

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 9. HEALTH SERVICES

CHAPTER 1. DEPARTMENT OF HEALTH SERVICES ADMINISTRATION

[R08-206]

PREAMBLE

- 1. Sections Affected**
R9-1-411
R9-1-412
- Rulemaking Action**
Repeal
Amend
- 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. §§ 36-132(A)(1) and (A)(17), and 36-136(F)
Implementing statutes: A.R.S. §§ 36-405 and 36-406
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**
Notice of Rulemaking Docket Opening: 14 A.A.R. 2042, May 23, 2008 (*9 A.A.C. 1*)
Notice of Rulemaking Docket Opening: 14 A.A.R. 2043, May 23, 2008 (*9 A.A.C. 10*)
Notice of Proposed Rulemaking: 14 A.A.R. 2817, July 18, 2008 (*9 A.A.C. 10 in this issue*)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Rohno Geppert
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5. An explanation of the rules, including the agency's reasons for initiating the rulemaking:

A.R.S. § 36-405 requires the Arizona Department of Health Services (Department) to adopt rules to establish minimum standards and requirements for the construction, modification, and licensure of health care institutions necessary to assure the public health, safety, and welfare. A.R.S. § 36-406 requires the Department to review and authorizes the Department to approve plans and specifications for the construction of or modifications or additions to health care institutions regulated under A.R.S. Title 36, Chapter 4. A.R.S. § 36-421(A) requires an initial license application for a health care institution to include architectural plans and specifications, which are required to meet the minimum standards for licensure within the class or subclass of health care institution for which they are intended.

In R9-1-412, the Department incorporates by reference physical plant health and safety codes and standards. The Department does this in R9-1-412 so that the Department can refer to R9-1-412 in its different sets of licensure rules throughout Title 9, rather than including separate incorporations by reference in each set of licensure rules.

In R9-1-411, the Department explains why the codes and standards are included in 9 A.A.C. 1; alerts persons that they need to use the correct edition of the codes and standards; alerts persons that federal, other state, or local laws and rules may impose additional or more restrictive standards with which they must comply; establishes rules of construction for conflicts among the standards established in Title 9; excludes from applicability certain provisions in the codes and standards listed in R9-1-412; and provides deadlines for and administrative requirements related to correction of deficiencies in physical plants.

The purpose of this rulemaking is to clarify and update the requirements in 9 A.A.C. 1, Article 4 to reflect Department policy and practice requirements. In a separate, related rulemaking, the Department is amending R9-10-104, Approval of Architectural Plans and Specifications (also published in this issue). This proposed rulemaking amends 9 A.A.C. 1, Article 4 by:

- Repealing R9-1-411. In R9-1-411, subsections (A) and (B) are repealed because the content of these subsections is merely explanatory information that should not be in rule. In R9-1-411(C), the text establishing rules of construction for conflicts among the standards established in Title 9 is repealed because it is now contained in R9-1-412(C). In R9-1-411(D), the text excluding certain portions of the materials incorporated by reference in R9-1-412 is repealed because R9-1-412 already contains exclusions from the materials incorporated by reference. Also in R9-1-411(D), the text establishing deadlines for and administrative requirements related to correcting deficiencies in physical plants is repealed because it is now contained in a more appropriate location in R9-10-104 (see related rulemaking in this issue).
- Deleting NFPA 5000 from the 2006 *National Fire Codes* incorporated by reference in R9-1-412(A)(12). NFPA 5000 was added to the 2003 *National Fire Codes*, and was incorporated by reference in R9-1-412(A)(12) when the Department changed from the 2001 *National Fire Codes* to the 2006 *National Fire Codes* (rules effective February 2, 2008). The Department is deleting NFPA 5000 in this rulemaking for the following reasons:
 - NFPA 5000 represents a separate building code. R9-1-412(A)(1) incorporates by reference the 2006 *International Building Code* as the building code Arizona uses to regulate health care institutions. Having an additional building code, NFPA 5000, causes confusion for the regulated community.
 - The American Institute of Architects and Facilities Guidelines Institute, 2006 *Guidelines for Design and Construction of Health Care Facilities* (2006 *AIA Guidelines*), incorporated by reference in R9-1-412(A)(11), does not reference NFPA 5000.
 - The 2006 *AIA Guidelines* require compliance with the 2006 *International Plumbing Code*, while NFPA 5000 requires compliance with the outdated 2003 *Uniform Plumbing Code*.
 - NFPA 5000 allows a performance-based option for the design of buildings to replace codes and standards. This would result in an additional cost to the Department to hire consultants to evaluate proposals submitted under the performance-based option.
 - NFPA 5000 allows lay-in ceilings while the 2006 *International Building Code* requires solid gypsum-board drywall (GBDW) ceilings. Solid GBDW ceilings form a more effective barrier to limit transfer of smoke than lay-in ceilings.
- Adding R9-1-412(C), to establish rules of construction for conflicts among the standards established in Title 9 (subject matter previously covered in R9-1-411(C)).
- Adding R9-1-412(D), to state that where a conflict occurs between a physical plant health and safety standard established in A.A.C. Title 9 and a standard established by a local governmental agency, the Department may allow the local governmental agency's standard to take precedence when the local governmental agency's standard is more stringent than the standard established in Title 9.

The proposed rules conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

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.

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:

Annual cost/revenue changes are designated as minimal when less than \$5,000, moderate when between \$5,000 and \$50,000, and substantial when greater than \$50,000 in additional costs or revenues. Cost/revenue changes are listed as significant when meaningful or important, but not readily subject to quantification. The extent to which businesses or health care consumers are affected by this rulemaking may depend on many factors, such as the health care institution physical plant standards that are currently adopted by the local jurisdictions in which a business operates or a consumer receives health care; the type of health care institution; how a health care institution is modified; and the number of health care institutions a business owns, serves, or from which a consumer receives health care.

