribution of the award monies to institutions on the basis of the submission of institutional reports (daily or weekly) of potential awardees to the Commission to a disbursement of funds on a quarterly basis (with the fourth quarter rolled into the third quarter distribution). The result will be that the frequent request of LEAP grant funds driven by lists of student awardees will no longer be required by the institutions. It will be replaced by a one-time report from the institutions near year-end that includes all awards to students as well as all reversed transactions with students. The audit procedures and the amount of money allocated to each institution will be unchanged. This change in procedure will save resources on the part of both the ACPE and the 47 participating institutions. Institutional partners were surveyed regarding the benefit of these procedural changes to students and institutions and these proposed rules were modified accordingly.

Lastly, Article 4 pertains to the Arizona Private Postsecondary Education Student Financial Assistance Program (PFAP) which is a program established by the Arizona State Legislature to provide financial assistance awards to qualified students who wish to complete a baccalaureate degree program and are attending a participating private postsecondary institution. The changes reflected are intended to expedite processing of the PFAP grant. It also increases the annual amount to \$2,000 for a maximum of \$3000 over two years.

6. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to 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:

None

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:

The Commission deleted all State Postsecondary Review Entity (SPRE) language depicted as archaic language. This was a federal mandate requiring the ACPE to review postsecondary institutions for compliance with federal guidelines with the penalty of barring institution for Title IV financial aid. The mandate was unfunded and later repealed.

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

The amended rules do not create a significant economic, small business and consumer impact. The amended rules shall create a significantly more efficient process and will directly benefit postsecondary education students, postsecondary institutional financial aid administrators and the ACPE financial aid staff. The Commission will bear any administrative costs as a consequence of the proposed rulemaking. Postsecondary institutions will bear the minimal cost of these proposed changes and will benefit through efficiencies of administration over time. Due to the nature of the various statutory requirements, less intrusive or less costly alternatives are not available.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Dr. April L. Osborn, Executive Director
Address: Commission for Postsecondary Education
2020 N. Central Ave., Suite 650
Phoenix, AZ 85004
Telephone: (602) 258-2435, ext. 106
Fax: (602) 258-2483
E-mail: aosborn@azhighered.gov

or

Name: Hugo Gomes, Program Director
Address: Commission for Postsecondary Education
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Phoenix, AZ 85004
Telephone: (602) 258-2435, ext. 103
Fax: (602) 258-2483
E-mail: hgomes@azhighered.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:

Written comments may be submitted on or before 10:00 a.m. July 14, 2008 at the location listed below. The schedule for oral proceedings is as follows:

Date: July 14, 2008
Time: 10:00 a.m. – 12:00 p.m.
Location: 2020 N. Central Ave., Suite 650
Phoenix, AZ 85004

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:

Not applicable

13. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

ARTICLE 1. RULEMAKING

Section

Notices of Proposed Rulemaking

R7-3-105. Economic, Small ~~Business~~, Business and Consumer Impact Summary

ARTICLE 2. ~~ADJUDICATIONS~~ REPEALED

Section

- R7-3-201. ~~Definitions~~ Repealed
- R7-3-202. ~~Contested Cases, Notice, Hearing, Records~~ Repealed
- R7-3-203. ~~Decisions and Orders~~ Repealed
- R7-3-204. ~~Hearings and Evidence~~ Repealed
- R7-3-205. ~~Rehearing and Decisions~~ Repealed

ARTICLE 3. ARIZONA LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

Section

- R7-3-303. Receipt and Allocation of Arizona LEAP Program Funds
- R7-3-304. Arizona LEAP Student Eligibility Requirements
- R7-3-305. Arizona LEAP Award Procedures
- R7-3-306. Award Alterations
- R7-3-308. Arizona LEAP Institutional Review
- R7-3-309. Definitions

ARTICLE 4. ARIZONA PRIVATE POSTSECONDARY EDUCATION STUDENT FINANCIAL ASSISTANCE PROGRAM

Section

- R7-3-403. Administration and Allocation of Funds
- R7-3-404. Student Eligibility

ARTICLE 1. RULEMAKING

R7-3-105. Economic, Small Business, and Consumer Impact Summary

The Commission shall cause to be prepared an economic, small business, and consumer impact summary. The economic, small business, and consumer impact summary shall be a brief summary of the following information:

1. No change
2. An identification of the persons who will be directly affected by, ~~bear~~ bears the costs of, or directly benefit from the proposed rulemaking;
3. No change
4. No change
5. No change
6. No change
7. No change

ARTICLE 2. ~~ADJUDICATIONS~~ REPEALED

R7-3-201. ~~Definitions~~ Repealed

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

- ~~1. "Commission" means the Commission for Postsecondary Education, including the state postsecondary review entity, acting in accordance with responsibilities as prescribed by A.R.S. § 15-1851(A).~~
- ~~2. "Contested case" means any proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by the Commission after an opportunity for hearing.~~

R7-3-202. ~~Contested Cases, Notice, Hearing, Records~~ Repealed

~~**A.** In a contested case, the parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall be given at least 20 days prior to the date set for the hearing.~~

~~**B.** The notice shall include:~~

- ~~1. A statement of the time, place, and nature of the hearing;~~
- ~~2. A statement of the legal authority and jurisdiction under which the hearing is to be held.~~
- ~~3. A reference to the particular Sections of the statutes and rules involved.~~
- ~~4. A short and plain statement of the matters asserted. If a party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.~~

~~**C.** Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. Informal disposition may be made of any contested case by stipulation, agreed settlement, consent agreement, or default.~~

~~**D.** The record in a contested case shall include:~~

1. All pleadings, motions, and interlocutory rulings;
 2. Evidence received or considered;
 3. A statement of matters officially noticed;
 4. Objections and offers of proof and rulings thereon;
 5. Proposed findings and exceptions;
 6. Any decision, opinion, or report by the officer presiding at the hearing;
 7. All staff memoranda, other than privileged communications, or data submitted to the hearing officer or members of the Commission in connection with their consideration of the case.
- E.** A hearing before a hearing officer or the Commission in a contested case or any part thereof shall be recorded manually or by a recording device and shall be transcribed on request of any party, unless otherwise provided by law. The cost of such transcript shall be paid by the party making the request, unless otherwise provided by law or unless assessment of the cost is waived by the Commission.
- F.** Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

R7-3-203. Decisions and Orders Repealed

Any final decision or order adverse to a party in a contested case shall be in writing or stated in the record. Any final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by mail to their last known address of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to the party's attorney of record.

R7-3-204. Hearings and Evidence Repealed

- A.** A hearing in a contested case shall be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. A party to such proceedings shall have the right to be represented by counsel, to submit evidence in open hearing, and shall have the right of cross examination. Hearings may be held in any place determined by the Commission or its hearing officer.
- B.** Copies of documentary evidence may be received in the discretion of the presiding officer. Upon request, the parties shall be given an opportunity to compare the copy with the original.
- C.** Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the Commission. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The Commission's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

R7-3-205. Rehearing of Decisions Repealed

- A.** A party in a contested case before the Commission who is aggrieved by a decision rendered in such case may file with the Commission not later than 20 days after receipt of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor. A motion for rehearing or review under this Section may be amended at any time before it is ruled upon by the Commission. A response may be filed within 10 days after service of such motion by any other party. The Commission may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- B.** A rehearing or review of a decision may be granted for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the administrative proceedings of the Commission or its hearing officer, or abuse of discretion, whereby the moving party was deprived of a fair hearing;
 2. Misconduct of the Commission or its hearing officer or the prevailing party;
 3. Accident or surprise which could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;
 7. That the decision is not justified by the evidence or is contrary to the law.
- C.** The Commission may affirm or modify the decision or grant a rehearing or review to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (B). An order granting a rehearing or review shall specify with particularity the ground or grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters so specified.
- D.** Not later than 20 days after a decision is rendered, the Commission may on its own initiative order a rehearing or review of its decision for any reasons for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Commission may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting such a rehearing or review shall

specify the grounds therefor.

