

# 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 2. ADMINISTRATION

### CHAPTER 5. DEPARTMENT OF ADMINISTRATION PERSONNEL ADMINISTRATION

[R08-325]

#### PREAMBLE

- 1. Sections Affected**

	<b><u>Rulemaking Action</u></b>
Article 1	Amend
R2-5-101	Amend
Article 4	Amend
R2-5-415	Repeal
R2-5-415	Repeal
R2-5-415	Repeal
R2-5-416	Repeal
R2-5-417	Repeal
R2-5-418	Repeal
R2-5-419	Repeal
R2-5-420	Repeal
R2-5-421	Repeal
R2-5-422	Repeal
R2-5-423	Repeal
  
- 2. The statutory authority for the rulemaking, including both the authorizing statutes (general) and the implementing statutes (specific):**

Authorizing statute(s): A.R.S. §§ 41-761 and 41-763(2) and (6)  
Implementing statute(s): A.R.S. § 41-783(1) through (28)
  
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 13 A.A.R. 2447, July 6, 2007  
Notice of Rulemaking Docket Opening: 14 A.A.R. 3438, August 29, 2008
  
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Christine Bronson, Manager, Employee Relations  
Address: Department of Administration  
Human Resources Division  
100 N. 15th Ave., Suite 261  
Phoenix, AZ 85007  
Telephone: (602) 542-1423  
Fax: (602) 542-1980  
E-mail: Christine.Bronson@azdoa.gov
  
- 5. An explanation of the rules, including the agency's reasons for initiating the rulemaking:**

This rulemaking primarily results from the Department's Five-year Review Report, approved by the Governor's Regulatory Review Council (G.R.R.C.) in September 2006. Article 4, Benefits, explains the various types of employee benefits (leave and insurance), eligibility, and use. This rulemaking will repeal the rules regarding insurance benefits for state officers and employees from this Chapter, as these rules will be relocated to a separate Chapter (in a separate

Notices of Proposed Rulemaking

rulemaking). Because Sections R2-5-415 through R2-5-422 are being repealed, it is necessary to renumber R2-5-423 as R2-5-415. R2-5-101, Definitions, will also be amended, in part because some of the terms defined are directly applicable to the insurance benefit rules, which are being repealed. Clarifications and housekeeping revisions are also being made along with the previously mentioned changes.

**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 and does not propose to rely on or not rely on any study for 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:**

The proposed rulemaking affects state officers and employees only and will not have an impact on small businesses and consumers. The economic impact of relocating these rules will be minimal.

**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: Christine Bronson, Manager, Employee Relations  
Address: Department of Administration  
Human Resources Division  
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E-mail: Christine.Bronson@azdoa.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:**

An oral proceeding regarding the proposed rules will be held as follows:

Date: Monday, November 10, 2008  
Time: 1:00 p.m.  
Location: 100 N. 15th Ave., Room 300  
Phoenix, AZ 85007

The rulemaking record will close at 5:00 p.m. on Wednesday, November 12, 2008.

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

None

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

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION  
PERSONNEL ADMINISTRATION

ARTICLE 1. GENERAL

Section  
R2-5-101. Definitions

ARTICLE 4. ~~BENEFITS~~ LEAVE

Section  
~~R2-5-415.~~ Insurance Plans

~~R2-5-423, R2-5-415, Recognition Leave~~

- ~~R2-5-416. Health Benefit Plan Repealed~~
- ~~R2-5-417. Life Insurance and Disability Income Insurance Plans Repealed~~
- ~~R2-5-418. Retiree Health Benefit Plan Repealed~~
- ~~R2-5-419. Health Benefit Plan for Former Elected Officials Repealed~~
- ~~R2-5-420. Health Benefit Plan for Surviving Spouse of Elected Official Repealed~~
- ~~R2-5-421. Life Insurance Plan for Former Elected Officials Repealed~~
- ~~R2-5-422. Flexible or Cafeteria Employee Benefit Plan Repealed~~
- ~~R2-5-423. Renumbered~~

ARTICLE 1. GENERAL

**R2-5-101. Definitions**

The following words and phrases have the defined meanings unless otherwise clearly indicated by the context.

1. "Agency" means a department, board, office, authority, commission, or other governmental budget unit of the state.
2. "Agency head" means the chief executive officer of an agency.
3. "Appeal" means a request for a review by the Personnel Board of a disciplinary action under A.R.S. § 41-782.
4. "Applicant" means a person who seeks appointment to a position in state service.
5. "Appointment" means the offer to and the acceptance by a person of a position in state service.
6. "Base salary" means an employee's salary excluding overtime pay, shift differential, bonus pay, special performance adjustment previously granted, or pay for other allowance or special incentive pay program.
7. "Business day" means the hours between 8:00 a.m. and 5:00 p.m. Monday through Friday, excluding observed state holidays.
8. "Candidate" means a person whose knowledge, skills, and abilities meet the requirements of a position and who may be considered for employment.
9. "Cause" means any of the reasons for disciplinary action provided by A.R.S. § 41-770 or these rules.
10. "Child" means: ~~for purposes of R2-5-404, pertaining to sick leave, R2-5-410 pertaining to bereavement leave, and R2-5-411, pertaining to parental leave, a natural child, adopted child, foster child, or stepchild.~~
  - a. ~~For purposes of R2-5-416(C), pertaining to the health benefit plan, R2-5-418(B), pertaining to the retiree health benefit plan, and R2-5-419(C), pertaining to the health benefit plan for former elected officials, an unmarried person who falls within one or more of the following categories:~~
    - i. ~~A natural child, adopted child, or stepchild of the employee member, retiree, former elected official, or domestic partner and who is younger than age 19 or younger than age 25 if a full-time student;~~
    - ii. ~~A child who is younger than age 19 for whom the employee member, retiree, or former elected official has court ordered guardianship;~~
    - iii. ~~A foster child who is younger than age 19;~~
    - iv. ~~A child who is younger than age 19 and placed in the employee member's, retiree's, or former elected official's home by court order pending adoption; or~~
    - v. ~~A natural child, adopted child, or stepchild of the employee member, retiree, former elected official, or domestic partner and who was disabled prior to age 19 and continues to be disabled under 42 U.S.C. 1382e and for whom the employee member, retiree, former elected official or domestic partner had custody prior to age 19.~~
  - b. ~~For purposes of R2-5-417(C) and (D), pertaining to the life and disability income insurance plan, and R2-5-421(B), pertaining to the life insurance plan for former elected officials, an unmarried person who falls within one or more of the following categories:~~
    - i. ~~A natural child, adopted child, or stepchild of the employee member, former elected official, or domestic partner and who is younger than age 19 or younger than age 25 if a full-time student;~~
    - ii. ~~A child who is younger than age 19 for whom the employee or former elected official has court ordered guardianship;~~
    - iii. ~~A foster child who is younger than age 19;~~
    - iv. ~~A child who is younger than age 19 and placed in the employee's or former elected official's home by court order pending adoption; or~~
    - v. ~~A natural child, adopted child, or stepchild of the employee member, former elected official, or domestic partner and who was disabled prior to age 19 and continues to be disabled under 42 U.S.C. 1382e and for whom the employee, former elected official, or domestic partner had custody prior to age 19; or~~
  - c. ~~For purposes of R2-5-207(D), pertaining to the employment of relatives, R2-5-404, pertaining to sick leave, R2-5-410, pertaining to bereavement leave, the term includes a natural child, adopted child, foster child, or stepchild; and~~
  - d. ~~For purposes of R2-5-411, pertaining to parental leave, the term includes a natural child, adopted child, foster~~

- child, or stepchild.
11. "Class" means a group of positions with the same title and pay grade because each position in the group has similar duties, scope of discretion and responsibility, required knowledge, skills and abilities, or other job-related characteristics.
  12. "Class series" means:
    - a. For purposes of R2-5-902(B), pertaining to the administration of reduction in force, and R2-5-903(A), pertaining to a temporary reduction in force, a A group of related classes that is listed in the Arizona Department of Administration, Human Resources Division, Occupational Listing of Classes as a subsection of the occupational group; and
    - b. For purposes of R2-5-902(D), pertaining to the calculation of retention points for length of service, ~~a group of related classes that is listed in the Arizona Department of Administration, Human Resources Division, Occupational Listing of Classes as a subsection of the occupational group, including~~ includes a position that has been reclassified or reassigned to the class series within five years before the effective date of the reduction in force.
  13. "Class specification" means a description of the type and level of duties and responsibilities of the positions assigned to a class.
  14. "Clerical pool appointment" means the non-competitive, temporary placement of a qualified individual in a clerical position.
  15. "Competition" means the process leading to the identification of candidates for employment or promotional consideration that includes an evaluation of knowledge, skills, and abilities and the development of a hiring list in accordance with ~~these rules~~ this Chapter.
  16. "Covered employee" means an employee in state service who is subject to the provisions of ~~these rules~~ this Chapter.
  17. "Covered position" means a position in state service, as defined in A.R.S. § 41-762.
  18. "Days" means calendar days; unless otherwise stated.
  19. "Demotion" means a change in the assignment of ~~an~~ a permanent status employee from a position in one class to a position in another class with a lower pay grade that results from disciplinary action for cause.
  20. "Department" means the Arizona Department of Administration.
  21. "Director" means the Director of the Arizona Department of Administration, and the Director's designee with respect to personnel administration.
  22. ~~"Domestic partner" means a person of the same or opposite gender who:~~
    - a. ~~Shares the employee's or retiree's permanent residence;~~
    - b. ~~Has resided with the employee or retiree continuously for at least 12 consecutive months before filing an application for benefits and is expected to continue to reside with the employee or retiree indefinitely as evidenced by an affidavit filed at time of enrollment;~~
    - c. ~~Has not signed a declaration or affidavit of domestic partnership with any other person and has not had another domestic partner within the 12 months before filing an application for benefits;~~
    - d. ~~Does not have any other domestic partner or spouse of the same or opposite sex;~~
    - e. ~~Is not currently legally married to anyone or legally separated from anyone else;~~
    - f. ~~Is not a blood relative any closer than would prohibit marriage in Arizona;~~
    - g. ~~Was mentally competent to consent to contract when the domestic partnership began;~~
    - h. ~~Is not acting under fraud or duress in accepting benefits;~~
    - i. ~~Is at least 18 years of age; and~~
    - j. ~~Is financially interdependent with the employee or retiree in at least three of the following ways:~~
      - i. ~~Having a joint mortgage, joint property tax identification, or joint tenancy on a residential lease;~~
      - ii. ~~Holding one or more credit or bank accounts jointly, such as a checking account, in both names;~~
      - iii. ~~Assuming joint liabilities;~~
      - iv. ~~Having joint ownership of significant property, such as real estate, a vehicle, or a boat;~~
      - v. ~~Naming the partner as beneficiary on the employee's life insurance, under the employee's will, or employee's retirement annuities and being named by the partner as beneficiary of the partner's life insurance, under the partner's will, or the partner's retirement annuities; and~~
      - vi. ~~Each agreeing in writing to assume financial responsibility for the welfare of the other, such as durable power of attorney; or~~
      - vii. ~~Other proof of financial interdependence as approved by the Director.~~
  23. ~~"Eligible dependent" means the employee member's, retiree's, or former elected official's spouse under Arizona law, domestic partner, child, or older child.~~
  24. ~~22.~~ "Emergency appointment" means an appointment made without regard to the recruitment, evaluation, referral, or selection requirements of ~~these rules~~ this Chapter in response to a governmental emergency.
  25. ~~23.~~ "Entrance salary" means the minimum rate of the pay grade established for a specific class.
  26. ~~24.~~ "Essential job function" means ~~the~~ a fundamental job ~~duties~~ duty of a position that an applicant or employee must be able to perform, with or without a reasonable accommodation.