The Department will experience minimal costs to notify local jurisdictions of the new requirements. The Department anticipates deriving a minimal benefit from saving time spent coordinating and reconciling two different building and plumbing codes and standards. The Department also anticipates deriving a significant benefit from not having to hire consultants to evaluate proposals submitted under the performance-based option for the design of buildings.

The Department anticipates that many local jurisdictions will derive a minimal-to-moderate benefit from the new rule because many local jurisdictions will, like the Department, save time spent coordinating and reconciling two different building and plumbing codes and standards.

The economic impact of the proposed rules on businesses that own health care institutions depends on what type of health care institutions a business owns, how many health care institutions a business owns, and whether a business is constructing a new health care institution or modifying an existing health care institution. The new requirements have the potential to result in cost savings for businesses that own health care institutions but also have the potential to result in increased costs. The net effect of the new requirements on a business that owns a health care institution may be a zero-to-substantial increase in revenue or a zero-to-substantial increase in costs.

The economic impact of the proposed rules on businesses that design, construct, or modify health care institutions depends on what types of health care institutions a business serves, how many health care institutions a business serves, and the type of services a business provides to health care institutions. The new requirements have the potential to result in cost savings for businesses that design, construct, or modify health care institutions but also have the potential to result in increased costs. The net effect of the new requirements on a business that designs, constructs, or modifies health care institutions may be a zero-to-substantial increase in revenue or a zero-to-substantial increase in costs.

Third-party payers may derive a significant benefit from new requirements that have the potential to result in savings for businesses that own health care institutions because the savings may be passed along to consumers in the form of lower health care costs and thereby lower third-party payer costs. However, third-party payers may experience higher costs as a result of the rulemaking. New requirements that have the potential to result in additional costs to businesses that own health care institutions may increase third-party payer costs if those costs are passed along to third-party payers in the form of higher health care costs to patients.

Consumers of health care services may experience significant savings from new requirements that have the potential to result in savings to businesses that own health care institutions because the savings may be passed along to consumers in the form of lower health care costs. New requirements that have the potential to result in additional costs to businesses that own health care institutions may increase consumer health care costs if those costs are passed along to consumers.

The rulemaking should have no direct impact on private and public employment in businesses, agencies, and political subdivisions of this state.

The Department does not have precise data on the number of health care institutions that are small businesses as defined in A.R.S. § 41-1001, but believes that, except hospitals, the majority are small businesses. Currently, the Department does not collect data on the number of employees or gross annual receipts for all the different types of health care institutions. The Department also does not collect data on the number of employees or gross annual receipts for the businesses that design, construct, or modify health care institutions in this state but believes that many are small businesses. The economic impact associated with complying with the rule is the same for small businesses as it is for large businesses.

The rulemaking should not increase or decrease state revenues.

Notices of Proposed Rulemaking

The Department believes that the proposed rules reflect the least intrusive and least costly method of achieving the purpose of the rulemaking, which is protecting the public health, safety, and welfare by establishing minimum standards and requirements for the physical plants of health care institutions.

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: Rohno Geppert
Program Manager, Office of Special Licensing

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Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: phillik@azdhs.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:

The Department has scheduled the following oral proceeding:

Date: Monday, August 25, 2008

Time: 9:30 a.m.

Location: Department of Health Services
1740 W. Adams St., Room 411
Phoenix, AZ 85007

Close of record: Monday, August 25, 2008, at 5:00 p.m.

Written comments on the proposed rulemaking or the preliminary economic, small business, and consumer impact summary may be submitted to either individual listed in items 4 and 9 until the close of record at 5:00 p.m. on Monday, August 25, 2008.

Individuals with a disability may request a reasonable accommodation by contacting Mark Gula at (602) 364-0989 or gulam@azdhs.gov. A request should be made as early as possible to allow time to arrange 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:

None

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

In R9-1-412, the Department incorporates by reference the following, with modifications:

R9-1-412(A)(1): International Code Council, *International Building Code* (2006)

R9-1-412(A)(2): International Code Council, *International Fuel Gas Code* (2006)

R9-1-412(A)(3): International Code Council, *International Mechanical Code* (2006)

R9-1-412(A)(4): International Code Council, *International Property Maintenance Code* (2006)

R9-1-412(A)(5): International Code Council, *International Fire Code* (2006)

- R9-1-412(A)(6): International Code Council, *ICC Electrical Code—Administrative Provisions* (2006)
- R9-1-412(A)(7): International Code Council, *International Energy Conservation Code* (2006)
- R9-1-412(A)(8): International Code Council, *International Plumbing Code* (2006)
- R9-1-412(A)(9): International Code Council, *International Private Sewage Disposal Code* (2006)
- R9-1-412(A)(10): International Code Council/American National Standard, *Accessible and Usable Buildings and Facilities* (ICC/ANSI A117.1-2003)
- R9-1-412(A)(11): American Institute of Architects and Facilities Guidelines Institute, *Guidelines for Design and Construction of Health Care Facilities* (2006)
- R9-1-412(A)(12): National Fire Protection Association, *National Fire Codes* (2006), as updated by *National Fire Codes Supplement* (2006)

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 1. DEPARTMENT OF HEALTH SERVICES
ADMINISTRATION**

ARTICLE 4. CODES AND STANDARDS REFERENCED

Section

- R9-1-411. Scope and Applicability Repealed
- R9-1-412. Physical Plant Health and Safety Codes and Standards