- ~~E. When a motion for rehearing or review is based upon affidavits they shall be served with the motion. An opposing party may within 10 days after service of such motion serve opposing affidavits and this period may be extended for an additional period not exceeding 20 days by the Commission for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.~~

ARTICLE 3. ARIZONA LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

R7-3-303. Receipt and Allocation of Arizona LEAP Program Funds

- A. Receipt of funds.**
1. No change
 2. No change
 3. No change
 4. No change
 5. All student awards as well as reversions, in keeping with the institution's revision policy, shall be reported in a final LEAP year-end report which is due to the Commission. The report is due no later than June 30th. This report shall serve as the basis for LEAP audits.
- B. Receipt of funds.**
1. Arizona LEAP Program Funds will be allocated to eligible ~~Associate Degree and Baccalaureate Degree granting~~ Arizona postsecondary educational institutions according to their proportionate share of applying institutions ~~the State's~~ total headcount of Arizona resident students taking no less than half time credit standing, enrolled in eligible programs. The Commission will accept applications survey for each eligible institution in Arizona that chooses to participate in the LEAP program no later than May of each year to determine the number of eligible Arizona resident students who will be ~~are~~ enrolled. Enrollment data must be verified by two administrative officials of the school. Headcount will be determined in the following manner:
 - a. No change
 - b. Institutions which operate on clock hour or other nontraditional schedules will provide unduplicated student enrollment data for the period from August through ~~December~~ April of the previous year. (For example, allocations for the LEAP program for any given year will be based on data for the period August through ~~April~~ December.) Enrollment data must be verified by two Administrative Officials of the school.
 2. No change
 3. No change
 4. All institution applications responses which are received by the Commission on or before the response due date will determine the final list of institutions eligible to participate in the LEAP program. ~~If all institutions elect to participate, the preliminary allocation will become the final allocation list.~~ However, if some institutions choose not to participate, or if some prefer to participate at a reduced level, the staff will calculate a new final allocation list considering only the institutions on the final institutional eligibility list. The staff will then notify each participant institution of its revised allocation, the amount of institutional funds to provide, and instructions for transmitting its funds to the Commission.
 5. No change
- C. All matching institutional funds are due to the Commission no later than July 31st. Transfer of institutional funds. When the institution receives its final allocation notice from the Commission, it shall send its institutional funds to the Commission. This transfer shall take place beginning July 1 of each year. Checks conveying institutional funds shall be made out to the Arizona Commission for Postsecondary Education – LEAP Program.**
- D. No change**
- E. Reallocation of Unused LEAP Program Funds,**
1. ~~Schools will be contacted in April February, and asked if they will be able to use all their funds or if they wish additional funding and the amount thereof.~~
 2. ~~Schools not awarding 100% of their funds by the middle of April February may have the remaining LEAP funds recovered by the Commission for reallocation. Remaining institutional funds, less administrative funds, will then be returned to each of those schools when the final program financial report has been received by the Commission.~~
 3. ~~In March, a reallocation of funds will take place and funds will be available for those schools that asked for additional funds in February.~~
 - a. ~~If the amount of available funds exceeds the total amount of requests, all requests will be honored. Any remaining available funds will be retained by the Commission for later reallocation.~~
 - b. ~~If the amount of the requests exceeds the amount of available funds, the Commission will allocate those funds among the requesting institutions based on each institution's proportionate share of Arizona resident students eligible headcount for that institution. The enrollment at non-requesting institutions will not be included in these calculations.~~

4. ~~The staff will notify each participant institution of its share of the reallocation, the amount of institutional funds to provide, and instructions for transmitting its funds to the Commission.~~
5. Any unutilized LEAP funds retained by the institutions, ~~minus the institutional proportionate share originally paid,~~ must be returned to the Commission in the form of a check by the end of July, along with the signed Financial Report. Any ~~unused~~ unutilized program funds from institutions remaining in the state treasury will be returned to the institutions in the same proportionate share as was paid in at the beginning of the program year. The Commission may impose a deduction in the amount of those unutilized program funds from a school's following year's allocation.

R7-3-304. Arizona LEAP Student Eligibility Requirements

- A. Student eligibility requirements. To be eligible for a grant from the Arizona LEAP Program, a student must:
1. No change
 2. Be enrolled or accepted for enrollment on at least a half-time basis as defined in R7-3-309(A)(20) in an eligible course or program at an Arizona postsecondary educational institution which has met the institutional eligibility requirements in R7-3-302, and which has been applied to ~~approved by~~ the Commission.
 3. No change
 4. No change
 5. No change
- B. No change
- ~~C.~~ A student is considered to have substantial financial need when:
1. ~~The student has an expected family contribution of \$2,140 or less as a result of the student's FM need analysis for the program year; or,~~
 2. ~~The difference between the student's cost of education and the student's expected family contribution is at least \$100.~~

R7-3-305. Arizona LEAP Award Procedures

- A. No change
- B. The financial aid office will:
1. No change
 2. No change
 3. No change
 4. Recommending the amount of the LEAP award in accordance with the following guidelines:
 - a. No change
 - b. No change
 - c. No change
 - d. Once these students have been identified as eligible by their attending institutions, the institutions shall award eligible students and notify the students of their LEAP award.
 - d. ~~The financial aid officer must ensure that all applications are received in a timely fashion so disbursement of funds to students will be made before a semester or training period ends.~~
 - e. ~~Sign the application form.~~
 5. Send the application form to:
Arizona Commission For Postsecondary Education
2020 North Central Avenue, Suite 275
Phoenix, Arizona 85004-4503
(Attention: Financial Aid Director)
 6. ~~Receive approved applications, assure that LEAP award funds are disbursed to the student, and retain on file disbursement records (signed receipts, canceled checks, etc.) which verify that the student received the funds. No disbursement may be made to a student who, as a result of a change in status, no longer meets the eligibility requirements outlined in R7-3-304.~~
 7. ~~Maintain adequate fiscal control, accounting, and financial aid records at the institution in accordance with approved state and federal procedures.~~
 8. ~~Provide to the Commission such financial and other information as may be required to meet federal reporting and auditing requirements.~~
- ~~C.~~ The Arizona Commission for Postsecondary Education will:
1. ~~Receive the application for the Arizona LEAP award;~~
 2. ~~Verify that the student is eligible and that there are sufficient funds in the LEAP program account to fund the award;~~
 3. ~~Approve applications which meet these criteria;~~
 4. ~~Return applications that do not meet the criteria or are in any way incomplete to the financial aid office;~~
 5. ~~Disburse funds to the institution's financial aid officer for the approved applications.~~

R7-3-306. Award Alterations

The institution ~~Commission~~ will attempt to accommodate any changes ~~which institutional financial aid officers wish to make~~

in individual student awards. These changes might include, for example, cancellation of award, reduction in award level, or increase in award level.

1. Increased LEAP Awards: A student's LEAP award may be increased by the institution, if the earlier award for that program year is less than the maximum amount specified, and if the student is eligible for such an increase. ~~To increase a LEAP award, the institutional financial aid officer will simply submit to the Commission another LEAP application form, and provide updated financial aid information on the form.~~ In no case may a student receive more than a total of \$2,500 in LEAP awards for a program year.
2. No change
3. No change
 - a. No change
 - b. The financial aid officer ~~completes the LEAP Reversion Form~~ notes the revision for the student record and is able to redistribute the reversed funds to the next eligible student awaiting LEAP funding;
 - e. ~~The financial aid officer forwards the completed LEAP Reversion Form(s) and the Transmittal Form to the Commission.~~
4. ~~Reverted LEAP funds recovered by the Commission are redeposited in the secured LEAP program account and credited to the institution's LEAP Program Fund account. Such funds are then available to the institution to be used to make new LEAP awards.~~

R7-3-308. Arizona LEAP Institutional Review

Commission staff members will review Institutional LEAP Program records for each program year, and each institution participating in the LEAP program will be visited at least once every two years. The purpose of the visit is to review, with institution financial aid and fiscal officers, the LEAP student records which state and federal regulations require be kept. Those records include documentation which verifies that:

1. No change
2. No change
3. No change
4. The student has received the LEAP funds approved for the award applied to eligible expenses ~~(for example, a canceled check, a written receipt, a signed roster, etc.).~~
5. No change
6. No change
7. No change

R7-3-309. Definitions

The following definitions are taken from the Federal Regulations which govern the LEAP program and apply to this Plan as well.

1. No change
2. No change
3. ~~“Board” means the Arizona Board of Regents.~~
- 4-3. “CFR” means the Code of Federal Regulations.
- 5-4. “Clock hour” means a period of time which is the equivalent of a 50 to 60 minute class, lecture, or recitation, or a 50 to 60 minute period of faculty-supervised laboratory, shop training, or internship.
- 6-5. “Commission” means the Commission for Postsecondary Education.
- 7-6. “Cost of education” means the cost of attending an institution as defined by the institution.
- 8-7. “Dependent student” is a student who does not qualify as an Independent Student.
- 9-8. “Eligible course or program” is one which is properly approved by an accrediting agency recognized by the U.S. Department of Education as being an integral part of the curriculum of the institution, is of postsecondary level, and is at least one semester in length at a college or university, or six months in length, or a minimum of 600 clock hours at a proprietary institution.
- 10-9. “Expected family contribution of a dependent student” means the sum of amounts which reasonably may be expected from the student to meet the student's costs of education and the amount which reasonably may be expected to be made available to the student by the student's parents for such purpose. Amount is calculated based upon the Federal methodology need analysis for current program year.
- 11-10. “Expected Family Contribution of an Independent Student” means the amount which reasonably may be expected from the student or their spouse, or both, to meet the student's cost of education. Amount is calculated based upon the Federal methodology need analysis for current program year.
- 12-11. “Federal methodology” means the methodology now mandated by federal regulation for determining financial need for federally funded programs.
- 13-12. “Full-time undergraduate student” means a student who has not attained the baccalaureate or first professional degree and who is carrying a full-time academic work load, other than by correspondence, measured in terms of:

Notices of Proposed Rulemaking

- a. No change
- b. No change
- ~~14-13.~~ "Full-time graduate student" is a student who has attained a baccalaureate or first professional degree, has been accepted by the graduate college, and is enrolled in an approved graduate level program at an accredited university or college for a minimum of nine semester, trimester, or quarter hours during a normal length term or five hours during a summer session.
- ~~15-14.~~ "Independent" means an independent student as defined by federal regulations.
- ~~16-15.~~ "Program funds" means the awards; reversions (reverted/retained); and un-utilized Funds:
 - a. No change
 - b. Reversions: ~~i. Reverted LEAP funds are funds that have been awarded and because student is no longer eligible are returned to the Commission for re-use at a later date reversed and taken away from that student to be re-issued to another eligible student awaiting LEAP funding.~~
 - ii. ~~Reverted Retained LEAP funds are those funds that institutions have kept and not transferred back to the Commission after the student who has been awarded is considered ineligible for LEAP award.~~
 - c. Un-utilized: Un-utilized LEAP Program Funds are those Funds that have never been awarded to a student by an eligible institution. ~~Those funds will need to be returned to the Commission by June 15th. At the end of the year, these funds are to be returned to the Commission if they were unable to be reissued to another eligible LEAP student.~~
- ~~17-16.~~ "Public or private nonprofit institution of higher education" means an educational institution which:
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- ~~18-17.~~ "Nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which may lawfully inure to the benefit of any private shareholder or individual.
- ~~19-18.~~ "Parent" means the student's mother or father, or both, legal guardians or legally adoptive parents. This does not include foster parents.
- ~~20-19.~~ "Part-time undergraduate student" is a student who is enrolled at least half-time, but less than fulltime, in an eligible program at an eligible and participating Arizona institution. In no case will this be less than six semester, trimester or quarter hours per academic term (including one summer session), or less than 12 clock hours per week for institutions which utilize a clock hour system.
- ~~21-20.~~ "Part-time graduate student" is a student who has attained a baccalaureate or first professional degree, has been accepted by the graduate college, and is enrolled in an approved graduate level program at an accredited university or college for a minimum of six semester, trimester, or quarter hours during any term, including summer sessions.
- ~~22-21.~~ "Postsecondary education institution" means an educational institution which offers courses or training programs which are beyond the high school level in scope and complexity and which are open to the general public. Major categories are public universities, private colleges and universities, community colleges and proprietary institutions.
- ~~23-22.~~ "Program Year" means the consecutive period which begins on July 1 and runs through June 30 of any given year.
- ~~24-23.~~ "Proprietary institution of higher education" means an educational institution:
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
- ~~25-24.~~ "State" means, in addition to the several states of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and Trust Territory of the Pacific Islands, and the Virgin Islands.

**ARTICLE 4. ARIZONA PRIVATE POSTSECONDARY EDUCATION STUDENT
FINANCIAL ASSISTANCE PROGRAM**

R7-3-403. Administration and Allocation of Funds

- A. No change
- B. No change
- C. No change
- D. Any funds which have been allocated to a student, but are not used by that student, shall be ~~reallocated by the Commission in a subsequent award year~~ reallocated by the Commission.
- E. Student financial assistance will be awarded to renewal students as first priority and then to new students in the order of

Notices of Proposed Rulemaking

receipt of completed applications. In the event that there are more new eligible students in an award year than available vouchers for new students, awards shall be made in the ~~following priority:~~ order of receipt of a completed application.

- ~~1. Date of receipt of a completed application;~~
- ~~2. Highest grade point averages for the associate degree.~~

F. Student financial assistance in the amount up to ~~\$1,500~~ \$2,000 may be disbursed to an eligible student for an award year. An amount representing the student financial assistance award shall be paid to the eligible institution towards tuition and fee charges following:

1. Receipt by the Commission of a completed application and an institutional certification of full-time attendance by the eligible student; and proof that the student is a graduate of an Arizona Community College or, for continuing students, certification of Satisfactory Academic Progress (SAP); and proof that the student exemplifies "need" as defined by the Federal Methodology.
2. No change

G. Student financial assistance in the amount up to ~~\$750~~ \$1,000 may be awarded to an eligible student for half of an award year. An amount representing the student financial assistance award shall be paid to the eligible institution towards tuition and fee charges following:

1. Receipt by the Commission of a completed application and an institutional certification of full-time attendance by the eligible student; and
2. No change

R7-3-404. Student Eligibility

A. To be considered for an initial private postsecondary education student financial assistance, an eligible student, as defined in R7-3-402(D) and R7-3-402(G), shall submit a complete private postsecondary education student financial assistance program application to the Commission. The application shall contain:

1. No change
2. No change
3. No change
4. A signed statement certifying the student's understanding that the award will be used for tuition and fee expenses only; ~~and~~
5. Agreement to reimburse the Commission the total amount of Program awards in the event the student fails to receive a baccalaureate degree within a three-year period of the receipt of the initial student financial assistance award;
6. Proof that the eligible student has a minimum cumulative GPA of 2.5 at the transferring community college and maintains Satisfactory Academic Progress (SAP) for following awards;
7. Proof that the eligible student is a United States citizen or eligible non-citizen; and
8. Proof of Arizona residency.

B. To be eligible for a renewal of a private postsecondary education student financial assistance, a student shall:

1. No change
2. No change
3. Not have exceeded a cumulative total of ~~\$3,000~~ \$4,000 in awards.

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

[R08-178]

PREAMBLE

1. Sections Affected

R7-3-501
R7-3-502
R7-3-503
R7-3-503
R7-3-504
R7-3-505
R7-3-506
R7-3-507

Rulemaking Action

Amend
Amend
Repeal
New Section
Amend
Amend
Amend
Amend

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. § 15-1852(A)(2)

Implementing Statute: A.R.S. § 15-1873(A)(1)

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

Notice of Ruelamking Docket Opening: 14 A.A.R. 2241, June 6, 2008 (*in this issue*)

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

Name: Dr. April L. Osborn, Executive Director

Address: Commission for Postsecondary Education
2020 N. Central Ave., Suite 650
Phoenix, AZ 85004

Telephone: (602) 258-2435, ext. 106

Fax: (602) 258-2483

E-mail: aosborn@azhighered.gov

or

Name: Hugo Gomes, Program Director

Address: Commission for Postsecondary Education
2020 N. Central Ave., Suite 650
Phoenix, AZ 85004

Telephone: (602) 258-2435, ext. 103

Fax: (602) 258-2483

E-mail: hgomes@azhighered.gov

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

The Commission for Postsecondary Education's purpose in promulgating the proposed rules and amendments is to make the necessary technical changes to the Arizona Family College Savings Program rules into conformity with § 529 of the Internal Revenue Code and IRS Notices promulgated pursuant to § 529 of the Code. Additionally, The Arizona Family College Savings Program has revised the fee structure and various policies that will benefit account holders.

6. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to 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:

None

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:

None

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

The amended rules do not create a significant economic, small business and consumer impact. The amended rules shall create a significantly more efficient process and will directly benefit Arizona Family College Savings account holders and the ACPE staff. In addition, the ACPE Staff and AFCSP account holders will not incur any additional costs with the proposed amendments set forth. Program providers will bear the minimal cost of these proposed changes and will benefit through efficiencies of administration over time. Due to the nature of the various statutory requirements, less intrusive or less costly alternatives are not available.

Rule R7-3-503 will benefit the ACPE and potential AFCSP providers by providing a more efficient solicitation and selection process. One benefit of this amendment will allow small financial institutions to be more competitive in the selection process. In addition, rule R7-3-506 will also benefit the ACPE since it will reduce the burden placed on the ACPE with its involvement in the recordkeeping and maintenance of the withdrawal process.

In regards to rule R7-3-502, providers are slightly economically impacted due to assessment of an asset-based fee which will replace the current administrative fee charged to AFCSP providers. This asset-based fee will be assessed on all new assets under management, which is the industry norm, and exclusively paid by the AFCSP providers. The ACPE will directly benefit from this amendment since the revenue from this asset-based fee will be allocated to compensate for outside legal securities counsel, increased local marketing efforts and other AFCSP administrative activities.

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In addition, small businesses may be hindered by the expense of this new asset-based fee, which may lower its profit margin and may also lessen its competitiveness with larger more established providers in the industry.

Rule R7-3-507 pertaining to the revised proxy voting policy may have a direct affect on the providers due to the initial IT set-up expense of initiating the new process. However, the new method will reduce future proxy voting distribution costs for the provider. Account holders will benefit from the revised proxy policy since this new method will allow account owners access to view current proxy voting ballots and have the ability to provide their opinions on such votes.