- ~~27-25.~~ “Evaluation” means the procedure used to determine the relative knowledge, skills, and abilities of an applicant.
- ~~28.~~ “Flexible or cafeteria employee benefit plan” means a plan providing benefits to eligible employees that meets the requirements of Section 125 of the Internal Revenue Code.
- ~~29-26.~~ “FLSA” means the federal Fair Labor Standards Act.
- ~~30-27.~~ “FLSA exempt” means a position that is not entitled to overtime compensation under the FLSA.
- ~~31-28.~~ “FLSA non-exempt” means a position that is entitled to overtime compensation under the FLSA.
- ~~32-29.~~ “FMLA” means the federal Family and Medical Leave Act.
- ~~33-30.~~ “Good standing” means the status of a former employee at the time of separation from state service for reasons other than disciplinary action or anticipated disciplinary action.
- ~~34-31.~~ “Grievance” means a formal complaint filed by an employee, using the procedure established in Article 7 of ~~these rules this Chapter~~, that alleges discrimination, noncompliance with ~~these rules this Chapter~~, or concerns other work-related matters that directly and personally affect the employee.
- ~~35-32.~~ “Human Resources Employment Database” means the database that contains the resumé of an applicant interested in employment within state service.
- ~~36-33.~~ “Incumbent” means the officer or employee who currently holds an office or position.
- ~~37.~~ “Institution” means a facility that provides supervision or care for residents on a 24-hour per day, 7-day per week, basis.
- ~~38-34.~~ “Knowledge, skills, and abilities” means the qualifications and personal attributes required to perform a job that are generally demonstrated through qualifying service, education, or training.
- a. Knowledge is a body of information applied directly to the performance of a function;
  - b. Skill is an observable competence to perform a learned psychomotor act; and
  - c. Ability is competence to perform an observable behavior or a behavior that results in an observable product.
- ~~39-35.~~ “Limited appointment” means an appointment to a position that is funded for at least six months but not more than 36 months.
- ~~40-36.~~ “Limited position” means a position in state service that is established for at least six months but not more than 36 months based on the duration of funding.
- ~~41-37.~~ “Manifest error” means an act or failure to act that is, or clearly has caused, a mistake.
- ~~42-38.~~ “Mobility assignment” means the assignment of a permanent status employee to an uncovered position or to a covered or uncovered position in another state agency.
- ~~43.~~ “Older child” means an individual who:
- a. Is younger than 25 years old;
  - b. Is unmarried;
  - c. Was covered by a health insurance plan made available by the Department during the year that the individual was 18 years old, and
  - d. Resides in Arizona, if the individual is:
    - i. A natural child, adopted child, or stepchild of the employee, officer, retiree, or former elected official;
    - ii. A natural child, adopted child, or stepchild of a domestic partner; or
    - iii. A child for whom an employee, officer, retiree, or former elected official received a court-ordered guardianship when the child was 18 years old or younger.
- ~~44-39.~~ “Original probation” means the specified period following initial appointment to state service in a regular or limited position for evaluation of the employee’s work.
- ~~45-40.~~ “Original probationary appointment” means the initial appointment to a regular or limited position in state service.
- ~~46-41.~~ “Parent” means, for purposes of R2-5-403, pertaining to annual leave, R2-5-404, pertaining to sick leave, and R2-5-410, pertaining to bereavement leave, a birth parent, adoptive parent, stepparent, foster parent, grandparent, parent-in-law, or anyone who can be considered “in loco parentis.”
- ~~47.~~ “Participant” means an employee who is enrolled in the state’s insurance program.
- ~~48-42.~~ “Part-time” means, for purposes of R2-5-402, pertaining to holidays, R2-5-403, pertaining to annual leave, R2-5-404, pertaining to sick leave, R2-5-902, pertaining to reduction in force, and R2-5-903, pertaining to temporary reduction in force, employment scheduled for less than 40 hours per week.
- a. “3/4 time” means employment regularly scheduled for 30 hours per week.
  - b. “1/2 time” means employment regularly scheduled for 20 hours per week.
  - c. “1/4 time” means employment regularly scheduled for 10 hours per week.
- ~~49-43.~~ “Pay grade” means a salary range in a state service salary plan.
- ~~50-44.~~ “Pay status” means an employee is eligible to receive receiving pay for work or for a compensated absence.
- ~~51-45.~~ “Permanent status” means the standing an employee achieves after the completion of an original probation or a promotional probation.
- ~~52.~~ “Plan” means a flexible or cafeteria employee benefit plan.
- ~~53.~~ “Plan administrator” means the Director of the Arizona Department of Administration.
- ~~46.~~ “Premium/contribution” means the amount paid in exchange for insurance coverage. Depending on the type of cover-

- ~~age, the premium/contribution is paid by the employee, the state, or a combination of both.~~
- ~~54-47.~~ “Promotion” means a permanent change in assignment of an employee from a position in one class to a position in another class that has a higher pay grade.
- ~~55-48.~~ “Promotional probation” means the specified period of employment following promotion of a permanent status employee for evaluation of the employee’s work.
- ~~49.~~ “Provisional appointment” means the non-competitive appointment of a qualified individual on an interim basis until the reporting date of the candidate selected from the referral list or six months, whichever occurs first.
- ~~56-50.~~ “Qualified” means an individual possesses the knowledge, skills, and abilities required of a specific position, as described in the class specification, and any unique characteristics required for the position.
- ~~57.~~ “Qualified life event” means a change in an employee’s family, employment status, or residence including but not limited to:
- ~~a.~~ Changes in the employee’s marital status such as marriage, divorce, legal separation, annulment, death of spouse, domestic partnership, termination of domestic partnership, or death of domestic partner;
  - ~~b.~~ Changes in dependent status such as birth, adoption, placement for adoption, death, or dependent eligibility due to age, marriage, or student status;
  - ~~c.~~ Changes in employment status or work schedule that affect benefits eligibility for the employee, spouse, domestic partner, or dependent; or
  - ~~d.~~ Changes in residence that affect available plan options for the employee, spouse, domestic partner, or dependent.
- ~~58-51.~~ “Reclassification” means changing the classification of a position if a material and permanent change in duties or responsibilities occurs.
- ~~59-52.~~ “Reduction” means the non-appealable movement of an employee from one position to another position in a lower pay grade as a result of a reduction in force.
- ~~60-53.~~ “Reemployment” means the appointment of a former permanent status employee who was separated by a reduction in force.
- ~~61-54.~~ “Regular position” means a full-time equivalent (FTE) position in state service.
- ~~62-55.~~ “Reinstatement” means the appointment of a former permanent status employee who resigned, was separated in good standing, or was separated without prejudice within two years from the effective date of separation.
- ~~63-56.~~ “Repromotion” means the promotion of an employee who was reduced in pay grade due to a reduction in force to the pay grade held before the reduction in force or to an intervening pay grade.
- ~~64-57.~~ “Reversion” means the return of an employee on promotional probation to a position in the class in which the employee held permanent status immediately before the promotion.
- ~~65-58.~~ “Rules” means the rules contained in A.A.C., Title 2, Chapter 2 A.A.C. 5.
- ~~66-59.~~ “Separation without prejudice” means a non-disciplinary removal from state service, without appeal rights, of an employee in good standing.
- ~~67-60.~~ “Special detail” means the temporary assignment of a permanent status employee to a covered position in the same agency.
- ~~68-61.~~ “State service” is defined in A.R.S. § 41-762: and means all offices and positions of employment in state government except offices and positions exempted by the provisions of A.R.S. Title 41, Chapter 4, Article 5.
- ~~69.~~ “Surviving spouse” means the husband or wife, as provided by law, of a current or former elected official, or active or retired officer or employee who survives upon the death of the elected official, officer, or employee.
- ~~70-62.~~ “Temporary appointment” means an appointment made for a maximum of 1,500 hours in any one position per agency in each calendar year.
- ~~71-63.~~ “Transfer” means the movement of an employee from one position in state service to another position in state service in the same pay grade.
- ~~72-64.~~ “Uncovered position” means a position that is exempt under A.R.S. § 41-771 and not subject to the provisions of these rules.
- ~~73-65.~~ “Underfill” means the appointment of a person to a class with a pay grade that is lower than the pay grade for the allocated class for that position.
- ~~74-66.~~ “Voluntary pay grade decrease” means a change in assignment, at the request of an employee, to a position in a class with a lower pay grade.

**ARTICLE 4. BENEFITS LEAVE**

**~~R2-5-415.~~ Insurance Plans**

- ~~A.~~ Designation of qualifying health care plans. The following types of plans are qualifying health care plans:
- ~~1.~~ Medical Insurance.
  - ~~2.~~ Dental Insurance.
  - ~~3.~~ Vision Insurance.
- ~~B.~~ Designation of other qualifying insurance plans. Other qualifying insurance plans are:

1. Life Insurance.
2. Short-term Disability Income Insurance.

~~C. Complaints. An employee who wishes to submit a complaint about an employee insurance plan shall contact the employee's Agency Insurance Liaison or a representative of the Department Benefits Section. Retired employees shall contact a representative of the Department Human Resources Benefits Section.~~

**~~R2-5-423. R2-5-415. Recognition Leave~~**

- A. Definition. "Recognition leave" means a period of paid leave granted to an employee by an agency head as an acknowledgment of exemplary employee service or extraordinary contributions toward accomplishing the agency's goals.
- B. Amount of leave. An agency with 100 or fewer permanent positions may award 16 hours of recognition leave per year. An agency with more than 100 permanent positions may award eight hours of recognition leave per year per 50 permanent positions.
- C. Procedure. An agency head shall develop and implement an employee recognition leave program and process. The agency head shall submit a proposed recognition leave program and process and any subsequent changes to the Director. The process shall include as a minimum:
  1. Criteria for consideration;
  2. Nominating procedures;
  3. Categories of recognition used by the agency; and
  4. Recommendation procedure, with final approval by the agency head.
- D. Use of leave. An employee shall use recognition leave within one year of receiving the leave.
- E. Movement to another agency. ~~An~~ If an employee who moves from one agency to another state service agency, the employee's shall transfer any unused recognition leave shall be transferred to the employee's recognition leave account in the new agency.
- F. Separation. An employee who separates from state service shall be paid for all unused recognition leave at the employee's current rate of pay.