ARTICLE 4. CODES AND STANDARDS REFERENCED

R9-1-411. Scope and Applicability Repealed

- ~~A. Codes and standards referenced elsewhere in this Title are listed in this Article for convenience in making periodic revisions as new editions become available. Before applying referenced codes and standards, the effective date shown at the end of the applicable regulation within this Article should be checked and the Department or the Secretary of State contacted to assure that the proper edition of the applicable regulation is being utilized.~~
- ~~B. Other jurisdictions — federal, county, city or other state agencies — may have applicable requirements which may be additional (such as local zoning ordinances, state and federal occupational safety and health standards) or more restrictive than the minimum requirements established by these rules and regulations (such as local building codes and county health standards).
It is the responsibility of the applicant or licensee, or his agent, to assure that he is in compliance with all such requirements.~~
- ~~C. Where conflicts occur among the standards established in this Title, the following rules of construction shall apply:
1. Standards specified in the narrative portions of the regulations shall govern over the standards adopted by reference.
2. If a conflict occurs among the standards adopted by reference, the more restrictive standard shall govern over the less restrictive.~~
- ~~D. Provisions in the structural codes and standards listed in R9-1-412, relating to purpose, scope, enforcement, exceptions and other administrative matters shall be applied except that:
1. Provisions specifying penalties are excluded from the provisions adopted as regulations.
2. Provisions relating to buildings, structures or facilities subject to licensure by the Department existing at the time an applicable code is adopted, or at the time an existing facility first becomes subject to such provisions, shall be administered in accordance with the following:
a. Readily correctable deficiencies (those deficiencies posing a hazard which can be corrected to comply with a code adopted by reference within the period ending one year after the expiration of the institution's then existing license) shall be corrected as soon as practicable and before the expiration of the institution's then existing license or, if the Department determines additional time is needed, before the expiration of the next provisional license. The period of time for correction shall begin with the notification by the Department that a deficiency or deficiencies exist as a result of a code adopted by reference and that the deficiency, or each such deficiency, is determined by the Department to pose a hazard to the welfare of patients or employees of the facility. Following such notice the licensee shall meet a reasonable timetable for correction fixed by the Department which shall specify the periods for:
i. Submission of a satisfactory written plan for correction of the deficiencies, if necessary.~~

Notices of Proposed Rulemaking

- ii. ~~Submission of preliminary drawings, if necessary.~~
- iii. ~~Submission of working drawings, if necessary.~~
- iv. ~~Completion of the modification or construction.~~
- b. ~~Major deficiencies (those deficiencies posing a hazard which cannot be corrected to comply with a code adopted by reference within the maximum period allowable by subparagraph (2)(a)) shall be corrected within three years after being notified by the Department that a major deficiency or major deficiencies exist as a result of a code adopted by reference and that the deficiency or each such deficiency is determined by the Department to pose a hazard to the welfare of patients or employees of the facility. Following such notice the licensee shall meet a reasonable timetable for correction fixed by the Department. The time for completion of construction shall not exceed three years and shall specify the periods for:~~
 - i. ~~Submission of a satisfactory written plan for correction of the deficiencies, if necessary.~~
 - ii. ~~Submission of preliminary drawings, if necessary.~~
 - iii. ~~Submission of working drawings, if necessary.~~
 - iv. ~~Completion of the modification or construction.~~
- e. ~~If the plan for correction shows that the entire building in which major deficiencies exist will be replaced with a newly constructed building, the Department may allow up to two additional years for the completion of construction if it determines that maximum time period allowable under subparagraph (2)(b) is insufficient.~~

R9-1-412. Physical Plant Health and Safety Codes and Standards

- A. No change
 - 1. 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
 - j. No change
 - k. No change
 - l. No change
 - m. No change
 - n. No change
 - o. No change
 - p. No change
 - q. No change
 - r. No change
 - s. No change
 - t. No change
 - u. 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
 - 3. 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
- 4. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
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 - f. No change
 - g. No change
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 - i. No change
 - j. No change
- 5. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
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 - h. No change
 - i. No change
 - j. No change
- 6. No change
 - a. No change
 - b. No change
 - c. No change
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 - i. No change
 - j. No change
 - k. No change
- 7. No change
 - a. No change
 - b. No change
- 8. 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
- 9. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
- 10. No change
- 11. No change
- 12. No change
 - a. NFPA 5000 is deleted:

- a-b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
 - vii. No change
 - viii. No change
 - ix. No change
 - x. No change
 - xi. No change
 - xii. No change
 - xiii. No change
 - xiv. No change
 - xv. No change
 - xvi. No change
 - xvii. No change
 - xviii. No change
 - xix. No change

b-c. No change

B. No change

C. Where a conflict occurs between or among the physical plant health and safety standards established in this Title, the following shall apply:

1. A standard specified in a rule takes precedence over a standard specified in a document incorporated by reference;
and
2. If a conflict occurs between or among standards specified in documents incorporated by reference, the more restrictive standard takes precedence over the less restrictive standard.

D. Where a conflict occurs between a physical plant health and safety standard established in this Title and a standard established by a local governmental agency, the Department may allow the local governmental agency's standard to take precedence when the local governmental agency's standard is more stringent than the standard established in this Title.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

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

[R08-207]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R9-10-101 | Amend |
| R9-10-104 | Amend |
- 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. §§ 36-132(A)(1) and (A)(17), and 36-136(F)
Implementing statutes: A.R.S. §§ 36-405 and 36-406
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**
Notice of Rulemaking Docket Opening: 14 A.A.R. 2042, May 23, 2008 (9 A.A.C. 1)
Notice of Rulemaking Docket Opening: 14 A.A.R. 2043, May 23, 2008 (9 A.A.C. 10)
Notice of Proposed Rulemaking: 14 A.A.R. 2810, July 18, 2008 (9 A.A.C. 1 in this issue)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Notices of Proposed Rulemaking

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

A.R.S. § 36-405 requires the Arizona Department of Health Services (Department) to adopt rules to establish minimum standards and requirements for the construction, modification, and licensure of health care institutions necessary to assure the public health, safety, and welfare. A.R.S. § 36-406 requires the Department to review and authorizes the Department to approve plans and specifications for the construction of or modifications or additions to health care institutions regulated under A.R.S. Title 36, Chapter 4. A.R.S. § 36-421(A) requires an initial license application for a health care institution to include architectural plans and specifications, which are required to meet the minimum standards for licensure within the class or subclass of health care institution for which they are intended.