Lastly, amending Sections R7-3-504, R7-3-505, and R7-3-508 will not directly incur any additional cost or benefit to the ACPE, account holders, or providers.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Dr. April L. Osborn, Executive Director
Address: Commission for Postsecondary Education
2020 N. Central Ave., Suite 650
Phoenix, AZ 85004
Telephone: (602) 258-2435, ext. 106
Fax: (602) 258-2483
E-mail: aosborn@azhighered.gov

or

Name: Hugo Gomes, Program Director
Address: Commission for Postsecondary Education
2020 N. Central Ave., Suite 650
Phoenix, AZ 85004
Telephone: (602) 258-2435, extension 103
Fax: (602) 258-2483
E-mail: hgomes@azhighered.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:

Written comments may be submitted on or before 10:00 a.m. July 14, 2008 at the location listed below. The schedule for oral proceedings is as follows:

Date: July 14, 2008
Time: 10:00 a.m. – 12:00 p.m.
Location: 2020 N. Central Ave., Suite 650
Phoenix, AZ 85004

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:

Not applicable

13. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM

Section
R7-3-501. Definitions
R7-3-502. Fees

Notices of Proposed Rulemaking

- R7-3-503. ~~RFP Process~~ Financial Institution Solicitation and Selection Process
- R7-3-504. Changing Designated Beneficiary
- R7-3-505. Account Balance Limitations
- R7-3-506. ~~Withdrawals; Reporting of Non-qualified Withdrawals; Penalties~~
- R7-3-507. Oversight of Financial Institutions

ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM

R7-3-501. Definitions

- A. "Account year" means the period beginning on ~~October~~ January 1 and ending on ~~September 30~~ December 31 of each year.
- B. No change
- C. No change
- D. No change
- E. "Commission" means the Commission for Postsecondary Education ~~as defined in A.R.S. § 15-1871.~~
- F. "Committee" means the Family College Savings Program Oversight Committee ~~as defined in A.R.S. § 15-1871.~~
- G. "Distributee" means the designated beneficiary or the account owner who receives or is treated as receiving a distribution from an account. If a distribution is made directly to the designated beneficiary or to an eligible educational institution for the benefit of the designated beneficiary, the designated beneficiary is the distributee. In all other circumstances, the account owner is the distributee.
- H. ~~"Eligible educational institution" means an institution of higher education that qualifies under § 529 of the Code as an eligible educational institution.~~
- I. ~~"Negotiable instrument" means negotiable instrument as defined in A.R.S. § 47-3104.~~
- ~~J.H.~~ "Qualified Tuition Program" means a qualified tuition program as defined in § 529 of the Code.
- L. "Trustee" means the Arizona Commission for Postsecondary Education.
- J. All terms pertaining to the rules governing the Arizona Family College Savings Program shall have the meaning set forth in A.R.S. § 15-1871.

R7-3-502. Fees

The Commission establishes the following fees and may use the collected fees to pay for expenses related to the administration of the program including, but not limited to, operating expenses, legal services expenses and marketing expenses.

- ~~A.1.~~ No change
- 2. Asset-Based State Administrative fee. In addition to the application fee, the Commission may negotiate an annual asset-based state administrative fee with a financial institution that shall be based on the value of the assets of the portfolio. The administrative fee shall not exceed .15 percent, or 15 basis points, of the total value of the assets of the portfolio. As used in this Section, "portfolio" means the investment selected by the account owner to which account contributions are allocated. The asset-based state administrative fee shall be charged to the financial institution and not to the account owner. For financial institutions that provide financial instruments that are not conducive to the assessment of an asset-based state administrative fee, the Commission may negotiate a comparable state administrative fee that shall be charged to the financial institution and not to the account owner.
- B.** Marketing fee. The financial institution shall pay to the Commission an annual marketing fee. The marketing fee shall be paid at the beginning of each calendar year as a \$200 flat fee. If a financial institution begins participating in the Arizona Family College Savings Program after the beginning of a calendar year, the financial institution shall pay a pro-rated marketing fee based upon the month in which it begins participation in the Program regardless of the day in the month. The Committee shall review the marketing fee every 12 months and recommend to the Commission whether the marketing fee should be adjusted. The Commission may review the marketing fee prior to the committee's required 12-month review. The financial institution shall not charge the account owner the marketing fee.

R7-3-503. ~~RFP Process~~ Financial Institution Solicitation and Selection Process

~~The Commission may require any and all information for participation, including the ability of the investment instruments to track estimated costs of higher education as calculated by the Commission.~~

- A. In accordance with the requirements delineated in A.R.S. §§ 15-1874(B) and (C), the Committee shall solicit proposals from financial institutions to act as depositories of fund monies and managers of the program, and the Commission shall select the proposals from the financial institutions. The Committee may solicit and the Commission may select proposals at any time. The solicitation and selection process is exempt from the Arizona procurement code requirements delineated in A.R.S. Title 41, Chapter 23.
- B. Notwithstanding subsection (A), if the Committee determines that a Request for Proposals is necessary, it may follow a process that is similar to the Arizona procurement code requirements delineated in A.R.S. Title 41, Chapter 23.
- C. Financial institutions seeking to inquire about becoming depositories of fund monies and managers of the program may submit inquiries to Commission staff in accordance with the following procedures:
 - 1. Inquiries shall be in writing.

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2. Commission staff may collect and review the inquiries and request additional information as necessary. Additional information requested may include, but is not limited to, the following:
 - a. The financial institution's most recent prospectus.
 - b. The financial institution's most recent annual report.
 - c. The financial institution's current marketing materials and fund applications.
 - d. The financial institution's description of how it would market its product if it is selected, and
 - e. The financial institution's description of how it would assist the Commission in achieving the program's mission.
3. Commission staff may forward the materials to the Committee chairperson for review.
4. Upon recommendation of the Committee chairperson, the financial institution's offerings may be forwarded to the Committee for consideration.
5. Upon direction of the Committee, Commission staff may respond to the financial institution's inquiry and indicate that:
 - a. The Committee is not currently seeking new financial institutions.
 - b. Further information regarding the offering is required, or
 - c. The inquiry shall be kept on file so that the financial institution can receive a request for proposals if one is issued.

D. Protest and Appeals Process:

1. A.A.C. R2-7-A901. Protest of Solicitations and Contract Awards:
 - a. Any interested party may protest a solicitation, a determination of not susceptible for award, or the award of a contract.
 - b. The interested party shall file the protest in writing with the agency chief procurement officer, with a copy to the state procurement administrator, and shall include the following information:
 - i. The name, address and telephone number of the interested party;
 - ii. The signature of the interested party or the interested party's representative;
 - iii. Identification of the purchasing agency and the solicitation or contract number;
 - iv. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents;
and
 - v. The form of relief requested.
 - c. If the protest is based upon alleged improprieties in a solicitation that are apparent before the offer due date and time, the interested party shall file the protest before the offer due date and time.
 - d. In cases other than those covered in subsection (C), the interested party shall file the protest within 10 days after the agency chief procurement officer makes the procurement file available for public inspection.
 - e. The interested party may submit a written request to the agency chief procurement officer for an extension of the time limit for protest filing set forth in subsection (D). The written request shall be submitted before the expiration of the time limit set forth in subsection (D) and shall set forth good cause as to the specific action or inaction of the purchasing agency that resulted in the interested party being unable to submit the protest within the 10 days. The agency chief procurement officer shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted set forth a new date for submission of the filing.
 - f. If the interested party shows good cause, the agency chief procurement officer may consider a protest that is not timely filed.
 - g. The agency chief procurement officer shall immediately give notice of a protest to interested parties.
2. A.A.C. R2-7-A903. Resolution of Solicitation and Contract Award Protests:
 - a. The agency chief procurement officer has the authority to resolve a protest.
 - b. The agency chief procurement officer shall issue a written decision within 14 days after a protest has been filed under A.A.C. R2-7-A901. The decision of the agency chief procurement officer shall contain the basis for the decision and a statement that the decision may be appealed to the Executive Director within 30 days from receipt of the decision.
 - c. The agency chief procurement officer shall furnish the decision to the interested party, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the state procurement administrator and the Executive Director.
 - d. The agency chief procurement officer may submit a written request to the Executive Director for an extension of the time limit for decisions under subsection (B). The Executive Director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for submission of the decision, not to exceed an additional 30 days. The Executive Director shall notify the agency chief procurement officer, the interested party, and the state procurement administrator in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
 - e. If the agency chief procurement officer fails to issue a decision within the time limits set forth in this Article, the interested party may proceed as if the agency chief procurement officer had issued an adverse decision.
3. A.A.C. R2-7-A904. Remedies by the Agency Chief Procurement Officer:

- a. If the agency chief procurement officer sustains a protest in whole or part and determines that a solicitation, a determination of not susceptible for award, or contract award does not comply with the procurement statutes and regulations, the agency chief procurement officer shall implement an appropriate remedy.
 - b. In determining an appropriate remedy, the agency chief procurement officer shall consider all the circumstances surrounding the procurement or proposed procurement including:
 - i. The seriousness of the procurement deficiency.
 - ii. The degree of prejudice to other interested parties or to the integrity of the procurement system.
 - iii. The good faith of the parties.
 - iv. The extent of performance.
 - v. The costs to the state.
 - vi. The urgency of the procurement.
 - vii. The impact on the agency's mission, and
 - viii. Other relevant issues.
 - c. An agency chief procurement officer may implement any of the following appropriate remedies:
 - i. Decline to exercise an option to renew under the contract.
 - ii. Terminate the contract.
 - iii. Amend the solicitation.
 - iv. Issue a new solicitation.
 - v. Award a contract consistent with procurement statutes and regulations, or
 - vi. Render such other relief as determined necessary to ensure compliance with procurement statutes and regulations.
4. A.A.C. R2-7-A905. Appeals to the Executive Director:
- a. An interested party may appeal the decision entered or deemed to be entered by the agency chief procurement officer to the Executive Director within 30 days after the date the decision is received or deemed received under A.A.C. R2-7-A903. The interested party shall file a copy of the appeal with the Executive Director, the agency chief procurement officer, and the state procurement administrator.
 - b. The interested party shall file the appeal in writing and shall include the following information:
 - i. The information prescribed in A.A.C. R2-7-A901(B) including the identification of confidential information under A.A.C. R2-7-103.
 - ii. A copy of the decision of the agency chief procurement officer, and
 - iii. The precise factual or legal error in the decision of the agency chief procurement officer from which an appeal is taken.
 - c. The Executive Director may consider any appeal that is not filed timely if:
 - i. The interested party shows good cause, or
 - ii. The Executive Director finds there is good cause.
5. A.A.C. R2-7-A906 Notice of Appeal to the Executive Director:
- a. The agency chief procurement officer shall promptly give notice of the appeal to all offerors.
 - b. The Executive Director shall, upon request, furnish copies of the appeal to all offerors subject to the provisions of A.A.C. R2-7-103.
6. A.A.C. R2-7-A907 Stay of Procurement during Appeal to Executive Director:
- a. If a stay is issued under A.A.C. R2-7-A902, the filing of an appeal shall automatically continue the stay, unless the Executive Director makes a written determination that the award of the contract or a notice to proceed with contract performance is necessary to protect the substantial interests of the state.
 - b. Following a review of the agency chief procurement officer's or the state procurement officer's decision and the interested party's appeal, the Executive Director may stay the procurement if the Executive Director determines that there is a reasonable probability the protest will be upheld or that a stay is in the best interests of the state.
7. A.A.C. R2-7-A908 Agency Report:
- a. The agency chief procurement officer shall file a complete report on the appeal with the Executive Director and the state procurement administrator within 14 days after the date the appeal is filed, at the same time furnishing a copy of the report to the interested party. The agency chief procurement officer shall also provide a copy of the report to any interested parties who request a copy, at their cost. The report shall contain copies of:
 - i. The appeal;
 - ii. The offer submitted by the interested party;
 - iii. The offer of the firm that is being considered for award;
 - iv. The solicitation, including the specifications or portions relevant to the appeal;
 - v. The abstract of offers or relevant portions;
 - vi. Any other documents that are relevant to the protest; and
 - vii. A statement by the agency chief procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

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- b. The agency chief procurement officer may submit a written request to the Executive Director for an extension of the time period for filing the report as prescribed in subsection (A), identifying the reason for extension. The Executive Director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date the submission of the report. The Executive Director shall notify the agency chief procurement officer, the state procurement administrator, and the interested party in writing that the time for the submission of the report is extended, providing the date on which the report must be submitted.
- c. The interested party shall file comments on the agency report with the Executive Director within 10 days after receipt of the report. The interested party shall provide copies of the comments to the agency chief procurement officer, the state procurement administrator, and other interested parties.
- d. The interested party may submit a written request to the Executive Director for an extension of the period for submission of comments, identifying the reasons for the extension. The Executive Director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of filing comments. The Executive Director shall notify the agency chief procurement officer and the state procurement administrator of any extension.
- 8. A.A.C. R2-7-A909 Remedies by the Executive Director. If the Executive Director sustains the appeal in whole or part and determines that a solicitation, a not susceptible for award determination, or an award does not comply with procurement statutes and regulations, the Executive Director shall implement remedies as provided in A.A.C. R2-7-A904.
- 9. A.A.C. R2-7-A910 Dismissal Before Hearing:
 - a. The Executive Director shall dismiss, upon written determination, an appeal in whole or in part before scheduling a hearing if:
 - i. The appeal does not state a valid basis for protest.
 - ii. The appeal is untimely as prescribed under A.A.C. R2-7-A905, or
 - iii. The appeal attempts to raise issues not raised in the protest.
 - b. The Executive Director shall notify the interested party, the agency chief procurement officer, and the state procurement administrator in writing of a determination to dismiss an appeal before hearing.
- 10. R2-7-A911 Hearing. The Executive Director shall resolve appeals of solicitation or contract award decisions as contested cases under A.R.S. § 41-1092.07.

R7-3-504. Changing Designated Beneficiary

An account owner may change the designated beneficiary so long as the new designated beneficiary is a member of the family, as defined in A.R.S. § ~~45-1871(8)~~ 15-1871(9), of the previously named designated beneficiary. The account owner must certify and provide to the financial institution the name, address, ~~social security~~ Social Security number, and relationship of the new designated beneficiary to the previously named designated beneficiary. The change shall be effective upon the financial institution's receipt of such certification.

R7-3-505. Account Balance Limitations

- A. For each designated beneficiary, the balance in all qualified tuition programs, as defined in § 529 of the Code, shall not exceed the lesser of:
 - 1. ~~The product (rounded down to the nearest multiple of \$1000) of 7~~ Seven times the cost of and the average one year's undergraduate tuition, fees, room and board at the ~~ten~~ 10 independent four year eligible educational institutions as measured and last published by the College Board's Independent College 500 Index that have the largest total direct charges. For purposes of this subsection, "total direct charges" means the charges determined for each eligible educational institution by multiplying the eligible educational institution's undergraduate enrollment by the reported tuition, fees, room and board for an on-campus student at the eligible educational institution. ~~;~~
 - 2. No change
- B. No change
- C. No financial institution, acting on behalf of the trustee, shall accept for deposit in any account a contribution if the contribution would cause the sum of the values (as of the beginning of an account year) of all qualified tuition programs of the designated beneficiary that are managed by the financial institution and contributions to such accounts less withdrawals from such accounts during the account year to exceed the maximum allowable balance set forth in subsection (A).
- D. No change
- E. No change
- F. If the Commission determines that contributions have been made to program accounts in violation of subsection (B) or (C), it shall notify ~~the designated beneficiary and~~ the account owners of all accounts of such designated beneficiary. The account owners shall have 60 days after receipt of such notice to reduce the balances of the qualified tuition programs through distributions and/or changes in beneficiaries to a level less than or equal to the maximum account balance described in subsection (A). If the balances are not appropriately reduced, the Commission will disqualify such accounts in reverse order of their date of opening until the sum of the balances in the accounts does not exceed the maximum allow-

able balance set forth in subsection (A). This subsection shall not apply to any contribution made at a time when such contributions did not cause the account balance limits to be exceeded.

R7-3-506. Withdrawals; ~~Reporting of Non-qualified Withdrawals; Penalties~~

A. No change

~~B.~~ ~~Withdrawals.~~

~~1. Qualified Withdrawals.~~

~~In order to make a qualified withdrawal, the account owner or the account owner's designee must complete a certification, on a form approved by the Commission, declaring that the funds will be used for the purposes set forth in A.R.S. § 15-1871(11). The form shall include a statement advising the designated beneficiary and account owner of their obligations to report, in accordance with R7-3-506(B)(3)(e), refunds received from an eligible educational institution. In addition to the certification, a withdrawal shall be deemed qualified only if:~~

- ~~a. The financial institution is provided with a copy of an invoice from the eligible educational institution, and the distribution is made directly to the eligible educational institution; or~~
- ~~b. The financial institution is provided with a copy of an invoice from the eligible educational institution, and the distribution is made in the form of a check payable to both the designated beneficiary and the eligible educational institution; or~~
- ~~e. Within 30 days following the withdrawal, substantiation that the withdrawal was actually expended for qualified higher education expenses is submitted to the financial institution.~~

~~2. Withdrawal Based on Death, Disability, or Scholarship.~~

~~A penalty-free withdrawal may be made as a result of the designated beneficiary's death, disability, or scholarship, if written substantiation thereof is provided. Such written substantiation must come from a party other than the designated beneficiary or the account owner. In the case of a scholarship, the withdrawal may not exceed the amount of the scholarship.~~

~~3. Non-Qualified or Unsubstantiated Withdrawals.~~

~~Pursuant to A.R.S. § 15-1875(H), the Commission has authority to assess penalties for non-qualified withdrawals. If an account owner fails to certify that a withdrawal is qualified or penalty-free, as defined in R7-3-506(B)(1) and (2), above, or if a financial institution has reason to believe that a withdrawal is non-qualified, the financial institution shall withhold from such withdrawal an amount equal to 10% of that portion of that withdrawal which constitutes income under § 72 of the Code. If an account owner seeks to make a withdrawal in accordance with R7-3-506(B)(1)(e) and does not provide the required substantiation at the time of the withdrawal, the withdrawal shall be limited so that the balance remaining in the account is sufficient to pay the 10% of earnings penalty. If the financial institution is not provided with the required substantiation within 30 days, the withdrawal shall be treated as a non-qualified withdrawal, the penalty shall be assessed at that time, and the financial institution shall withdraw the penalty from the account.~~

~~a. If the withdrawal has not been declared, by the party making the withdrawal, to be non-qualified, the amount of any penalty shall be remitted to the Commission with the financial institution's first monthly report following the date that the withdrawal is determined to be non-qualified. If the withdrawal has been declared to be non-qualified, the amount of said withholding may be remitted to the Commission with the financial institution's required monthly report.~~

~~b. If the withdrawal has not been declared, by the party making the withdrawal, to be non-qualified, the financial institution shall report any such withholding, in writing, to the Commission with the financial institution's first monthly report following the date that the withdrawal is determined to be non-qualified. The report shall include identification of the account owner, beneficiary, date of withdrawal, amount of withdrawal, and a brief description as to why the financial institution believes the withdrawal to be nonqualified. If the withdrawal has been declared to be non-qualified, the report may be submitted to the Commission with the financial institution's required monthly report. The financial institution shall notify the account owner and beneficiary, in writing, of any withholding.~~