**R2-5-416. ~~Health Benefit Plan Repealed~~**

**~~A. Eligibility:~~**

1. ~~A state employee, except an employee listed in subsection (A)(2), and the employee's eligible dependents may participate in the health benefit plan, if the employee complies with the contractual requirements of the selected health benefit plan. An eligible employee may enroll in a health benefit plan at any time within the first 31 days of employment or during an open enrollment period specified by the Director. To add an eligible dependent due to a qualified life event, an eligible employee shall submit an application for enrollment within 31 days of the qualified life event.~~
2. ~~The following categories of employees are not eligible to participate in the health benefit plan:~~
  - a. ~~An employee who works fewer than 20 hours per week;~~
  - b. ~~An employee in a temporary, emergency, or clerical pool position;~~
  - c. ~~A patient or inmate employed in a state institution;~~
  - d. ~~A non-state employee, officer, or enlisted personnel of the National Guard of Arizona;~~
  - e. ~~An employee in a position established for rehabilitation purposes;~~
  - f. ~~An employee of any state college or university:~~
    - i. ~~Who works fewer than 20 hours per week;~~
    - ii. ~~Who is engaged to work for less than six months; or~~
    - iii. ~~For whom contributions are not made to a state retirement plan. This disqualification does not apply to a non-immigrant alien employee, an employee participating in a medical residency training program, a Cooperative Extension employee on federal appointment, or a retiree who returns to work under A.R.S. § 38-766.01.~~

~~B. Eligibility exception. An employee who is on leave without pay may continue to participate in the health benefit plan under the conditions in:~~

1. ~~R2-5-405 for employees on leave without pay due to industrial illness or injury;~~
2. ~~R2-5-413 for employees on medical leave without pay; or~~
3. ~~R2-5-414 for employees on leave without pay for any other reason.~~

~~C. Dependent eligibility. Dependents eligible to participate in the health benefit plan include:~~

1. ~~An employee member's spouse as provided by law or domestic partner; and~~
2. ~~Each child.~~

~~D. Enrollment of dependents. An eligible employee may enroll eligible dependents at the time of the employee's original enrollment, within 31 days of a qualified life event, or at open enrollment.~~

**R2-5-417. ~~Life Insurance and Disability Income Insurance Plans Repealed~~**

**~~A. Eligibility:~~**

1. ~~A state employee, except an employee listed in subsection (A)(2), may participate in the life insurance and short-term~~

Notices of Proposed Rulemaking

disability income insurance plans.

2. The following categories of employees are not eligible to participate in the life insurance and short-term disability income insurance plans:
  - a. An employee who works fewer than 20 hours per week;
  - b. An employee in a temporary, emergency, or clerical pool position;
  - c. A patient or inmate employed in a state institution;
  - d. A non-state employee, officer, or enlisted personnel of the National Guard of Arizona;
  - e. An employee in a position established for rehabilitation purposes;
  - f. An employee of any state college or university:
    - i. Who works fewer than 20 hours per week;
    - ii. Who is engaged to work for less than six months; or
    - iii. For whom contributions are not made to a state retirement plan. This disqualification does not apply to an employee participating in a medical residency training program, a Cooperative Extension employee on federal appointment, or a retiree who returns to work under A.R.S. § 38-766.01.
- B.** Supplemental insurance coverage. In addition to the basic life insurance provided at no cost to an employee, an eligible employee may elect to purchase additional group life insurance. The employee may purchase an amount of insurance that does not exceed three times the employee's annual base salary, rounded down to the nearest \$5,000, or the maximum amount established by the Director, whichever is less.
- C.** Dependent coverage. An eligible employee may elect to purchase group life insurance for the employee's spouse or domestic partner, and each child in an amount established by the Director.
- D.** Long-term disability coverage. The monthly benefit paid under the disability portion of a plan provided under A.R.S. § 38-651 may be reduced by payments the employee receives or is eligible to receive in the same month as determined by the terms and conditions of the plan.

**R2-5-418. Retiree Health Benefit Plan Repealed**

- A.** Eligibility. A state employee is eligible to participate in the retiree health benefit plan if the employee is:
  1. Retired under a state-sponsored retirement plan and continues enrollment in the retiree health benefit plan;
  2. Newly retired under a state-sponsored retirement plan and within 31 days of the date of retirement enrolls in the retiree health benefit plan; or
  3. On long-term disability under a state-sponsored plan.
- B.** Dependent eligibility. A retired employee's spouse or domestic partner, and each child are eligible to participate in the retiree health benefit plan.
- C.** Extended coverage. If a state employee dies while retired, on long-term disability, or continuing to work when eligible for retirement, retiree health benefit plan coverage that is in effect for the employee's spouse or child may continue by payment of the premium and applicable administrative expense.

**R2-5-419. Health Benefit Plan for Former Elected Officials Repealed**

- A.** Definition. "Former elected official" means an elected official as defined in A.R.S. § 38-801(3) who is no longer in office.
- B.** Eligibility. A former elected official of this state is eligible to participate in the retiree health benefit plan if the former elected official:
  1. Has at least five years of credited service in the Elected Officials' Retirement Plan;
  2. Was covered under a group health or group health and accident plan at the time of leaving office;
  3. Served as an elected official on or after January 1, 1983; and
  4. Applies for enrollment within 31 days of leaving office or retiring.
- C.** Dependent eligibility. A former elected official's spouse or domestic partner, and each child are eligible to participate in the retiree health benefit plan.
- D.** Eligibility of surviving spouse. Upon the death of a former elected official, the surviving spouse is eligible for coverage under the retiree health benefit plan by paying the premium and applicable administrative expenses if:
  1. The deceased former elected official met the qualifications for eligibility listed in subsection (B); and
  2. The surviving spouse applies for coverage within 31 days of the death of the former elected official.
- E.** Termination of coverage. The insurance coverage of a former elected official or the surviving spouse of a former elected official who fails to pay insurance premiums when due shall terminate at 11:59 p.m. on the last day of the period covered by the last premium paid.

**R2-5-420. Health Benefit Plan for Surviving Spouse of Elected Official Repealed**

- A.** Upon the death of an elected official who is currently serving in office, the surviving spouse is eligible for coverage under the retiree health benefit plan by paying the premium and applicable administrative expenses if:
  1. The deceased elected official met the qualifications for eligibility listed in R2-5-419(B)(1) and (2), or would have met the qualifications upon completion of the term of office in which the deceased elected official was serving at the time of death; and



2. The surviving spouse applies for coverage within 31 days of the death of the elected official.

**B.** Termination of coverage. The insurance coverage of a surviving spouse who fails to pay insurance premiums when due shall terminate at 11:59 p.m. on the last day of the period covered by the last premium paid.

**R2-5-421. Life Insurance Plan for Former Elected Officials Repealed**

**A.** Definitions. "Former elected official" means an elected official as defined in A.R.S. § 38-801(3) who is no longer in office.

**B.** Eligibility. A former elected official of this state, spouse or domestic partner, and each child are eligible to participate in the group life insurance plan, if the former elected official:

1. Has at least five years of credited service, as referenced in A.R.S. § 38-801 et seq., in the Elected Officials' Retirement Plan; and,
2. Served as an elected official on or after January 1, 1983.

**C.** Eligibility of surviving spouse.

1. Upon the death of a former elected official, the spouse is entitled to coverage under the group life insurance plan, if:
  - a. The deceased former elected official met the qualifications for eligibility listed in subsection (B);
  - b. The surviving spouse is receiving a monthly survivor's retirement check from the Elected Officials' Retirement Plan;
  - c. The surviving spouse applies for the life insurance benefit within 31 days of the death of the former elected official; and,
  - d. The surviving spouse pays the premium for the group life insurance coverage based upon the spouse's age and pays applicable administrative expenses.
2. Upon the death of an incumbent elected official, the surviving spouse is eligible to participate in the life insurance plan for former elected officials in accordance with the terms of the insurance contract covering the former elected official at the time of death, if:
  - a. The deceased elected official met the qualifications for eligibility listed in subsection (B) or would have met the qualifications upon completion of the term of office in which the deceased elected official was serving at the time of death;
  - b. The surviving spouse is receiving a monthly survivor's retirement check from the Elected Officials' Retirement Plan; and,
  - c. The surviving spouse applies for the life insurance benefit within 31 days of the death of the incumbent elected official.

**D.** Termination of coverage. The insurance coverage of either a former elected official or the surviving spouse of a former or incumbent elected official who fails to pay insurance premiums when due shall terminate at 11:59 p.m. on the last day of the period covered by the last premium paid.

**R2-5-422. Flexible or Cafeteria Employee Benefit Plan Repealed**

**A.** Eligibility. A state employee who is eligible to participate in the state's employee insurance programs, other than the short term disability program, is enrolled in the flexible or cafeteria employee benefit plan, in accordance with 26 U.S.C. 125, Internal Revenue Code of 1986, as amended. Benefits provided to domestic partners shall receive pre-tax treatment under the flexible or cafeteria employee benefit plan only to the extent allowed by 26 U.S.C. 125, as amended.

**B.** Pre-taxing of plan premiums. The method of subtracting premiums for health and supplemental life insurance from gross salary before deducting federal and state income taxes and Social Security taxes, resulting in the pre-taxing of premiums for health and supplemental life insurance plans, shall not change or cancel until the end of the plan year.

**C.** Corresponding change in premiums. A family status event that results in the modification of a pre-tax premium will also result in a corresponding change in the premium amount being deducted.

**D.** Automatic disenrollment. A participant is automatically disenrolled from this plan if the participant ceases to be an eligible employee.

**E.** Plan administrator. The Arizona Department of Administration administers the plan and determines the type, structure, and components of the plan.

**F.** Responsibility for plan operation. The plan administrator has sole authority to amend or terminate, in whole or in part, the plan at any time. The plan administrator has sole responsibility for effecting salary reductions.