In R9-10-101, the Department defines terms relevant to the licensing of health care institutions.

In R9-10-104, the Department establishes the conditions for approval of architectural plans and specifications for construction or modification of health care institutions. Businesses that own health care institutions are required to obtain Department approval before proceeding with construction or modification. Health care institutions are required to ensure that architectural plans and specifications conform to physical plant health and safety codes and standards incorporated by reference in R9-1-412. The Department incorporates codes and standards by reference in R9-1-412 so that the Department can refer to R9-1-412 in its different sets of licensing rules throughout Title 9, rather than including separate incorporations by reference in each set of licensing rules.

The purpose of this rulemaking is to clarify and update the requirements in 9 A.A.C. 10, Article 1 to reflect Department policy and practice requirements. In a separate, related rulemaking, the Department is amending 9 A.A.C. 1, Article 4, Codes and Standards Referenced (also published in this issue). This proposed rulemaking amends 9 A.A.C. 10, Article 1 by:

- Adding definitions to R9-10-101 for eight new terms introduced into 9 A.A.C. 10, Article 1 in this rulemaking.
- Adding a provision at R9-10-104(A)(1)(f) to require an applicant to submit a functional program as described and required in the American Institute of Architects and Facilities Guidelines Institute, Guidelines for Design and Construction of Health Care Facilities incorporated by reference in A.A.C. R9-1-412. This requirement reflects current practice.
- Amending R9-10-104(A) by dividing it into R9-10-104(A) and (B) to distinguish the documents an applicant is required to submit before the completion of construction or modification of a health care institution from the documents an applicant is required to submit after the completion of construction or modification of a health care institution.
- Adding a provision at R9-10-104(A)(3)(d)(ix) to require an applicant to submit a patient medical gas, vacuum, and piped distribution system plan, drawn to scale, showing the layout, gas, pipe sizing, stations, and materials. This requirement reflects current practice, because applicants currently submit the patient medical

Notices of Proposed Rulemaking

gas, vacuum, and piped distribution system plan as part of the plumbing floor plan in subsection (A)(3)(d)(ix). The proposed rules separate the two requirements for clarity.

- Amending R9-10-104(B)(1)(f)(i) to require that the tests of heating, ventilation, air conditioning, pressure relationships, and air balance be performed and certified by a contractor who did not install the heating, ventilation, or air conditioning (HVAC) systems. This requirement reflects current practice.
- Adding a provision at R9-10-104(B)(1)(f)(ii) to require a project's mechanical engineer to sign a document stating that the results of the tests of heating, ventilation, air conditioning, pressure relationships, and air balance required in R9-10-104(B)(1)(f)(i) indicate that the HVAC systems operate as designed. This requirement reflects current practice.
- Amending R9-10-104(B)(1)(h)(i) to require tests of the patient medical gas, vacuum, and piped distribution systems to be performed and certified by a person who did not install the patient medical gas, vacuum, and piped distribution systems.
- Adding a provision at R9-10-104(B)(1)(h)(ii) to require a project's mechanical engineer to sign a document stating that the tests of patient medical gas, vacuum, and piped distribution systems indicate that the patient medical gas, vacuum, and piped distribution systems operate as designed.
- Adding a provision at R9-10-104(B)(1)(h)(iii) to require applicants to submit a copy of the patient medical gas, vacuum, and piped distribution systems installer qualifications required in the National Fire Codes incorporated by reference in R9-1-412.
- Adding a provision at R9-10-104(B)(1)(h)(iv) to require applicants to submit a copy of the patient medical gas, vacuum, and piped distribution systems brazing procedures qualifications required in the National Fire Codes incorporated by reference in R9-1-412.
- Amending R9-10-104(B)(1)(i) to require health care institutions to report the kilowatt capacity and number of transfer switches for an emergency generator. Health care institutions collect this information in current practice, but do not report this information to the Department.
- Adding a provision at R9-10-104(B)(1)(j) to require a project's electrical engineer to sign a document stating that the tests of the isolated power system, if installed, demonstrate that the isolated power system operates as designed.
- Adding a provision at R9-10-104(B)(1)(m) to require health care institutions to submit a copy of the infection control risk assessment required in the American Institute of Architects and Facilities Guidelines Institute, Guidelines for Design and Construction of Health Care Facilities incorporated by reference in A.A.C. R9-1-412. This requirement reflects current practice.
- Adding a provision at R9-10-104(B)(1)(n) to require health care institutions to submit a copy of a food establishment license issued according to 9 A.A.C. 8, Article 1. This requirement reflects current practice.
- Adding a provision at R9-10-104(B)(1)(o) to require health care institutions to submit a copy of a pharmacy permit issued according to 4 A.A.C. 23. This requirement reflects current practice.
- Adding a provision at R9-10-104(B)(1)(p) to require health care institutions to submit a copy of a swimming pool permit and a copy of a swimming pool barrier permit issued by a local governmental agency. This requirement reflects current practice.
- Adding a provision at R9-10-104(B)(1)(q) to require health care institutions to submit a copy of written documentation issued by the Federal Aviation Administration approving the use of a heliport. This requirement reflects current practice.
- Adding a provision at R9-10-104(B)(1)(r) to require health care institutions to submit the site plan and floor plans for a project, with graphic scale, reduced to 11 by 17 inch paper. This requirement reflects current practice.
- Adding a provision at R9-10-104(B)(1)(s) to require health care institutions to submit as-built drawings for the project. This requirement reflects current practice.
- Adding R9-10-104(F) and (G) to clarify requirements currently in R9-1-411(D) related to correcting deficiencies in physical plants. R9-1-411(D) is being repealed in a separate, related rulemaking. This requirement does not change practice or substantive requirements currently in R9-1-411(D).