~~e. If a qualified withdrawal is made from an account in any calendar year, within 60 days after the end of such year and within 60 days after the end of the following year, any designated beneficiary or account owner who received a partial or total refund from the eligible educational institution attended by the designated beneficiary or the eligible educational institution that the designated beneficiary had expected to attend shall provide to the financial institution a signed statement identifying the amount of any refunds received. In addition, the designated beneficiary or account owner shall provide an explanation as to what portion, if any, of the refund is allocable to a qualified withdrawal. If all or a portion of a refund is allocable to a qualified withdrawal, the designated beneficiary (or the account owner) may provide the financial institution with substantiation of qualified higher education expenses for which the refund was used or substantiation that the refund was made by reason of scholarship, or the death, or disability of the designated beneficiary. To the extent that a refund allocable to a qualified withdrawal was not used to pay qualified higher education expenses or made on account of death, disability, or~~

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~~scholarship of the designated beneficiary, it shall be considered a non-qualified withdrawal subject to the penalty described in R7-3-506(B)(3). The financial institution shall withdraw the penalty from the account from which the original qualified withdrawal was made, if sufficient funds are available in the account, or attempt to collect the penalty by billing the designated beneficiary or account owner for the penalty, if sufficient funds are not available in the account.~~

4. ~~Substantiation Procedures.~~

~~Before treating any withdrawal as qualified or penalty-free based on substantiation provided, the financial institution shall review the substantiation to confirm that substantiation is provided for the amount of a withdrawal that the account owner or designated beneficiary asserts is qualified or penalty-free, that the substantiation complies with the program rules, and, in the case of a withdrawal to pay qualified higher education expenses, that the substantiated expenditures are of a nature and in amounts that can be treated as qualified higher education expenses. The financial institution may seek additional information from the account owner, the designated beneficiary, or the eligible educational institution before approving or rejecting substantiation, and the financial institution may seek guidance from staff of the Commission. If the financial institution determines that substantiation is inadequate, it shall promptly notify the account owner and defer making any distribution with respect to any inadequately substantiated request until proper substantiation is provided or the account owner instructs the financial institution to make the requested distribution and either withhold the penalty from the distribution or from other funds in the account.~~

5. ~~Distributions Made after December 31, 2001.~~

~~A financial institution shall not be required to collect a penalty on any withdrawal made after December 31, 2001. Withdrawals may be made pursuant to forms prepared or used by the financial institution and meeting the requirements. To the extent that A.R.S. § 15-1875 requires provisions that will generally enable the Commission to determine whether withdrawals are qualified or nonqualified withdrawals, a financial institution shall require an account owner to state whether the account owner expects that the withdrawal will be a qualified or nonqualified withdrawal.~~

~~C. The account owner may dispute any withholding made by a financial institution under subsection (B) by submitting written notice, to the Commission, within 30 days from the date of such withholding. The Commission shall make a written determination regarding the dispute within 30 days of the receipt of its notice from the account owner. If the account owner disagrees with the Commission's determination, the matter shall be adjudicated in accordance with A.R.S. § 41-1092 et seq.~~

~~B. A financial institution shall not be required to collect a penalty on any withdrawal made after December 31, 2001. Withdrawals may be made pursuant to forms prepared or used by the financial institution and meeting the requirements delineated in § 529 of the Code, A.R.S. Title 15, Chapter 14, Article 7, and 7 A.A.C. 3, Article 5.~~

R7-3-507. Oversight of Financial Institutions

A. Disclaimer of state liability. Every document pertaining to the Family College Savings Program shall clearly indicate that "The account is not insured by the state of Arizona and neither the principal deposited nor the investment return is guaranteed by the state of Arizona." ~~A rubber stamp may be used to imprint this language on deposit slips, account statements, payroll stubs, or other documents pertaining to the Family College Savings Program. This language may also be handwritten or typed or provided by any other method to facilitate compliance.~~

B. No change

C. Reporting Requirements.

1. At least quarterly, every financial institution shall provide each account owner with a statement. The statement shall list a beginning balance, all activity during the quarter, including any interest ~~paid~~ earned or dividends ~~earned~~ paid (if applicable) and any penalties charged, and an ending balance. Additionally, the statement for the fourth quarter shall include the following information: an annual beginning balance, an annual total of the interest earned or dividends paid (if applicable), an annual total of any penalties charged, and a year-end balance.

2. Within the time-frames established by the Code, financial institutions, at the request of the Commission, shall provide Form 1099Q to all distributees.

3. No change

4. The financial institutions shall provide to the Commission any other report or information required by the Commission for the Commission to fulfill its fiduciary duties.

D. Access to books and records. No contractor shall have access to the books and records associated with the qualified tuition program of a financial institution or Program Manager unless the Commission or its designee first approves, with or without modification, such request for access.

E. Non-renewal. The Commission's failure to renew a contract with a financial institution shall not be construed as "good cause" as referred to in A.R.S. § ~~45-1874(I)~~ 15-1874(H).

F. Marketing programs. ~~4.~~ Any financial institution or group of financial institutions that wishes to engage in its own marketing program may do so provided that any proposed marketing program is first submitted to the Commission for review. If, within 30 days, the Commission does not notify the financial institution or group of financial institutions, in writing, that the proposed marketing program is rejected or requires modifications, the proposed marketing program shall be deemed

approved.

2. ~~Any financial institution or group of financial institutions that chooses to engage in its own marketing program may petition the Commission for a credit against future marketing fees.~~

G. Voting of Proxies. The Arizona Commission for Post Secondary Education, acting as trustee of the Arizona Family College Savings Program on behalf of Arizona families, shall be responsible for casting proxy ballots solely in the interest of plan account owners and their beneficiaries. In voting proxies, the following policies set forth the Trustee's general position on various proposals:

1. Routine Items: The Trustee will generally vote for uncontested director, independent auditor, or fund trustee. The Trustee will generally vote for changes in company name and other procedural matters related to annual meetings.

2. Corporate Governance: The Trustee will generally vote for prospectus, statement of additional information, charter and bylaw amendments proposed solely to conform to modern business practices, to enhance shareholder value, for purposes of simplification, or to comply with what the Commission's counsel interprets as applicable law.

3. Anti-Takeover Matters: The Trustee will generally vote for proposals that require shareholder ratification of poison pills, and on a case-by-case basis on proposals to redeem a company's poison pill. Poison pill used in this context refers to a strategy used by corporations to discourage a hostile takeover by another company.

4. Mergers/Acquisitions and Corporate Restructurings: The Trustee will examine mergers, acquisitions, and corporate restructurings on a case-by-case basis.

5. Shareholder Rights: The Trustee will generally vote against proposals that may restrict shareholder rights.

6. Investment Directions: The Trustee will generally vote against proposals that restrict the investment authority of the Board of Directors or fund managers. The Trustee will generally vote against proposals that would increase fund fees or expenses, decrease fund risk-adjusted returns, or cause a change in a fund's investment style or asset-class exposure that is inconsistent with the benchmark index and investment objectives and policies as set forth in the fund's prospectus and/or statement of additional information.

7. While the above policies set forth the Trustee's general position on proxy voting, the Trustee may vary from such policies on a case-by-case basis if the Trustee deems it to be in the best financial and economic interest of the account owners and their beneficiaries. The Trustee welcomes and will consider input from account owners in voting proxies and will seek means, with provider participation, to offer information to account holders regarding impending proxy votes.

H. Aggregation of Duplicate Accounts.

1. The Commission shall provide monthly reports to all financial institutions that are serving as depositories of fund monies and managers of the program. The reports shall be specific to each financial institution and identify the account owners who hold duplicate accounts. For purposes of subsection (H), the term "duplicate accounts" means accounts that have the same account owner and designated beneficiary and that are opened in more than one financial institution serving as a depository of fund monies and manager of the program.

2. For purposes of withdrawals, the financial institutions shall use the monthly reports issued by the Commission and shall share the information regarding duplicate accounts with the other financial institutions acting as depositories of fund monies and managers of the program to determine the earnings for duplicate accounts. The financial institution that receives the withdrawal request shall be responsible for contacting the other financial institutions and securing their account information; aggregating the data; assigning the appropriate earnings for each account; and communicating this analysis back to the other financial institutions that are sharing the information.

3. For purposes of 1099 form preparation, the most recently added financial institution selected by the Commission shall be responsible for contacting the other financial institutions and securing their account information; aggregating the data; assigning the appropriate earnings for each account; and communicating this information back to the other financial institutions sharing the account information as well as the Commission.