**G.** Scope of authority. The plan administrator has sole responsibility to administer the plan, including, but not limited to, the following:

1. To construe and interpret the plan, decide all questions of eligibility, and determine the amount, manner, and time of payment of any benefits; and
2. To prescribe procedures to be followed by eligible employees who want to enroll in the plan.

**R2-5-423. Renumbered**

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 6. ~~EXPIRED~~ DEPARTMENT OF ADMINISTRATION  
BENEFIT SERVICES DIVISION

[R08-326]

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
Article 1	New Article
R2-6-101	New Section
R2-6-102	New Section
R2-6-103	New Section
R2-6-104	New Section
R2-6-105	New Section
R2-6-106	New Section
R2-6-107	New Section
R2-6-108	New Section
Article 2	New Article
R2-6-201	New Section
R2-6-202	New Section
R2-6-203	New Section
R2-6-204	New Section
R2-6-205	New Section
Article 3	New Article
R2-6-301	New Section
R2-6-302	New Section
R2-6-303	New Section
Article 4	New Article
R2-6-401	New Section
R2-6-402	New Section

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

Authorizing statute: A.R.S. §§ 41-763(6) and 38-653

Implementing statute: A.R.S. §§ 35-181.02, 38-651, 38-651.01, 38-651.02, 38-651.03, and 38-651.05

**3. List of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 14 A.A.R. 3438, August 29, 2008

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

Name: Jeanne Hann  
Address: Department of Administration  
100 N. 15th Ave., Suite 363  
Phoenix, AZ 85007  
Telephone: (602) 542-2006  
Fax: (602) 542-7544  
E-mail: Jeanne.hann@azdoa.gov

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

In response to a Five-year Review Report approved by Council in September 2006, the Department is relocating insurance plan rules from 2 A.A.C. 5 to a new Chapter. This change is necessary because the insurance plan rules are applicable to all state employees and officers rather than to only those who are covered under the state merit system. The Department is extending eligibility to participate in the insurance plans to older children who become disabled and is providing that coverage of a disabled older child does not terminate solely because the disabled older child attains the age that would be limiting without the disability. The Department is also amending the rules to make them more clear, concise, and understandable and consistent with statute and agency practice.

**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 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 economic impact of reorganizing and modernizing existing rules will be minimal. Extending eligibility to participate in the insurance plans to disabled older children will cost the Department approximately \$420,000 annually and provide a significant benefit to the disabled older child and the child's family. It will also benefit tax payers of the state because the disabled older child will have insurance coverage rather than depending on state-provided programs.

**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: Jeanne Hann  
Address: Department of Administration  
100 N. 15th Ave., Suite 363  
Phoenix, AZ 85007  
Telephone: (602) 542-2006  
Fax: (602) 542-7544  
E-mail: Jeanne.hann@azdoa.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:**

An oral proceeding regarding the proposed rules will be held as follows:

Date: Monday, November 10, 2008  
Time: 1:00 p.m.  
Location: 100 N. 15th Ave., Room 300  
Phoenix, AZ 85007

The rulemaking record will close at 5:00 p.m. on Wednesday, November 12, 2008.

**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 2. ADMINISTRATION

### CHAPTER 6. ~~EXPIRED~~ DEPARTMENT OF ADMINISTRATION BENEFIT SERVICES DIVISION

#### ARTICLE 1. ~~EXPIRED~~ GENERAL PROVISIONS

Section	
R2-6-101.	<del>Expired</del> <u>Definitions</u>
R2-6-102.	<del>Expired</del> <u>Availability of Funds Required</u>
R2-6-103.	<del>Expired</del> <u>Authority of the Director</u>
R2-6-104.	<del>Expired</del> <u>Confidentiality</u>
R2-6-105.	<del>Expired</del> <u>Times for Enrollment</u>
R2-6-106.	<del>Expired</del> <u>Effective Date of Coverage</u>
R2-6-107.	<del>Expired</del> <u>Termination of Coverage</u>
R2-6-108.	<del>Expired</del> <u>COBRA</u>

Notices of Proposed Rulemaking

**ARTICLE 2. ~~EXPIRED~~ INSURANCE PLANS**

Section

- R2-6-201. ~~Expired~~ Insurance Plans
- R2-6-202. ~~Expired~~ Long-term Disability Insurance
- R2-6-203. ~~Expired~~ Flexible Spending Accounts
- R2-6-204. ~~Expired~~ Employee Flexible Benefit Plan
- R2-6-205. ~~Expired~~ Performance Standards for Health, Dental, and Vision Insurance Plans

**ARTICLE 3. ~~EXPIRED~~ ELIGIBILITY CRITERIA**

Section

- R2-6-301. ~~Expired~~ Eligibility to Participate in Health, Dental, and Vision Insurance Plans
- R2-6-302. ~~Expired~~ Eligibility to Participate in Life and Short-term Disability Insurance Plans
- R2-6-303. ~~Expired~~ Audit of Dependent Eligibility

**ARTICLE 4. ~~EXPIRED~~ APPEALS AND GRIEVANCES**

Section

- R2-6-401. ~~Expired~~ Appeal of a Plan-provider Decision
- R2-6-402. ~~Expired~~ Grievance of a Department Decision

**ARTICLE 1. ~~EXPIRED~~ GENERAL PROVISIONS**

**R2-6-101. ~~Expired~~ Definitions**

In this Chapter, unless otherwise specified:

1. “Accident and health insurance,” as used in A.R.S. Title 38, Chapter 4, Article 4, means health insurance and dental insurance.
2. “Agency” means a department, board, office, authority, commission, or other governmental budget unit of the state.
3. “Agency head” means the chief executive officer of an agency.
4. “Appeal” means a request to a plan provider for review of a decision by the plan provider.
5. “Approved leave” means an employee’s or officer’s absence from assigned work is authorized in accordance with the state’s personnel rules at 2 A.A.C. 5.
6. “Base pay” means the fixed compensation paid to an employee or officer. Base pay excludes pay for overtime, shift differential, bonuses, special performance adjustment, special incentive program, or other allowance.
7. “Basic life insurance” means the amount of life insurance that the Department provides at no charge to an employee or officer.
8. “Child” means an unmarried individual who falls within one or more of the following categories:
  - a. A natural child, adopted child, or stepchild of an employee, officer, retiree, former elected official, or domestic partner who is:
    - i. Younger than 19, or
    - ii. Younger than 25 if a full-time student;
  - b. A foster child who is younger than 19;
  - c. A child who is younger than 19 for whom the employee, officer, retiree, or former elected official has court-ordered guardianship;
  - d. A child who is younger than 19 and placed in the home of the employee, officer, retiree, or former elected official by court order pending adoption; or
  - e. A natural child, adopted child, or stepchild of an employee, officer, retiree, former elected official, or domestic partner:
    - i. Who was disabled before the age of 19;
    - ii. Who continues to be disabled as defined at 42 U.S.C. 1382c;
    - iii. Who is dependent for support and maintenance upon the employee, officer, retiree, former elected official, or domestic partner; and
    - iv. For whom the employee, officer, retiree, former elected official, or domestic partner had custody before the child was 19.
9. “COBRA” means Consolidated Omnibus Budget Reconciliation Act of 1986, which is a federal law that provides group health insurance coverage that might otherwise be terminated.
10. “COBRA member” means a former member or formerly eligible dependent of a member or former member who opts to obtain health insurance through COBRA after no longer meeting the eligibility standards in Article 3.
11. “Compensation” means the total taxable remuneration provided by the state to an employee or officer in exchange for the employee’s or officer’s services.
12. “Creditable coverage” has the same meaning as prescribed at 42 CFR 423.56.

13. "Day" means a calendar day.
14. "Dental insurance" means an arrangement under which a policy holder makes advance payment to an insurer and the insurer pays amounts on behalf of an insured for certain preventive, diagnostic, and remedial care of the insured's teeth and gums.
15. "Department" means the Arizona Department of Administration.
16. "Director" means the Director of the Department or the Director's designee with respect to benefits administration.
17. "Disability income insurance" means a form of insurance that insures a specified portion of the compensation of an employee or officer against the risk that disability will make working impossible.
18. "Disabled older child" means an older child who:
  - a. Is disabled, as defined at 42 U.S.C. 423 or 42 U.S.C. 1382;
  - b. Became disabled on or after the older child's 19th birthday but before the older child's 25th birthday;
  - c. Is dependent for support and maintenance upon:
    - i. The employee, officer, retiree, or former elected official who enrolled the disabled older child in the insurance plan made available by the Department; or
    - ii. The domestic partner of the employee, officer, retiree, or former elected official; and
  - d. If the criteria in subsections (18)(a) through (c) are met, may be more than 24 years old.
19. "Domestic partner" means an individual who is of the same or opposite gender to an employee, officer, or retiree and who:
  - a. Shares a permanent residence with the employee, officer, or retiree;
  - b. Has resided with the employee, officer, or retiree continuously for the last 12 consecutive months and expects to continue to reside with the employee, officer, or retiree indefinitely as evidenced by an affidavit filed at the time of enrollment;
  - c. Has not signed a declaration or affidavit of domestic partnership with another individual within the last 12 months;
  - d. Has not had another domestic partner within the last 12 months;
  - e. Does not currently have another domestic partner;
  - f. Is not currently married to or legally separated from anyone;
  - g. Is not related by blood to the employee, officer, or retiree to a degree that would prohibit marriage in Arizona;
  - h. Was mentally competent to consent when the domestic partnership was established;
  - i. Is not acting under fraud or duress with regard to the insurance plans made available by the Department;
  - j. Is at least 18 years old; and
  - k. Is financially interdependent with the employee, officer, or retiree in at least three of the following ways:
    - i. Holds a joint mortgage, joint property tax identification, or joint tenancy on a residential lease;
    - ii. Holds one or more credit or bank accounts jointly;
    - iii. Owns significant property, such as a vehicle or real estate, jointly;
    - iv. Has one or more joint liabilities;
    - v. Is named by or has named the employee, officer, or retiree as beneficiary of life insurance or under a will or retirement annuity;
    - vi. Has a written durable power of attorney in which each assumes financial responsibility for the other; or
    - vii. Other evidence of financial interdependence that is approved by the Director.
20. "Eligible dependent" means a member's spouse, domestic partner, child, older child, or disabled older child, who is lawfully present in the U.S.
21. "Employee" means an individual who is hired by the state and regularly scheduled to work at least 20 hours per week for six months or longer. Employee does not include:
  - a. A patient or inmate employed at a state institution;
  - b. A non-state employee, officer, or enlisted personnel of the National Guard of Arizona;
  - c. An individual hired to fill an emergency, seasonal, or temporary position;
  - d. An individual who fills a position designed primarily to provide rehabilitation to the individual;
  - e. A student or work-study employee; or
  - f. An individual hired by a state university or college for whom the state university or college does not contribute to a state-sponsored retirement plan unless the individual is:
    - i. A non-immigrant alien employee;
    - ii. Participating in a medical residency or post-doctoral training program;
    - iii. On federal appointment with Cooperative Extension, or
    - iv. A retiree who has returned to work under A.R.S. § 38-766.01.
22. "Employee flexible benefit plan," or the State of Arizona Cafeteria Plan as approved by the Internal Revenue Service, means insurance plans specified in R2-6-204, the value of which is excludable from an employee's or officer's compensation under Section 125 of the Internal Revenue Code.
23. "Flexible spending account" means a financial arrangement under which an employee or officer authorizes the