The proposed rules conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

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.

Notices of Proposed Rulemaking

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:

Annual cost/revenue changes are designated as minimal when less than \$5,000, moderate when between \$5,000 and \$50,000, and substantial when greater than \$50,000 in additional costs or revenues.

Cost bearers are identified as the Department, which approves architectural plans and specifications for applicants who are businesses that own, design, construct, or modify health care institutions, and businesses that own, design, construct, or modify health care institutions, or “applicants,” as context requires, which request approval from the Department for architectural plans and specifications for the construction or modification of health care institutions. This rulemaking does not cause a direct economic impact except to the identified cost bearers, but the Department expects to improve public health, safety, and welfare by updating rules to be more clear, concise, and understandable and consistent with current Department policy and practice.

The estimated economic impact of this rulemaking is as follows:

Table 1. Department of Health Services

Rule	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
R9-10-101 and R9-10-104	Staff time spent notifying stakeholders of the changes to R9-10-101 and R9-10-104.	Minimal – The cost for one hour of one staff member’s time is approximately \$25.00.	None

Table 2. Businesses that own, design, construct, or modify health care institutions

Rule	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
R9-10-104(A)(1)(f)	Applicants requesting Department approval for architectural plans and specifications are required to submit a functional program, as described and required in the American Institute of Architects and Facilities Guidelines Institute, Guidelines for Design and Construction of Health Care Facilities, incorporated by reference in R9-1-412.	Minimal – The Department already collects a functional program from applicants according to policy and practice.	None
R9-10-104(A)(3)(d)(ix)	Applicants requesting Departmental approval for architectural plans and specifications are required to submit a patient medical gas, vacuum, and piped distribution system plan, drawn to scale, showing the layout, gas, pipe sizing, stations, and materials.	None – Does not impose any additional costs on the regulated community because applicants currently submit the patient medical gas, vacuum, and piped distribution system plan as part of the plumbing floor plan in subsection (A)(3)(d)(ix). The proposed rules separate the two requirements for clarity.	None
R9-10-104(B)(1)(f)(i)	Tests of heating, ventilation, air conditioning, and air balance must be performed and certified by a contractor who did not install the heating, ventilation, or air conditioning (HVAC) systems.	None – Does not impose any additional costs on the regulated community because this is already required by the National Fire Protection Association, National Fire Codes (2006), incorporated by reference in R9-1-412.	None

Arizona Administrative Register / Secretary of State

Notices of Proposed Rulemaking

R9-10-104(B)(1)(f)(ii)	A project's mechanical engineer must sign a document stating that the tests of heating, ventilation, air conditioning, and air balance required in R9-10-104(A)(5)(f)(i) demonstrate that the HVAC systems operate as designed.	Minimal – Applicants may incur minimal costs for the project's mechanical engineer to perform this service. The Department already collects this document from applicants according to policy and practice.	None
R9-10-104(B)(1)(h)(i)	Tests of inhalation anesthetics and non-flammable medical gas systems must be performed and certified by a contractor who did not install the inhalation anesthetics or nonflammable medical gas system.	None – Does not impose any additional costs on the regulated community because this is already required by the National Fire Protection Association, National Fire Codes (2006), incorporated by reference in R9-1-412.	None
R9-10-104(B)(1)(h)(ii)	A project's mechanical engineer must sign a document stating that the tests of inhalation anesthetics and nonflammable medical gas systems indicate that the inhalation anesthetics and nonflammable medical gas systems operate as designed.	Minimal – Applicants may incur minimal costs for the project's mechanical engineer to perform this service. The Department already collects this document from applicants according to policy and practice.	None
R9-10-104(B)(1)(h)(iii)	Applicants must submit a copy of the medical gas and vacuum piping installer qualifications required in the National Fire Codes incorporated by reference in R9-1-412.	None – Does not impose any additional costs on the regulated community because this is already required by the National Fire Protection Association, National Fire Codes (2006), incorporated by reference in R9-1-412.	None
R9-10-104(B)(1)(h)(iv)	Applicants must submit a copy of the medical gas and vacuum piping brazing procedures qualifications required in the National Fire Codes incorporated by reference in R9-1-412.	None – Does not impose any additional costs on the regulated community because this is already required by the National Fire Protection Association, National Fire Codes (2006), incorporated by reference in R9-1-412.	None
R9-10-104(B)(1)(i)	Applicants must submit the kilowatt capacity and number of transfer switches for an emergency generator.	Minimal – The businesses that own, design, construct, or modify health care institutions may incur a minimal cost to add this information to the application documents for approval of architectural plans and specifications. The businesses that own, design, construct, or modify health care institutions already collect this information.	None
R9-10-104(B)(1)(j)	A project's electrical engineer must sign a document stating that the tests of an isolated power system, if installed, demonstrate that the isolated power system operates as designed.	Minimal – The Department already collects this document from applicants according to policy and practice.	None