4. The financial institution that is responsible for collecting the information under subsection (H)(2) and (3) shall inform the Commission that the aggregation has occurred.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

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

[R08-168]

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| R9-10-201 | Amend |
| R9-10-202 | Amend |
| R9-10-203 | Amend |
| R9-10-234 | 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. §§ 36-132(A) and 36-136(F)

Implementing statute: A.R.S. § 36-405
- 3. A list of previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 14 A.A. R. 2243, June 6, 2008 (*in this issue*)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Kathleen Phillips, Rules Administrator and Administrative Counsel
Address:	Department of Health Services 1740 W. Adams St., Suite 200 Phoenix, AZ 85007-3233
Telephone:	(602) 542-1264
Fax:	(602) 364-1150
E-mail:	phillik@azdhs.gov
or	
Name:	Kathy McCanna, Program Manager
Address:	Department of Health Services Medical Facilities Licensing 150 N. 18th Ave., Suite 450 Phoenix, AZ 85007-3233
Telephone:	(602) 364-3030
Fax:	(602) 364-4764
E-mail:	mccannk@azdhs.gov
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

Currently hospitals designate a specific area or unit in the hospital's facility to be used to provide a specific organized service, i.e. medical/surgical services, intensive care services, telemetry, etc. There are specific requirements, including staffing and physical plant requirements, for each organized service. If an individual requiring intensive care is admitted to a hospital, the individual may require, over the course of the individual's stay in the hospital, intensive care services, telemetry, and medical/surgical services. In order for the hospital to provide those services under the current system, the individual is moved to a different organized services unit for each type of organized service.

Hospitals are now being planned that will admit an individual to a unit and provide more than one organized service to the individual in a single multi-organized service unit eliminating the need for physically transferring the individual to different organized services units during the individual's recovery. The rulemaking amends the rules to allow for this innovative delivery of care model.

The rulemaking also adds a definition of "continuing care nursery" to clarify which services may be provided in a multi-organized service unit.
- 6. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to rely**

on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

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

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 preliminary summary of the economic, small business, and consumer impact

Annual costs/revenues changes are designated as minimal when less than \$10,000, moderate when between \$10,000 and \$50,000, and substantial when \$50,000 or greater in additional costs or revenue.

Cost bearers

Hospitals

Although the rule allows a hospital more flexibility when designating areas for the provision of services, the rule does not require a hospital to have a multi-organized service unit. A hospital may incur additional physical plant costs if the hospital chooses to have a multi-organized service unit.

Beneficiaries

Hospitals

Because a hospital patient does not have to be moved from unit to unit, a multi-organized service unit may be more efficient and provide a financial benefit to a hospital.

Hospital patients

A hospital patient who previously had to be physically relocated as the patient recovered may benefit and recover more quickly when receiving all necessary organized services in one physical location.

9. The name and address or agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Kathleen Phillips, Rules Administrator and Administrative Counsel

Address: Department of Health Services
1740 W. Adams St., Suite 200
Phoenix, AZ 85007-3233

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: phillik@azdhs.gov

or

Name: Kathy McCanna, Program Manager

Address: Department of Health Services
Medical Facilities Licensing
150 N. 18th Ave., Suite 450
Phoenix, AZ 85007-3233

Telephone: (602) 364-3030

Fax: (602) 364-4764

E-mail: mccannk@azdhs.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: Wednesday, July 9, 2008

Time: 11:00 a.m.

Place: Department of Health Services
1740 W. Adams St., Room 309
Phoenix, AZ 85007

Close of record: 5:00 p.m. on Friday, July 11, 2008

A person may submit written comments on the proposed rules or the preliminary summary of the economic, small business, and consumer impact no later than 5:00 p.m., Friday, July 11, 2008 to the individuals listed in items 4 and 9.

Notices of Proposed Rulemaking

Persons with a disability may request reasonable accommodations by contacting Jessica Johnson at johnsojm@azdhs.gov or (602) 542-1513. Requests should be made as early as possible to allow sufficient time to arrange for the accommodation.

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:

Not applicable

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

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

ARTICLE 2. HOSPITALS

Section

- R9-10-201. Definitions
- R9-10-202. Application Requirements
- R9-10-203. Administration
- R9-10-226. Multi-Organized Service Unit

ARTICLE 2. HOSPITALS

R9-10-201. Definitions

In addition to the definitions in A.R.S. § 36-401 and ~~9 A.A.C. Title 9, Chapter 10, Article 1,~~ the following definitions apply in this Article:

- 1. No change
- 2. No change
- 3. No change
- 4. No change
- 5. No change
- 6. No change
- 7. No change
- 8. No change
- 9. No change
- 10. No change
- 11. No change
- 12. No change
- 13. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- 14. No change
 - a. No change
 - b. No change
 - c. No change
- 15. No change
- 16. No change
- 17. No change
- 18. No change
- 19. No change
- 20. No change
- 21. No change
- 22. "Continuing care nursery" means a nursery where medical services and nursing services are provided to a neonate who does not require intensive care services.

~~22-23~~. No change

~~23-24~~. No change

~~24-25~~. No change

a. No change

b. No change

c. No change

~~25-26~~. No change

~~26-27~~. No change

~~27-28~~. No change

~~28-29~~. No change

~~29-30~~. No change

~~30-31~~. No change

~~31-32~~. No change

~~32-33~~. No change

~~33-34~~. No change

~~34-35~~. No change

~~35-36~~. No change

~~36-37~~. No change

~~37-38~~. No change

~~38-39~~. No change

~~39-40~~. No change

~~40-41~~. No change

~~41-42~~. No change

~~42-43~~. No change

~~43-44~~. No change

~~44-45~~. No change

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~~52-53~~. No change

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~~54-55~~. No change

a. No change

b. No change

~~55-56~~. No change

~~56-57~~. No change

~~57-58~~. No change

~~58-59~~. No change

a. No change

b. No change

~~59-60~~. No change

~~60-61~~. No change

~~61-62~~. No change

~~62-63~~. No change

~~63-64~~. No change

~~64-65~~. No change

~~65-66~~. No change

~~66-67~~. No change

~~67-68~~. No change

69. "Multi-organized service unit" means an inpatient unit in a hospital where more than one organized service may be provided to a patient in the inpatient unit.

~~68-70~~. No change

a. No change

b. No change

~~69-71~~. No change

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

~~70-72~~. No change
~~71-73~~. No change
~~73-74~~. No change
~~72-75~~. No change
~~74-76~~. No change
~~75-77~~. No change
~~76-78~~. No change
~~77-79~~. No change
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~~78-80~~. No change
~~79-81~~. No change
~~80-82~~. No change
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100. No change
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~~108-110~~. No change
~~109-111~~. No change
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~~110-112~~. No change
~~111-113~~. No change
~~112-114~~. No change
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 b. No change
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~~113-115~~. No change
~~114-116~~. No change
~~115-117~~. No change
~~116-118~~. No change

- ~~117-119~~. No change
- ~~118-120~~. No change
- ~~119-121~~. No change
 - a. No change
 - b. No change
 - c. No change
- ~~120-122~~. No change
- ~~121-123~~. No change
- ~~122-124~~. No change
- ~~123-125~~. No change

R9-10-202. Application Requirements

- A. ~~For a hospital license, in~~ addition to the license application requirements in A.R.S. § 36-422 and ~~9~~ A.A.C. ~~Title 9, Chapter 10, Article 1,~~ a governing authority applying for an initial or renewal license shall submit the following to the Department:
 - ~~1. For a hospital license:~~
 - a. ~~A statement on a form provided by the Department of the licensed capacity requested for the hospital, including the number of inpatient beds for each organized service, not including well-baby bassinets.~~
 - 1. A statement of the licensed capacity requested for the hospital, on a form provided by the Department, including:
 - a. The number of inpatient beds for each organized service, not including well-baby bassinets; and
 - b. The number of inpatient beds for each multi-organized service unit, including:
 - i. An adult unit that provides both intensive care services and medical and nursing services other than intensive care services.
 - ii. A pediatric unit that provides both intensive care services and medical and nursing services other than intensive care services.
 - iii. A unit that provides both perinatal services and intensive care services for obstetrical patients, or
 - iv. A unit that provides both intensive care services for neonates and a continuing care nursery.
 - ~~b.2.~~ No change
 - ~~e.3.~~ No change
 - ~~2.B.~~ For a single group license authorized in A.R.S. § 36-422(F) or (G), in addition to the items listed in subsection (A)(1), a governing authority ~~applying for a single group license authorized in A.R.S. § 36-422(F) or (G);~~ shall submit the following to the Department on a form provided by the Department:
 - a. ~~The items listed in subsection (A)(1); and~~
 - b. ~~A form provided by the Department that includes:~~
 - ~~i.1.~~ No change
 - ~~ii.2.~~ No change
 - ~~iii.3.~~ No change
- ~~B.C.~~ No change
 - 1. No change
 - 2. No change
 - 3. No change

R9-10-203. Administration

- A. No change
 - 1. No change
 - ~~2. Determine which organized services are to be provided in the hospital;~~
 - 2. Designate:
 - a. Which organized services are to be provided in the hospital, and
 - b. The organized services that are to be provided in a multi-organized service unit according to R9-10-226(A);
 - 3. No change
 - a. No change
 - b. No change
 - c. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change
 - 9. No change

- 10. No change
- 11. No change
- 12. No change
- 13. No change
- B.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- C.** No change
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - f. No change
 - g. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - h. No change
 - i. No change
 - j. No change
 - k. No change
 - l. No change
 - m. No change
 - n. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change
 - ii. No change
 - i. No change
 - j. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - a. No change
 - b. No change
 - 6. No change
 - a. No change
 - b. No change
 - c. No change
 - d. Sexual abuse according to A.R.S. § 13-1404; and
 - e. Sexual assault according to A.R.S. § 13-1406; and
 - f. ~~A pattern of failure to provide hospital services without the informed consent of the patient or the patient's representative that results or may result in risk to the health and safety of the patient as determined by:~~

- i. ~~The number of incidents;~~
- ii. ~~How the incidents are related to each other;~~
- iii. ~~When the incidents occurred; and~~
- iv. ~~The amount of time between the incidents.~~

R9-10-234. Multi-Organized Service Unit

A. A governing authority may designate the following as a multi-organized service unit:

- 1. An adult unit that provides both intensive care services and medical and nursing services other than intensive care services.
- 2. A pediatric unit that provides both intensive care services and medical and nursing services other than intensive care services.
- 3. A unit that provides both perinatal services and intensive care services for obstetrical patients, or
- 4. A unit that provides both intensive care services for neonates and a continuing care nursery.