Notices of Proposed Rulemaking

- Department to reduce the employee's or officer's compensation on a pre-tax basis by a specified amount that the employee or officer uses to pay for eligible out-of-pocket medical- or dependent-care expenses.
24. "Former elected official" means an individual who was but no longer is elected by popular vote in this state to serve as a:
- a. State official;
  - b. County official;
  - c. Justice of the supreme court;
  - d. Judge of the court of appeals or superior court;
  - e. Full-time superior court commissioner except a full-time superior court commissioner who did not make a timely election of membership under the judges' retirement plan repealed on August 7, 1985; and
  - f. Official of an incorporated city or town if the incorporated city or town has executed an agreement with the state for coverage of the official.
25. "Grievance" means an expression of dissatisfaction about any matter other than a decision by a plan provider.
26. "Health insurance" means an arrangement under which a policy holder makes advance payments to an insurer and the insurer pays amounts on behalf of an insured for routine, preventive, and emergency health-care procedures and pharmaceuticals.
27. "Incumbent" means the employee or officer who currently holds a position or office.
28. "Institution" means a facility that provides supervision or care for residents on a 24-hours-per-day, seven-days-per-week basis.
29. "Life insurance" means a contract between an insurer and a policy holder under which the insurer agrees to pay a sum of money upon the occurrence of an insured's death in exchange for the policy holder paying a stipulated amount at regular intervals.
30. "Long-term disability insurance" means an insurance product that replaces part of an employee's or officer's compensation after an initial waiting period for the duration of time that the employee or officer is medically determined to be totally disabled as a result of a covered injury, illness, or pregnancy.
31. "Manifest error" means an act or failure to act that clearly is or has caused a mistake.
32. "Member" means an employee, officer, retiree, or former elected official who meets the criteria at R2-6-301(B), who enrolls in one or more of the insurance plans made available by the Department.
33. "Officer" means an individual who:
- a. Is elected or appointed to a state office, including a member of the state legislature; or
  - b. Is a member of a state board, commission, or council and serves at least 1,000 hours per year.
34. "Older child" means an individual who:
- a. Is younger than 25 years old.
  - b. Is unmarried.
  - c. Was covered by a health insurance plan made available by the Department during the year that the individual was 18 years old, and
  - d. Resides in Arizona, if the individual is:
    - i. A natural child, adopted child, or stepchild of an employee, officer, retiree, or former elected official;
    - ii. A natural child, adopted child, or stepchild of a domestic partner; or
    - iii. A child for whom an employee, officer, retiree, or former elected official received a court-ordered guardianship when the child was 18 years old or younger.
35. "Open enrollment" means a specified period during which a member may make additions, changes, or deletions to the member's participation in the insurance plans made available by the Department.
36. "Ophthalmic goods" means eyeglasses or contact lenses for which a prescription is required and components of the eyeglasses.
37. "Plan provider" means an entity that enters into a contract with the Department to provide an insurance plan to members and their eligible dependents.
38. "Plan year" means a specified period of 12 consecutive months during which a member is able to change the member's participation in the insurance plans made available by the Department only if the member experiences a qualified life event.
39. "Post-tax dependent" means an older child, disabled older child, domestic partner, and natural child, adopted child, or stepchild of the domestic partner of an employee or officer.
40. "Pre-tax dependent" means an eligible dependent who is not a post-tax dependent.
41. "QMCSO" means qualified medical child support order and has the same meaning as prescribed at 29 U.S.C. 1169.
42. "Qualified life event" means a change in a member's dependents, employment status, or residence that entitles the member to change the member's or an eligible dependent's participation in the insurance plans made available by the Department before the next open enrollment period. Qualified life event includes:
- a. Change in marital status caused by marriage, divorce, legal separation, annulment, or death of spouse;
  - b. Change in domestic partnership status caused by creation or termination of a domestic partnership or death of a

- domestic partner:
- c. Change in dependent status caused by birth, adoption, placement for adoption, court-ordered guardianship, death, or dependent eligibility due to age, marriage, or student status;
  - d. Change in employment status or work schedule that affects a member's eligibility to participate in the insurance plans made available by the Department; and
  - e. Change in residence that affects available insurance plan options.
43. "Retiree" means an employee or officer who is retired under a state-sponsored retirement plan or who receives long-term disability payments under a plan made available by the Department.
44. "Salary-reduction order" means a document signed by an employee or officer who elects to participate in the employee flexible benefit plan authorizing the state to reduce the employee's or officer's compensation under Section 125 of the Internal Revenue Code.
45. "Short-term disability insurance" means an insurance product that replaces part of an employee's or officer's compensation for a predetermined period if the employee or officer is medically determined to be unable to work due to illness, pregnancy, or a non-work-related injury.
46. "Spouse" means a member's husband or wife under Arizona law.
47. "Supplemental life insurance" means life insurance that is in addition to basic life insurance.
48. "Surviving dependent," as used in A.R.S. § 38-651.01(A), means an insured eligible dependent of a deceased retiree, except a deceased former elected official.
49. "Surviving spouse," as used in A.R.S. § 38-651.01(B), means the insured spouse of an incumbent or former elected official who dies when retired or eligible for retirement under R2-6-301(B).
50. "Vision insurance" means a form of insurance that provides coverage for the services rendered by an eye-care professional and for the purchase of ophthalmic goods.

**R2-6-102. ~~Expired~~ Availability of Funds Required**

As provided by law, any expenditure of public monies for an insurance plan described in this Article is contingent upon the legislature making an appropriation for the plan and the availability of funds.

**R2-6-103. ~~Expired~~ Authority of the Director**

- A. Within the limits prescribed by law, the Director shall determine the type, structure, and components of the insurance plans made available by the Department.
- B. The Director shall administer the insurance plans made available by the Department including:
  - 1. Construing and interpreting each plan;
  - 2. Deciding questions of eligibility; and
  - 3. Determining the amount of and manner and time that benefits are paid.
- C. The Director shall determine whether an insurance plan made available by the Department needs to be amended or terminated.
- D. The Director shall establish a procedure for ensuring that a member makes timely payments for participation in an insurance plan made available by the Department.
- E. If the Director determines that it is in the best interest of the state and consistent with law, the Director may delegate authority to an agency head.
- F. The Director shall determine whether a manifest error exists and correct the manifest error.

**R2-6-104. ~~Expired~~ Confidentiality**

The Department shall comply with all federal, state, and local laws regarding use and disclosure of the protected health information of an individual who participates in an insurance plan made available by the Department.

**R2-6-105. ~~Expired~~ Times for Enrollment**

- A. An employee, officer, retiree, or former elected official may enroll or may enroll an eligible dependent in one or more of the insurance plans made available by the Department only at the following times:
  - 1. Within 31 days of becoming eligible to participate in an insurance plan.
  - 2. Within 31 days of a qualified life event, and
  - 3. At open enrollment.
- B. A surviving dependent, as defined in R2-6-101, who wishes to continue enrollment in the health, dental, and vision insurance plans made available by the Department shall enroll within six months after the death that makes the surviving dependent eligible to continue enrollment.
- C. A surviving spouse, as defined in R2-6-101, who wishes to continue enrollment in the health, dental, vision, or life insurance plans made available by the Department shall enroll within 31 days after the death of the incumbent or former elected official.
- D. To be covered under the health or dental insurance plans made available by the Department, a retiree shall enroll at the time specified in subsection (A) and shall maintain enrollment in the health or dental insurance plan. If a retiree terminates

participation in both the health and dental insurance plans made available by the Department, neither the retiree nor the retiree's eligible dependent is eligible to enroll at a later time.

**R2-6-106. ~~Expired~~ Effective Date of Coverage**

- A.** If an individual enrolls in an insurance plan made available by the Department or provides notice of a qualified life event within the time specified in R2-6-105, the Department shall ensure that the insurance coverage becomes effective on the following dates:
1. Newly hired employee or officer. The date determined by the Director following submission of a properly completed enrollment form and supporting documentation;
  2. Retiree, former elected official, surviving dependent, or surviving spouse. The first day of the first pay period following the end of active coverage or the first day of the first month following submission of a properly completed enrollment form and supporting documentation, whichever is applicable;
  3. Qualified life event change other than a change in the number of dependents due to birth, adoption or legal placement for adoption, or grant of legal guardianship:
    - a. Non-university employee or officer. The first day of the first pay period following submission of a properly completed enrollment form and supporting documentation;
    - b. University employee. The date determined by the Director; and
    - c. Retiree, former elected official, or surviving spouse. The first of the month following submission of a properly completed enrollment form and supporting documentation; and
  4. Change in the number of dependents due to birth, adoption or legal placement for adoption, or grant of legal guardianship. On the date of birth, adoption or legal placement for adoption, or grant of legal guardianship if a properly completed enrollment form and supporting documentation are submitted.
- B.** If a retiree, former elected official, eligible dependent, surviving dependent, or surviving spouse becomes eligible for Medicare, the retiree, former elected official, eligible dependent, surviving dependent, or surviving spouse may cancel or reduce coverage under the health plan made available by the Department. If a retiree, former elected official, eligible dependent, surviving dependent, or surviving spouse ceases to be eligible for Medicare, the retiree, former elected official, eligible dependent, surviving dependent, or surviving spouse may enroll or increase coverage under the health plan made available by the Department. A change made under this subsection becomes effective on the first day of the first month following submission of a properly completed enrollment form and supporting documentation if the enrollment form and supporting documentation are submitted within 31 days of the change in Medicare eligibility.
- C.** If a member experiences one of the following changes in coverage, the member may make a corresponding change to the member's coverage under the health plan made available by the Department by submitting a properly completed enrollment form and supporting documentation within 31 days of the change. A change made under this subsection becomes effective on the first day of the first pay period or first month, as applicable, following submission of a properly completed enrollment form and supporting documentation:
1. Elected coverage provided under the plan is significantly restricted or eliminated.
  2. Non-elected coverage provided under the plan is significantly improved.
  3. The member's spouse makes a change in the coverage provided by the spouse's employer.
  4. The member or an eligible dependent loses coverage under another group health plan sponsored by a governmental or educational institution, or
  5. The member becomes subject to a QMCSO or another person becomes subject to a QMCSO that requires the other person to provide health insurance for the member's eligible dependent.