Arizona Administrative Register / Secretary of State

Notices of Proposed Rulemaking

R9-10-104(B)(1)(m)	Applicants must submit a copy of the infection control risk assessment required in the American Institute of Architects and Facilities Guidelines Institute, Guidelines for Design and Construction of Health Care Facilities incorporated by reference in R9-1-412.	Minimal – The Department already collects this document from applicants according to policy and practice.	None
R9-10-104(B)(1)(n)	Applicants must submit a copy of a food establishment license issued according to 9 A.A.C. 8, Article 1.	Minimal – The Department already collects this document from applicants according to policy and practice.	None
R9-10-104(B)(1)(o)	Applicants must submit a copy of a pharmacy permit issued according to 4 A.A.C. 23.	Minimal – The Department already collects this document from applicants according to policy and practice.	None
R9-10-104(B)(1)(p)	Applicants must submit a copy of a swimming pool permit and swimming pool barrier permit issued by a local governmental agency.	Minimal – The Department already collects this document from applicants according to policy and practice.	None
R9-10-104(B)(1)(q)	Applicants must submit a copy of written documentation issued by the Federal Aviation Administration approving the use of a heliport.	Minimal – The Department already collects this document from applicants according to policy and practice.	None
R9-10-104(B)(1)(r)	Applicants must submit a copy of the site plan described in R9-10-104(A)(3)(c) and the floor plans described in R9-10-104(A)(3)(d), with graphic scale, formatted on 11 by 17 inch paper.	Minimal – The Department already collects this document from applicants according to policy and practice reduced to 8.5 by 11 inch paper or 11 by 17 inch paper, and copy costs vary based on the size of the project.	None
R9-10-104(B)(1)(s)	Applicants must submit a copy of the as-built drawings for the construction or modification project.	Minimal – The Department already collects this document from applicants according to policy and practice.	None

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: Rohno Geppert
Program Manager, Office of Special Licensing

Address: Department of Health Services
Division of Licensing Services
Office of Special Licensing
150 N. 18th Ave., Suite 460
Phoenix, AZ 85007

Telephone: (602) 364-3046

Fax: (602) 364-4769

E-mail: gepperr@azdhs.gov

or

Name: Kathleen Phillips, Esq.
Rules Administrator and Administrative Counsel

Address: Department of Health Services
Office of Administrative Rules and Counsel
1740 W. Adams St., Suite 200
Phoenix, AZ 85007

Notices of Proposed Rulemaking

Telephone: (602) 542-1264
Fax: (602) 364-1150
E-mail: phillik@azdhs.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:

The Department has scheduled the following oral proceeding:

Date: Monday, August 25, 2008

Time: 9:30 a.m.

Location: Department of Health Services
1740 W. Adams St., Room 411
Phoenix, AZ 85007

Close of record: Monday, August 25, 2008, at 5:00 p.m.

Written comments on the proposed rulemaking or the preliminary economic, small business, and consumer impact summary may be submitted to either individual listed in items 4 and 9 until the close of record at 5:00 p.m. on Monday, August 25, 2008.

Individuals with a disability may request a reasonable accommodation by contacting Michael Bahr at (602) 364-0793 or bahrm@azdhs.gov. A request should be made as early as possible to allow time to arrange 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:

None

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

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

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

ARTICLE 1. GENERAL

Section

R9-10-101. Definitions
R9-10-104. Approval of Architectural Plans and Specifications

ARTICLE 1. GENERAL

R9-10-101. Definitions

No change

1. No change
2. No change
3. No change
 - a. No change
 - b. No change
4. No change
5. No change
6. No change
 - a. No change
 - b. No change
 - c. No change
7. No change
 - a. No change
 - b. No change
8. “As-built drawing” means a document that depicts all final construction elements of construction or modification of a

health care institution.

8-9. No change

9-10. no change

10-11. No change

11-12. No change

12-13. No change

13-14. No change

14-15. No change

15-16. No change

16-17. No change

17-18. No change

18-19. No change

20. “Device” means a piece of equipment that performs a specific function.

19-21. No change

22. “Electrical engineer” means an individual registered as an electrical engineer according to 4 A.A.C. 30, Article 2.

20-23. No change

21-24. No change

22-25. No change

23-26. No change

27. “Graphic scale” means a graduated line on a floor plan that is used to represent a measured distance on the floor plan.

24-28. No change

25-29. No change

26-30. No change

a. No change

b. No change

c. No change

27-31. No change

28-32. No change

29-33. No change

34. “Isolated power system” means an electrical distribution device that is shielded from the electrical ground, used primarily in locations where a health care institution’s staff or patients may encounter standing fluids on the floor or drenching of the work area.

30-35. No change

31-36. No change

a. No change

b. No change

c. No change

32-37. No change

38. “Mechanical engineer” means an individual registered as a professional mechanical engineer according to 4 A.A.C. 30, Article 2.

33-39. No change

34-40. No change

a. No change

b. No change

c. No change

35-41. No change

36-42. No change

37-43. No change

38-44. No change

39-45. No change

40-46. No change

41-47. No change

42-48. No change

49. “Patient medical gas” means piped gases such as oxygen, nitrous oxide, helium, and carbon dioxide that are used for purposes related to human respiration and the calibration of devices used for human respiration.

43-50. No change

44-51. No change

45-52. No change

46-53. No change

~~47-54.~~ No change

~~48-55.~~ No change

~~49-56.~~ No change

~~50-57.~~ No change

~~51-58.~~ No change

~~52-59.~~ No change

~~53-60.~~ No change

a. No change

b. No change

c. No change

d. No change

~~54-61.~~ No change

~~55-62.~~ No change

~~56-63.~~ No change

~~57-64.~~ No change

~~58-65.~~ No change

66. "Transfer switch" means a device that directs power from an emergency generator when another source of power fails.