B. An administrator shall require that:

- 1. For a patient in a multi-organized service unit, a medical staff member designates which organized service is to be provided to the patient in the patient's medical record;
- 2. A multi-organized service unit complies with the requirements in this Article that would apply if each organized service were offered as a single organized service unit; and
- 3. A multi-organized service unit and each bed in the unit complies with physical plant health and safety codes and standards incorporated by reference in A.A.C. R9-1-412 for all organized services provided in the multi-organized service unit.

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

[R08-169]

PREAMBLE

- 1. **Sections Affected** **Rulemaking Action**
R12-5-408 Amend
- 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. § 37-132(A)(1)
Implementing statute: A.R.S. § 37-251
- 3. **A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 14 A.A.R. 236, January 25, 2008
- 4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Richard B. Oxford, Director
Land Information, Title & Transfer Division

Address: State Land Department
1616 W. Adams St.
Phoenix, AZ 85007

Telephone: (602) 542-4602
Fax: (602) 542-5223
E-mail: Roxford@land.az.gov
- 5. **An explanation of the rule, including the agency's reasons for initiating the rule:**
Rule R12-5-408 was originally issue in 1976 and was amended in 1990. The current rule is antiquated, misleading and is not compliance with the law.

The proposed amendment explains how a holder of a Certificate of Purchase of State Trust land may apply to the State Land Commissioner to partial patent a parcel of land within the Certificate of Purchase. The proposed rule also

Notices of Proposed Rulemaking

explains what documents are required from the County Treasurer as well as data regarding development plans of the lands within and adjacent to the Certificate of Purchase and parcel to be patented. In addition, the rule requires an appraisal or economical analysis of the parcel to be patented as well as the remaining land under the Certificate of Purchase to assist the Department in determining the value of the remaining lands in the event a partial patent is issued.

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

The Agency did not review any study relevant to the rule.

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 preliminary summary of the economic, small business, and consumer impact:

The Arizona State Land Department manages 9.2 million acres of State-owned "Trust" lands. These lands were granted to the State of Arizona under the provisions of the 1910 federal Enabling Act that provided for Arizona's statehood in 1912. The lands are held in Trust for various beneficiaries including the common schools (K-12) and 13 other public institutions. The Trust's beneficiaries receive revenue from leasing, selling, or using State Trust land and its resources.

Trust land management activities to earn revenue can be divided into three categories: (1) surface uses (grazing, agricultural, commercial, and rights-of-way); (2) subsurface uses (mineral and precious metal extraction); and, (3) land and natural products sales (i.e. timber, rock, sand, and gravel).

In FY2007, gross revenues from land sales totaled \$453.7 million. Of that total, \$14.8 million was cash and \$431.1 million is paid over time through State Certificates of Purchase. Currently, the State is carrying 8,931 acres under 33 Certificates of Purchase (C.P.). The value of the unpaid principal on these C.P.s is in excess of \$900 million. Periodically, a C.P. holder applies to partially patent a tract of land from the entire parcel of land sold. When a partial patent is paid off, it results in several million dollars becoming available for the Treasurer's investment in the Trust's permanent fund. During the three-year time-frame from FY2005-FY2007, the Department issued 13 partial patents and collected \$136.5 million for the Trust's permanent fund. The interest earned benefits the Trust's beneficiaries. While there are some minimal costs to the applicant, the benefit to the state (taxes collected on private and developed land), the Department (revenue to the Trust's permanent fund), the beneficiaries (revenues earned from Treasurer's investments), private industry and small businesses (planning, engineering, suppliers of goods, services, materials and labor) local government and other state agencies that collected taxes, issue permits, fees, etc.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Richard B. Oxford, Director
Land Information, Title & Transfer Division

Address: State Land Department
1616 W. Adams St.
Phoenix, AZ 85007

Telephone: (602) 542-4602

Fax: (602) 542-5223

E-mail: Roxford@land.az.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

No public proceeding is scheduled. A person may submit written comments for at least 30 days from the date of this notice and may request that an oral proceeding be held on the proposed rules by submitting the comments or a written request for hearing no later than 5:00 p.m., July 11, 2008 to the person listed in item 9.

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. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

ARTICLE 4. SALES

Section
R12-5-408. Partial Patent

ARTICLE 4. SALES

R12-5-408. Partial Patent

- A. ~~The owner holder of a Certificate of Purchase applying to the Department for a partial patent of lands under shall use a Department form when filing an Application for Patent on Part of a Certificate of Purchase, which must be accompanied by provide the following documents or materials at the time of application:~~
1. ~~Appropriate \$5.00 filing fee as required under A.R.S. § 37-108.~~
 2. ~~A deposit of \$350.00, to be applied to the cost of appraisal of the land and improvements, if any.~~
 2. ~~A copy of a receipt from the County Treasurer, where the land under application for partial patent is located, verifying that the taxes on all lands remaining under the Certificate of Purchase, including the lands under application for partial patent, have been paid and are current.~~
 3. ~~A written land legal description and a plat of survey plat (drawing size 17" x 26") by a Registered Civil Engineer, an Arizona Registered Land Surveyor, showing of both the lands covered by the Certificate of Purchase and the lands described in this the application for partial patent. The written land legal description and the survey plat shall be provided in hard copy format, shall comply with all applicable laws and rules, and shall be in a digital format as identified in the application.~~
 4. ~~A development plan showing the lands covered by the Certificate of Purchase and information as to how the proposed development plan will be developed in compliance with City or County ordinances, regulations, and, if applicable, rezoning cases. The development plan shall contain proposed densities, unit breakdown, and approved or proposed zoning district classifications.~~
 4. ~~Original copy of Certificate of Purchase from which this partial release to patent is requested.~~
 5. ~~A document showing Satisfaction or Release of Mortgage or other encumbrances covering lands to be patented.~~
 6. ~~A notarized or other duly authenticated document setting forth the name of the person authorized to sign for a individual, partnership, group, company, corporation, etc.~~
- B. ~~If the Commissioner deems necessary, the Department may require a tentative plat with a proposed development overlay showing the existing conditions, including the topography, infrastructure improvements, and existing structures of the lands under the Certificate of Purchase (including the lands under application for partial patent), as well as of those lands contiguous to all boundaries of the lands covered by the Certificate of Purchase.~~
- ~~B.C.~~ ~~No application shall be accepted in the event the consideration will be given applications to patent a part of a Certificate of Purchase which is in default as to payment of principal, interest, taxes or any other default.~~
- D. ~~Before any parcel, less than the entire lands covered by the Certificate of Purchase, is patented, the Department shall determine that the remaining lands are of greater value than the unpaid balance of the Certificate of Purchase and that the remaining lands have development potential independent of the acreage that is being patented. If the Commissioner determines that it is necessary to establish the value of the remaining lands, the applicant shall provide, at the applicant's expense, the following:~~
1. ~~An appraisal or economic analysis dated no earlier than the date of the application, approved by the Department, of the parcel sought to be patented and, at the Commissioner's request, of the remaining lands;~~
 2. ~~An infrastructure assessment detailing service, capacity and cost information for the remaining lands; and~~
 3. ~~Any additional information the Department considers necessary to determine the adequacy of the value of the remaining lands as security for the balance of all remaining payments required to be made under the Certification of Purchase after the partial patent is issued.~~
- E. ~~If the application or any of its attachments is deficient, the Commissioner shall immediately notify the applicant of the deficiency and the applicant shall within 20 days, or such further time as the Commissioner may allow, remedy such deficiency, otherwise the application shall be deemed withdrawn.~~
- C. ~~If the application or any of its attachments is deficient, the Commissioner shall immediately notify the applicant of the deficiency and the applicant shall within 20 days, or such further time as the Commissioner may allow, remedy such deficiency, otherwise the application shall be deemed withdrawn.~~
- D. ~~Upon the filing of a proper application, the Commissioner shall appraise the parcel to be patented and improvements, if any, and upon completion of the appraisal, if the Commissioner finds that it is for the best interest of the state to patent said parcel, the Commissioner shall make an order authorizing the patenting of the land and setting forth the appraised value of the land and improvements. If the Commissioner finds that it is not in the best interest of the state to allow patenting of said parcel, the application shall be rejected by order of the Commissioner.~~

Notices of Proposed Rulemaking

- ~~E.~~ Orders whether authorizing the patenting of the land or rejecting the application shall be issued by the Commissioner within 60 days after the completion of the appraisal.
- ~~F.~~ If the purchaser fails to complete any of the required payments within 60 days or such further time as may be granted in writing by the Commissioner, the application shall be deemed to have been withdrawn by the applicant.