**R2-6-107. ~~Expired~~ Termination of Coverage**

- A.** Insurance coverage of an employee or officer and the employee's or officer's eligible dependent terminates at 11:59 p.m. on the last day of the period for which an insurance premium was paid if the employee or officer ceases to be eligible to participate in the insurance plan.
- B.** Insurance coverage of an eligible dependent terminates at 11:59 p.m. on the last day that the individual is an eligible dependent under this Chapter.
- C.** Insurance coverage of a retiree or former elected official terminates:
1. Automatically if the retiree or former elected official dies; or
  2. At 11:59 p.m. on the last day of the period for which the last insurance premium was paid.
- D.** Insurance coverage of a surviving dependent or surviving spouse terminates at 11:59 p.m. on the last day of the period for which the last insurance premium was paid.
- E.** Insurance coverage of a COBRA member terminates at 11:59 p.m. on the last day that the COBRA member is eligible for coverage under COBRA or of the period for which the last insurance premium was paid.
- F.** By providing written notice to the Director at any time, an employee, officer, or former elected official, as applicable, may cease purchasing:
1. Supplemental life insurance in excess of \$35,000;



2. Life insurance for an eligible dependent; or
3. Short-term disability insurance.

**R2-6-108. ~~Expired COBRA~~**

- A.** When a member or an insured eligible dependent ceases to be eligible to participate in the health, dental, or vision insurance plans made available by the Department because of a change in the work status of the member, the Director shall inform the member or eligible dependent of whether the member or eligible dependent is eligible for coverage under COBRA.
- B.** When an insured eligible dependent of a member ceases to be eligible to participate in the health, dental, or vision insurance plans made available by the Department because the member dies or because of divorce, legal separation, termination of domestic partnership, or ceasing to meet the criteria for a child, older child, or disabled older child, the member or affected dependent shall provide written notice of the change to the Director within 60 days of the change. The Director shall inform the affected dependent whether the affected dependent is eligible for coverage under COBRA. The Department is unable to make COBRA coverage available to an affected dependent if notice is not provided as specified.
- C.** When an employee or officer ceases to be eligible for a health care flexible spending account because of termination of status as an employee or officer, the Director shall inform the former employee or officer and all qualified beneficiaries of whether they are eligible for coverage under COBRA.
- D.** The state shall not pay any of the cost for COBRA coverage. An individual who elects COBRA coverage shall pay all costs plus a small amount for administrative expenses.
- E.** COBRA coverage is determined by federal law.

**ARTICLE 2. ~~EXPIRED INSURANCE PLANS~~**

**R2-6-201. ~~Expired Insurance Plans~~**

The Department shall make available the following types of insurance plans:

1. Health insurance,
2. Dental insurance,
3. Vision insurance,
4. Flexible spending account,
5. Life insurance, and
6. Short-term disability insurance.

**R2-6-202. ~~Expired Long-term Disability Insurance~~**

- A.** The state shall automatically enroll an employee or officer in a long-term disability insurance plan. The long-term disability insurance plan in which an employee or officer is enrolled depends on the state-sponsored retirement plan to which the employee or officer contributes.
- B.** The state may offset the amount that an employee or officer receives under a long-term disability insurance plan by amounts that the employee or officer receives as Social Security payments, retirement benefits, and other disability benefits.

**R2-6-203. ~~Expired Flexible Spending Accounts~~**

- A.** The state shall provide an employee or officer with the opportunity to establish a flexible spending account for:
  1. Health-care expenses,
  2. Dependent-care expenses, or
  3. Both health-care and dependent-care expenses.
- B.** An employee or officer who elects to establish a flexible spending account shall annually sign a salary reduction order specific for the flexible spending account.
- C.** A flexible spending account is regulated by federal law.

**R2-6-204. ~~Expired Employee Flexible Benefit Plan~~**

- A.** The Director shall ensure that the premium paid by an employee or officer for participation in the insurance plans listed in R2-6-201(1) through (4), and for a maximum of \$35,000 in supplemental life insurance reduces the employee's or officer's compensation as allowed by Section 125 of the Internal Revenue Code.
- B.** The Director shall ensure that the premium paid by an employee or officer to enroll a pre-tax dependent in the insurance plans listed in R2-6-201(1) through (3) reduces the employee's or officer's compensation as allowed by Section 125 of the Internal Revenue Code.
- C.** The Director shall ensure that the amount paid by the state to enable a post-tax dependent of an employee or officer to participate in the insurance plans listed in R2-6-201(1) through (3) increases the employee's or officer's compensation and is taxed as required by law.
- D.** If an employee or officer experiences a qualified life event during a plan year that adds or deletes a pre-tax or post-tax dependent, the Director shall ensure that the compensation of the employee or officer is adjusted accordingly and taxed as

required by law.

- E.** The Director shall ensure that the method of adjusting an employee's or officer's compensation under this Section is not changed or canceled until the end of a plan year.

**R2-6-205. ~~Expired Performance Standards for Health, Dental, and Vision Insurance Plans~~**

As required under A.R.S. § 38-651, the Department establishes and shall require that a plan provider comply with the following minimum performance standards:

1. Cost competitiveness. A plan provider shall offer the Department a discount from full-billed charges that is significant and an administrative fee that is reasonable when compared with the discount and administrative fee of other potential plan providers.
2. Utilization review. A plan provider of medical management services shall employ utilization review standards that are generally accepted in the industry and specified by the Department in contract.
3. Network development and access. A plan provider of a medical network shall comply with the access and availability requirements that the Department develops based on the location of participants and specifies in contract.
4. Conversion and implementation. A plan provider shall fully perform in accordance with all requirements that the Department specifies in contract from the date on which the contract begins until the date on which the contract ends or is terminated after giving proper notice.
5. Report accuracy and timeliness. A plan provider shall ensure that all reports are complete, accurate, and submitted as specified in contract.
6. Quality outcomes. A plan provider shall comply with the quality-outcome standards that the Department specifies in contract and shall be subject to an offset against any sums due to the plan provider for expenses, costs, or damages incurred as a result of the plan provider failing to comply with the specified quality-outcome standards.
7. Customer satisfaction. The Department shall annually measure the extent to which participants are satisfied with a plan provider's services.

**ARTICLE 3. ~~EXPIRED~~ ELIGIBILITY CRITERIA**

**R2-6-301. ~~Expired Eligibility to Participate in Health, Dental, and Vision Insurance Plans~~**

- A.** Employees, officers, and retirees. An employee, officer, or retiree may participate in the health, dental, and vision insurance plans made available by the Department by enrolling at the time specified in R2-6-105 and agreeing to pay the contracted cost of each insurance plan chosen.
- B.** Former elected officials. A former elected official may participate in the health, dental, and vision insurance plans made available by the Department if the former elected official:
1. Has at least five years of credited service in the Elected Officials' Retirement Plan established at A.R.S. § 38-802;
  2. Participated in a group health, dental, or vision insurance plan made available to elected officials at the time of leaving office;
  3. Served as an elected official on or after January 1, 1983;
  4. Enrolls at the time specified in R2-6-105; and
  5. Agrees to pay the contracted cost of the insurance plan.
- C.** Eligible dependents. A member may enroll an eligible dependent in the health, dental, and vision insurance plans made available by the Department at the time specified in R2-6-105. The member who enrolls an eligible dependent shall pay the contracted cost of the insurance plan.
- D.** Surviving dependents. A surviving dependent, as defined at R2-6-101, may continue coverage under the health, dental, and vision insurance plans made available by the Department by enrolling at the time specified in R2-6-105 and paying the contracted cost of the insurance plan.
- E.** Surviving spouse. A surviving spouse, as defined at R2-6-101, may continue coverage under the health, dental, and vision insurance plans made available by the Department by enrolling at the time specified in R2-6-105 and paying the contracted cost of the insurance plan.
- F.** Eligibility exception. An employee or officer who is on approved leave without pay and the enrolled eligible dependents of the employee or officer may continue enrollment in the health, dental, and vision insurance plans made available by the Department under the conditions in:
1. R2-5-405 if the employee or officer is on approved leave without pay because of an industrial illness or injury.
  2. R2-5-413 if the employee or officer is on approved medical leave without pay, and
  3. R2-5-414 if the employee or officer is on approved leave without pay for another reason.
- G.** Coverage of a newborn infant.
1. The state shall provide health insurance to an infant born to a member or the member's spouse from the time the infant is born until the infant reaches its 31st day. To ensure that the infant continues to have health insurance coverage, the member shall enroll the infant in the health insurance plan made available by the Department before the infant reaches its 31st day.
  2. In compliance with the Newborns' and Mothers' Health Protection Act of 1996, the state shall provide health insur-

ance to an infant born to a member's eligible dependent other than the member's spouse. In accordance with the Newborns' and Mothers' Health Protection Act of 1996, the state shall limit health insurance provided under this subsection to 48 hours for a vaginal delivery and 96 hours for delivery by cesarean section. A member who wishes to obtain health insurance for the infant beyond the time required under the Newborns' and Mothers' Health Protection Act of 1996, may enroll the infant in the health insurance plan made available by the Department if the infant is eligible.

**R2-6-302. ~~Expired~~ Eligibility to Participate in Life and Short-term Disability Insurance Plans**

**A. Employees and officers.**

1. Life insurance. An employee or officer may participate in the life and short-term disability insurance plans made available by the Department by enrolling at the time specified in R2-6-105. The state shall provide basic life insurance to an employee or officer at no charge.
2. Short-term disability insurance. An employee or officer who chooses to participate in the short-term disability insurance plan made available by the Department shall agree to pay the contracted cost of the plan.
3. Supplemental life insurance. The state shall make supplemental life insurance available to an employee or officer. An employee or officer may purchase an amount of supplemental life insurance that, when combined with basic life insurance, does not exceed three times the employee's or officer's base pay, rounded down to the nearest \$5,000 or the maximum amount established by the Director, whichever is less. An employee or officer who chooses to participate in the supplemental life insurance plan shall agree to pay the contracted cost for the supplemental life insurance.