~~59-67.~~ No change

~~60-68.~~ No change

R9-10-104. Approval of Architectural Plans and Specifications

A. For approval of architectural plans and specifications for the construction or modification of a health care institution that is required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in A.A.C. R9-1-412, an applicant shall submit to the Department before completion of the construction or modification an application packet including:

1. An application form provided by the Department that contains:

a. For construction of a new health care institution:

i. The health care institution's name, street address, city, state, zip code, telephone number, and fax number;

ii. The name and address of the health care institution's governing authority;

iii. The requested health care institution class or subclass; and

iv. The requested licensed capacity for the health care institution;

b. For modification of a licensed health care institution:

i. The health care institution's license number,

ii. The name and address of the licensee,

iii. The health care institution's class or subclass, and

iv. The health care institution's existing licensed capacity and the requested licensed capacity for the health care institution;

c. The health care institution's contact person's name, street address, city, state, zip code, telephone number, and fax number;

d. If the application includes architectural plans and specifications:

i. A statement signed by the governing authority or the licensee that the architectural plans and specifications comply with applicable ~~licensure~~ licensing requirements in A.R.S. Title 36, Article 4 and ~~9 A.A.C. 10 this Chapter~~ this Chapter and the health care institution is ready for an onsite inspection by a Department representative;

ii. The project architect's name, street address, city, state, zip code, telephone number, and fax number; and

iii. A statement signed and sealed by the project architect, according to the requirements in 4 A.A.C. 30, Article 3, that the project architect has complied with A.A.C. R4-30-301 and the architectural plans and specifications are in substantial compliance with applicable ~~licensure~~ licensing requirements in A.R.S. Title 36, Article 4 and ~~9 A.A.C. 10 this Chapter~~ this Chapter;

e. A narrative description of the project; ~~and~~

f. A functional program as described and required in the American Institute of Architects and Facilities Guidelines Institute, Guidelines for Design and Construction of Health Care Facilities incorporated by reference in A.A.C. R9-1-412;

~~f.g.~~ If providing or planning to provide medical services, which require compliance with specific physical plant codes and standards incorporated by reference in A.A.C. R9-1-412, the number of rooms or inpatient beds designated for providing the medical services;

2. If the health care institution is located on land under the jurisdiction of a local governmental agency, one of the following:

a. A building permit for the construction or modification issued by the local governmental agency; or

- b. If a building permit issued by the local governmental agency is not required, zoning clearance issued by the local governmental agency that includes:
 - i. The health care institution's name, street address, city, state, zip code, and county;
 - ii. The health care institution's class or subclass and each type of medical services to be provided; and
 - iii. A statement signed by a representative of the local governmental agency stating that the address listed is zoned for the health care institution's class or subclass;
 3. The following information on architectural plans and specifications that is necessary to demonstrate that the project described on the application form complies with applicable codes and standards incorporated by reference in A.A.C. R9-1-412:
 - a. A table of contents containing:
 - i. The architectural plans and specifications submitted,
 - ii. The physical plant codes and standards incorporated by reference in A.A.C. R9-1-412 that apply to the project or are required by a local governmental agency,
 - iii. An index of the abbreviations and symbols used in the architectural plans and specifications, and
 - iv. The facility's specific International Building Code construction type and International Building Code occupancy type;
 - b. If the facility is larger than 3,000 square feet and is or will be occupied by more than 20 individuals, the seal of an architect on the architectural plans and drawings according to the requirements in A.R.S. Title 32, Chapter 1;
 - c. A site plan, drawn to scale, of the entire premises showing streets, property lines, facilities, parking areas, outdoor areas, fences, swimming pools, fire access roads, fire hydrants, and access to water mains;
 - d. For each facility, ~~on architectural plans and specifications:~~
 - i. A floor plan, drawn to scale, for each level of the facility, showing the layout and dimensions of each room, the name and function of each room, means of egress, and natural and artificial lighting sources;
 - ii. A diagram of a section of the facility, drawn to scale, showing the vertical cross-section view from foundation to roof and specifying construction materials;
 - iii. Building elevations, drawn to scale, showing the outside appearance of each facility;
 - iv. The materials used for ceilings, walls, and floors;
 - v. The location, size, and fire rating of each door and each window and the materials and hardware used, including safety features such as fire exit door hardware and fireproofing materials;
 - vi. A ceiling plan, drawn to scale, showing the layout of each light fixture, each fire protection device, and each element of the mechanical ventilation system;
 - vii. An electrical floor plan, drawn to scale, showing the wiring diagram and the layout of each lighting fixture, each outlet, each switch, each electrical panel, and electrical equipment;
 - viii. A mechanical floor plan, drawn to scale, showing the layout of heating, ventilation, and air conditioning systems;
 - ix. A patient medical gas, vacuum, and piping distribution system plan, drawn to scale, showing the layout, gas, pipe sizing, stations, and materials;
 - ~~ix-x~~ A plumbing floor plan, drawn to scale, showing the layout and materials used for water and sewer systems including the water supply and plumbing fixtures;
 - ~~x-xi~~ A floor plan, drawn to scale, showing the communication system within the health care institution including the nurse call system, if applicable;
 - ~~xi-xii~~ A floor plan, drawn to scale, showing the automatic fire extinguishing, fire detection, and fire alarm systems; and
 - ~~xii-xiii~~ Technical specifications describing installation and materials used in the health care institution; and
 4. The estimated total project cost including the costs of:
 - a. Site acquisition,
 - b. General construction,
 - c. Architect fees,
 - d. Fixed equipment, and
 - e. Movable equipment;
- B.** For approval of architectural plans and specifications for the construction or modification of a health care institution that is required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in A.A.C. R9-1-412, an applicant shall submit to the Department upon completion of the construction or modification:
- 5-1. The following, as if applicable:
- a. If the health care institution is located on land under the jurisdiction of a local governmental agency, one of the following provided by the local governmental agency:
 - i. A copy of the Certificate of Occupancy,
 - ii. Documentation that the facility was approved for occupancy, or
 - iii. Documentation that a certificate of occupancy for the facility is not available;