**B. Former elected officials. A former elected official may purchase life insurance made available by the Department if the former elected official meets the criteria at R2-6-301(B)(1) and (3).**

**C. Eligible dependents. An employee, officer, or former elected official who meets the criteria at R2-6-301(B)(1) and (3) may purchase life insurance through the plan made available by the Department for an eligible dependent in an amount determined by the Director. An employee, officer, or former elected official who chooses to purchase life insurance for an eligible dependent shall agree to pay the contracted cost for the life insurance.**

**D. Surviving spouse of a former elected official. Under A.R.S. § 38-651.02(C), the surviving spouse of a former elected official who met the criteria at R2-6-301(B)(1) and (3) at the time of death may continue to purchase life insurance through the plan made available by the Department if the surviving spouse:**

1. Makes application within the time specified in R2-6-105;
2. Agrees to pay the contracted cost for the life insurance; and
3. Is receiving a monthly survivor's retirement check from the Elected Officials' Retirement Plan.

**R2-6-303. ~~Expired~~ Audit of Dependent Eligibility**

**A. A member shall not enroll an individual in an insurance plan made available by the Department unless the individual is an eligible dependent as defined in R2-6-101.**

**B. The Department shall conduct an audit to determine whether an individual enrolled by a member in an insurance plan made available by the Department is an eligible dependent. The Department shall choose a particular member for audit either randomly or in response to uncertainty concerning dependent eligibility.**

**C. If a member is chosen for audit, the Department shall provide the member with written notice and 60 days in which to produce evidence that an individual enrolled by the member in an insurance plan made available by the Department is an eligible dependent. Evidence of dependent eligibility may include one or more of the following:**

1. Marriage certificate.
2. Birth certificate.
3. Documentation of lawful presence in the U.S..
4. Documentation of sharing a permanent residence and financial interdependence as described in R2-6-101(19).
5. Receipts for insurance payments made while on leave without pay.
6. Court order regarding adoption or placement for adoption.
7. Court order regarding guardianship.
8. Documentation of foster-child placement.
9. Tax return.
10. School registration form or transcript.
11. Declaration of disability from the Social Security Administration.
12. Documentation of Arizona residence, or
13. Other documentation acceptable to the Director.

**D. If a member chosen for audit fails to produce evidence of dependent eligibility, the Department shall:**

1. Terminate insurance coverage of the individual whose eligibility was not proven;
2. Require that the member reimburse the Department for all premiums and claims paid since October 1, 2004, on behalf of the individual whose eligibility was not proven; and
3. Report an employee or officer who misrepresented dependent eligibility to the employee's or officer's agency for

possible disciplinary action.

**ARTICLE 4. ~~EXPIRED~~ APPEALS AND GRIEVANCES**

**R2-6-401. ~~Expired~~ Appeal of a Plan-provider Decision**

- A.** The Department has delegated to each plan provider the authority to:
1. Interpret and apply the terms of the plan provider's particular insurance plan;
  2. Determine whether a particular benefit is included in the plan and, if included, the amount of payment to be made under the plan; and
  3. Perform a full and fair review of any decision by the plan provider regarding benefits included in or payments to be made under the plan if the decision is appealed in accordance with the plan provider's specified procedures.
- B.** An individual who is enrolled in an insurance plan made available by the Department shall consult the plan description provided to the individual for information regarding the plan provider's appeal procedures.
- C.** An individual who wishes to appeal a decision by the plan provider shall follow the procedures specified in the applicable plan description.

**R2-6-402. ~~Expired~~ Grievance of a Department Decision**

- A.** An individual who participates in one or more of the insurance plans made available by the Department may file a grievance with the Director regarding:
1. Determination of creditable coverage.
  2. Determination of whether a medical child support order is qualified.
  3. Determination of eligibility.
  4. Dissatisfaction with care.
  5. Dissatisfaction with an insurance plan.
  6. Dissatisfaction with a plan provider.
  7. Access to care, and
  8. Inconsistent application of statute or rule.
- B.** To file a grievance, an individual shall submit a letter to the Director that contains the following information:
1. Name and contact information of the individual filing the grievance.
  2. Name of the particular insurance plan that is the subject of the grievance.
  3. Nature of the grievance, and
  4. Nature of the resolution requested.
- C.** The Director shall provide a written response to a grievance within 60 days.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 38. BOARD OF HOMEOPATHIC ~~MEDICAL~~ MEDICAL AND INTEGRATED MEDICINE EXAMINERS**

[R08-327]

**PREAMBLE**

<b><u>1. Sections Affected</u></b>	<b><u>Rulemaking Action</u></b>
R4-38-105	Amend
R4-38-301	Amend
R4-38-302	Re-number
R4-38-302	New Section
R4-38-303	Repeal
R4-38-303	Re-number
R4-38-303	Amend
R4-38-304	Amend
R4-38-305	Repeal
R4-38-305	New Section
R4-38-306	Re-number
R4-38-306	Amend
R4-38-307	Re-number
R4-38-307	Amend
R4-38-308	Re-number

Notices of Proposed Rulemaking

R4-38-308	New Section
R4-38-309	Re-number
R4-38-309	Amend
R4-38-310	Re-number
R4-38-310	Amend
R4-38-311	Repeal
R4-38-311	New Section
R4-38-312	Re-number
R4-38-312	Amend
R4-38-401	Repeal
R4-38-401	New Section
R4-38-402	Repeal
R4-38-403	Repeal
Table 1	New Table

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

Authorizing statute: A.R.S. § 32-2904(A)(9)

Implementing statute: A.R.S. §§ 32-2901(15) and 32-2939

**3. List of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 13 A.A.R. 4046, November 16, 2007

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

Name: Chris Springer, Executive Director

Address: Board of Homeopathic and Integrated Medicine Examiners  
1400 W. Washington St., Suite 230  
Phoenix, AZ 85007

Telephone: (602) 542-3095

Fax: (602) 542-3093

E-mail: chris.springer@azhomeopathbd.az.gov

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

The Board is amending its rules regarding medical assistants to clarify them and make them consistent with agency practice and current rule writing standards.

**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 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 rulemaking will have minimal economic impact because it simply clarifies existing rules and makes them consistent with agency practice.

**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: Chris Springer, Executive Director

Address: Board of Homeopathic and Integrated Medicine Examiners  
1400 W. Washington St., Suite 230  
Phoenix, AZ 85007

Telephone: (602) 542-3095

Fax: (602) 542-3093

E-mail: chris.springer@azhomeopathbd.az.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:**

An oral proceeding regarding the proposed rules will be held as follows:

Notices of Proposed Rulemaking

Date: Tuesday, November 18, 2008  
Time: 1:00 p.m.  
Location: 1400 W. Washington St., Suite 280  
Phoenix, AZ 85007

The rulemaking record will close at 5:00 p.m. on Friday, November 21, 2008.

**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 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 38. BOARD OF HOMEOPATHIC ~~MEDICAL~~ AND INTEGRATED MEDICINE EXAMINERS**

**ARTICLE 1. GENERAL**

Section  
R4-38-105. Fees

**ARTICLE 3. EDUCATION, SUPERVISION, AND DELEGATION STANDARDS FOR REGISTRATION OF MEDICAL ASSISTANTS BY HOMEOPATHIC PHYSICIANS**

Section  
R4-38-301. Definitions  
~~R4-38-302.~~ Requirements to Supervise a Medical Assistant; Standards for Supervision  
~~R4-38-303.~~ Supervision of Formally Trained Assistants  
~~R4-38-302.~~ ~~R4-38-303.~~ Approved Board Standards for a Formal Educational Programs Education Program  
R4-38-304. Approved Practical Educational Programs Education Program; Renewal  
R4-38-305. Supervision of Practical Education Programs Minimum Requirements for Registration of a Homeopathic Medical Assistant  
~~R4-38-308.~~ ~~R4-38-306.~~ Registration of Procedures for Application to Register a Medical Assistants and Practical Educational Programs Assistant  
~~R4-38-310.~~ ~~R4-38-307.~~ Additional Requirements to Register a Previously Licensed Practitioners Health Care Practitioner  
~~R4-38-308.~~ Renewal of Medical Assistant Registration  
~~R4-38-306.~~ ~~R4-38-309.~~ Restrictions on Delegated Procedures  
~~R4-38-309.~~ ~~R4-38-310.~~ Registration not Transferable; Multiple Supervisors Employers  
R4-38-311. Deadlines for Compliance with Rules Responsibilities of a Registered Medical Assistant  
~~R4-38-307.~~ ~~R4-38-312.~~ Unprofessional Conduct

**ARTICLE 4. ~~APPLICATION AND RENEWAL PROCESS;~~ LICENSING TIME-FRAMES**

Section  
R4-38-401. ~~Definitions~~ Licensing Time-frames  
R4-38-402. Application; Initial License, Permit, or Registration Repealed  
R4-38-403. Application; Renewal of License, Permit, or Registration Repealed  
Table 1. Time-frames (in days)

**ARTICLE 1. GENERAL**

**R4-38-105. Fees**

- A.** The Board establishes and shall charge collect the following fees, according to which are specifically authorized by A.R.S. §§ 32-2914 and 32-2916:
1. Application for license: \$ 550.00
  2. Issuance of initial license: \$ 250.00
  3. Annual renewal of license: \$ 975.00
  4. Late renewal penalty: \$ 350.00

5. Application for dispensing permit: \$ 200.00
  6. Annual renewal of dispensing permit: \$ 200.00
  7. Locum tenens registration application: \$ 200.00
  8. Locum tenens registration issuance: \$ 100.00
  9. Application for registration to conduct approval of a practical education course for supervised medical assistants program: \$ 150.00
  10. Annual renewal of registration to conduct approval of a practical education course program: \$ 50.00
  11. Initial application for supervision of to register a medical assistant: \$ 200.00
  - ~~12. Triennial renewal of supervision of medical assistant: \$ 50.00~~
  - ~~13-12. Annual renewal for of registration of medical assistant: \$ 200.00~~
- B.** The Board shall collect the following amounts for the services described:
- ~~14-1. Annual directory: \$ 25.00~~
  - ~~15-2. Copies, per page: \$ 0.25~~
  - ~~16-3. Copies, per audio tape: \$ 35.00~~
  - ~~17-4. Copies, per 1.44 M computer disk: \$ 100.00~~
  - ~~18-5. Mailing lists - non-commercial (per name): \$ 0.05~~
  - ~~19-6. Mailing lists - commercial (per name): \$ 0.25~~
  - ~~20-7. Mailing list labels (per name): \$ 0.30~~
  - ~~21-8. Copy of statutes or rules, each: \$ 5.00~~

**ARTICLE 3. EDUCATION, SUPERVISION, AND DELEGATION STANDARDS FOR REGISTRATION OF MEDICAL ASSISTANTS BY HOMEOPATHIC PHYSICIANS**