Notices of Proposed Rulemaking

- b. A certification and a statement that the construction or modification of the facility is in substantial compliance with applicable ~~license~~ licensing requirements in A.R.S. Title 36, Article 4 and ~~9 A.A.C. 10~~ this Chapter signed by the project architect, the contractor, and the owner;
- c. A written description of any work necessary to complete the construction or modification submitted by the project architect;
- d. If the construction or modification affects the health care institution's fire alarm system, a contractor certification and description of the fire alarm system on a form provided by the Department;
- e. If the construction or modification affects the health care institution's automatic fire extinguishing system, a contractor certification of the automatic fire extinguishing system on a form provided by the Department;
- f. If the construction or modification affects the health care institution's heating, ventilation, or air conditioning:
 - i. ~~a~~ A copy of the tests of heating, ventilation, air conditioning, pressure relationships, and air balance tests and a contractor certification of the heating, ventilation, or air conditioning systems performed and certified by a person who did not install the heating, ventilation, or air conditioning system; and
 - ii. A document signed by the project's mechanical engineer stating that the results of the tests performed according to subsection (A)(5)(f)(i) demonstrate that the heating, ventilation, and air conditioning systems operate as designed;
- g. If draperies, cubicle curtains, or floor coverings are installed or replaced, a copy of the manufacturer's certification of flame spread for the draperies, cubicle curtains, or floor coverings;
- h. For a health care institution using ~~inhalation anesthetics or nonflammable medical gas,~~ a patient medical gas, vacuum, and piped distribution systems;
 - i. ~~A copy of the Compliance Certification for Inhalation Anesthetics or Nonflammable Medical Gas System required in the National Fire Codes incorporated by reference in R9-1-412~~ tests of the patient medical gas, vacuum, and piped distribution systems performed and certified by a person who did not install the patient medical gas, vacuum, and piped distribution systems;
 - ii. A document signed by the project's mechanical engineer stating that the results of the tests performed according to subsection (A)(5)(h)(i) demonstrate that the patient medical gas, vacuum, and piped distribution systems operate as designed;
 - iii. A copy of the patient medical gas, vacuum, and piped distribution systems installer qualifications required in the National Fire Codes incorporated by reference in A.A.C. R9-1-412; and
 - iv. A copy of the patient medical gas, vacuum, and piped distribution systems brazing procedures qualifications required in the National Fire Codes incorporated by reference in A.A.C. R9-1-412;
- i. If ~~a~~ an emergency generator is installed, the kilowatt capacity, number of transfer switches, transfer time, and a copy of the installation acceptance required in the National Fire Codes incorporated by reference in A.A.C. R9-1-412;
- j. If an isolated power system is installed, documentation indicating that the isolated power system has been evaluated and tested by an electrical engineer after installation and the results of tests performed on the isolated power system demonstrate that the isolated power system operates as designed;
- ~~j-k.~~ For a health care institution providing radiology, a written report from a certified health physicist of the location, type, and amount of radiation protection; ~~and~~
- ~~k-l.~~ If a factory-built building is used by a health care institution:
 - i. A copy of the installation permit and the copy of a certificate of occupancy for the factory-built building from the Office of Manufactured Housing; or
 - ii. A written report from an individual registered as an architect or a professional structural engineer ~~under~~ according to 4 A.A.C. 30, Article 2, stating that the factory-built building complies with applicable design standards;
- m. A copy of the infection control risk assessment required in the American Institute of Architects and Facilities Guidelines Institute, Guidelines for Design and Construction of Health Care Facilities incorporated by reference in A.A.C. R9-1-412;
- n. A copy of a food establishment license issued according to 9 A.A.C. 8, Article 1;
- o. A copy of a pharmacy permit issued according to 4 A.A.C. 23;
- p. A copy of a swimming pool permit and a copy of a swimming pool barrier permit issued by a local governmental agency;
- q. A copy of written documentation issued by the Federal Aviation Administration approving the use of a heliport;
- r. The site plan described in subsection (A)(3)(c) and the floor plans described in subsection (A)(3)(d), with graphic scale, formatted on 11 by 17 inch paper; and
- s. A copy of the as-built drawings for the project;
- ~~6-2.~~ A statement signed by the project architect that final architectural drawings, and specifications, and all owner's manuals and operating manuals of all related installed equipment have been submitted to the person applying for a health care institution license or the licensee of the health care institution; and

7-3. The applicable fee required by R9-10-122.

- ~~B.C.~~ Before an applicant submits an application for approval of architectural plans and specifications for the construction or modification of a health care institution, an applicant may request an architectural evaluation by submitting the documents in subsection (A)(3) to the Department.
- ~~C.D.~~ The Department shall approve or deny an application for approval of architectural plans and specifications of a health care institution in this Section according to R9-10-108.
- ~~D.E.~~ In addition to obtaining an approval of a health care institution's architectural plans and specifications, a person shall obtain a health care institution license from the Department before operating the health care institution.
- F. If the Department determines that a licensed health care institution does not comply with an applicable physical plant health and safety code or standard incorporated by reference in A.A.C. R9-1-412 and the administrator of the health care institution submits to the Department the information specified in subsections (A)(1) through (A)(4) that includes architectural plans and specifications demonstrating compliance with the code or standard, the Department may allow the health care institution up to three years to complete the construction or modification if the Department determines non-compliance with the code or standard does not pose a direct risk to the life, health, or safety of patients.
- G. If the architectural plans and specifications in subsection (E) consist of an entire building being replaced by the construction of a new building, the Department may allow up to two additional years for the health care institution to complete the construction of the new building if the Department determines the health care institution's non-compliance with an applicable code or standard incorporated by reference in A.A.C. R9-1-412 does not pose a direct risk to the life, health, or safety of patients.