**R4-38-301. Definitions**

- A.** ~~“Assists” means performing delegated procedures within the homeopathic physician’s practice according to a written job description for which the Board has approved the assistant’s educational program and the supervising physician’s practice experience.~~
- B.** ~~“Commensurate with the assistant’s education and training” means that the assistant’s education and training in either a formal or practical educational program meets Board standards for the specific technical functions in the job description for which the supervising physician makes application.~~
- C.** ~~“Delegated procedures” refers to technical functions which are specifically outlined in the assistant’s written job description and which may include any of the following:~~
- ~~1. Assisting in information gathering functions, including history taking, measuring patients’ vital signs, measuring patients’ neuromuscular and electro-physiologic responses, specimen collection, and phlebotomy;~~
  - ~~2. Assisting in information processing functions including scoring of questionnaires, plotting of laboratory, physical, and chemical measurements, and symptom repertorization using standard homeopathic references or software programs;~~
  - ~~3. Assisting in or administering patient treatments by physical, hygienic, including colonic irrigation; and electrical therapy modalities as ordered by the physician;~~
  - ~~4. Assisting in delivery of drugs, devices, and natural substances to patients;~~
  - ~~5. Assisting in patient health care education and counseling including nutritional and stress management counseling;~~
  - ~~6. Assisting in explaining and reinforcing home follow up advice for physician prescribed homeopathic therapy programs; and~~
  - ~~7. Administration of skin tests and injections ordered by the physician.~~
- D.** ~~“Educational program approved by the Board” means a formal educational program or a practical educational program which is recognized by the Board as sufficient to qualify a Medical Assistant to perform specific delegated procedures under the supervision of a physician.~~
- E.** ~~“Formal educational program” means an organized course of study or training program in a technical field which includes didactic and supervised clinical experience and whose curriculums are approved by the Board.~~
- F.** ~~“Physical medicine modalities” means hydrotherapy, including colonic irrigation; application of heat and cold; diathermy; electro galvanic stimulation; ultrasound; traction; massage therapies; neuromuscular re-education procedures; application of transectaneous nerve stimulator units; and the use of electronic micro-current devices for stimulation of nerve and muscle tissue.~~
- G.** ~~“Practical educational program” means a course of study organized and directed by the supervising physician who conducts or verifies the didactic portion of the training and personally oversees or verifies the clinical experience portion of the training while the assistant is on the job.~~
- H.** ~~“Under the supervision of” means that:~~
- ~~1. The supervising physician is physically on-site at the practice location during the day the delegated procedures are performed;~~

Notices of Proposed Rulemaking

2. The supervising physician provides specific written orders for the medical Assistant for any treatment functions delegated to the medical assistant;
3. The medical assistant documents the performance of the delegated function in the office medical record by legible and identifiable notes;
4. An office, laboratory, or therapy note is prepared which is signed by the assistant and countersigned by the supervising physician within one week of the date of service for each visit in which a medical assistant performs delegated procedures;
5. The supervising physician has met Board approved clinical experience standards as set forth in R4-38-303(B) or R4-38-305(B), for the procedure approved for delegation to the medical assistant;
6. All the delegated procedures and treatments could be legally performed by the supervising physician; and
7. The supervising physician ensures that there is regular discussion with each medical assistant with regard to individual patient's responses to treatments or treatment programs delegated to that medical assistant.

The definitions in A.R.S. §§ 32-2901, 32-2933, and 32-2951 apply to this Article. Additionally, in this Article:

"Advertisement" means a written, oral, or electronic communication, including a business card or telephone directory listing, which is intended, directly or indirectly, to inform a person that a medical assistant provides a homeopathic procedure.

"Delegated procedure" means a technical homeopathic function that a medical assistant is qualified to perform and is specified in the medical assistant's Board-approved job description.

"Electrodermal testing device" means an instrument that is FDA-registered for the measurement of galvanic skin response.

"FDA" means the United States Food and Drug Administration.

"Homeopathic modality" means a method of diagnosis and treatment listed in the definition of the practice of homeopathic medicine at A.R.S. § 32-2901.

"Homeopathic repertorization" means to assess an individual's symptoms and use a reference to determine the appropriate homeopathic remedy for each symptom.

"Homeotherapeutic instruction" means education regarding the signs, symptoms, and physical findings that lead to the recommendation of a particular substance or therapeutic procedure.

"Hour" means 60 minutes.

"Kinesiology" means the scientific study of human movement.

"Patient record" means a medical record, as defined at A.R.S. § 12-2291, which is maintained as required under A.R.S. § 32-2936.

**R4-38-302. Requirements to Supervise a Medical Assistant; Standards for Supervision**

- A.** Before a homeopathic physician applies to the Board to register a medical assistant under R4-38-306, the homeopathic physician shall be licensed by the Board.
- B.** When a homeopathic physician applies to the Board to register a medical assistant, the homeopathic physician shall submit evidence that the homeopathic physician is qualified in the homeopathic modality that will be delegated to the medical assistant.
- C.** The Board shall find that a homeopathic physician is qualified in the homeopathic modality that will be delegated to a medical assistant if the homeopathic physician submits with the application to register the medical assistant certificates of attendance or other evidence that the homeopathic physician completed postgraduate coursework in the delegated homeopathic modality equal to the number of hours specified in R4-38-103(C)(1) through (6).
- D.** A homeopathic physician who supervises a registered medical assistant shall:
  1. Perform and document in the patient record the following for each patient for whom the medical assistant performs a delegated procedure:
    - a. Initial evaluation.
    - b. Treatment planning including any modification in the treatment plan, and
    - c. Re-evaluation of the patient's health status every fourth visit and at the time of discharge or termination of treatment.
  2. Respond within 15 minutes to a telephone call or other telecommunication from a medical assistant who provides a delegated procedure when the homeopathic physician is not physically present at the location at which the medical assistant is working;
  3. Ensure that a note is placed in the patient record every time the medical assistant seeks direction from the homeopathic physician regarding a delegated procedure performed for a patient;
  4. Ensure that the medical assistant performs only delegated procedures that are in the medical assistant's Board-approved job description;
  5. Provide a specific written order for any procedure delegated to and performed by the medical assistant for a patient;



6. Ensure that the specific written order required under subsection (D)(5) is placed in the patient record on the day that the medical assistant performs the delegated procedure;
7. Ensure that the medical assistant makes a contemporaneous note in the patient record of any procedure performed by the medical assistant for the patient;
8. Review the medical assistant notes placed in patient records within one week after each note is made and initial and date each note; and
9. Review with the medical assistant a patient's response to treatments performed by the medical assistant:
  - a. Within three months of the initial visit,
  - b. After any significant change in the initial treatment plan, and
  - c. After an adverse reaction.

**~~R4-38-303. Supervision of Formally Trained Assistants~~**

- ~~A. In order for a homeopathic physician to delegate specified homeopathic diagnostic and therapeutic procedures, as described in this rule, his or her qualifications shall be approved by the Board.~~
- ~~B. Approval may be granted by the Board after its review of the physicians' educational and practice experience in the specified delegated procedure. Such experience may include the completion of 25 hours of homeopathic post graduate education in the specified delegated procedure. Certificates of attendance and completion of such courses shall be submitted with the application form supplied by the Board.~~
- ~~C. Physicians may submit documentation of practice experience substantially equivalent to post graduate training in the specified Homeopathic modalities for individual approval by the Board.~~
- ~~D. Supervision of the medical assistants performing general medical office procedures recognized as common within the allopathic and osteopathic community does not require any additional experience and training beyond that contained in the requirements for licensure as a homeopathic physician.~~

**~~R4-38-302. R4-38-303. Approved Board Standards for a Formal Educational Programs Education Program~~**

- ~~A. Physicians requesting that their assistants be approved for one or more of the following specified delegated procedures on the basis of a formal educational program shall submit evidence that the assistant has successfully completed the specified educational program:~~
  - ~~1. General medical office procedures require completion of a course of instruction and training in a public or private school, college, or technical institute designed to place graduates in positions as General Office Medical Assistants. Such course of instruction shall consist of a minimum of the following:~~
    - ~~a. 240 classroom hours in medical secretarial skills;~~
    - ~~b. 240 classroom hours in back office assisting; and~~
    - ~~c. 320 hours of supervised clinical experience.~~
  - ~~2. Neuromuscular Integration therapy procedures:~~
    - ~~a. Completion of a course of instruction and training in a public or private school, college, or technical institute designed to place graduates in positions as qualified Physical Therapy Assistants in a United States jurisdiction. Such course of instruction shall consist of a minimum of the following:~~
      - ~~i. 1200 classroom hours in hands on 22 techniques, sciences, theories and principles;~~
      - ~~ii. 720 hours of supervised clinical experience; and~~
      - ~~iii. 580 classroom hours in general studies; or~~
    - ~~b. Completion of a professional program in massage therapy consisting of 1000 hours of didactic and clinical training or examination and certification sponsored by the American Massage Therapy Association; or~~
    - ~~c. Completion of a professional training or certification program in Feldenkrais, Rolfing, Hellerwork, Trager, Orthobionomy, Shiatsu, Reiki, Polarity, Jin Shin Jyutsu, or similarly organized training program of at least 1000 hours of technical training and clinical supervision;~~
  - ~~3. Acupuncture therapy procedures: completion of a didactic and clinical training program in acupuncture and examination and certification by the National Commission for the Certification of Acupuncturists (NCCA);~~
  - ~~4. Homeopathic repertorization procedures: completion of at least 180 hours of a formal educational program as set forth in R4-38-301(E) or preceptorship in a homeotherapeutics program approved by the Board including those certified by the Council for Homeopathic Certification; or~~
  - ~~5. Nutritional counseling procedures require completion of one of the following:~~
    - ~~a. Board approved formal educational program in clinical nutrition consisting of 500 hours or more of training; or~~
    - ~~b. Certification by the International University for Nutrition Education.~~
- ~~A. The Board establishes the following minimum standards for a formal education program in the subject area specified:~~
  - ~~1. Neuromuscular integration therapy procedures. A formal education program in neuromuscular integration therapy procedures shall:~~
    - ~~a. Be provided at a public or private school, college, or technical institute and designed to qualify a graduate as a physical therapist assistant in a U. S. jurisdiction; or~~

Notices of Proposed Rulemaking

- b. Consist of 750 hours of educational training and 250 hours of supervised clinical experience in Feldenkrais, Rolfing, Hellerwork, Trager, Orthobionomy, Shiatsu, Reiki, Polarity, Jin Shin Jyutsu, or a similar therapy;
  - 2. Homeopathic repertorization procedures. A formal education program in homeopathic repertorization procedures shall:
    - a. Be provided at a public or private school, college, or technical institute;
    - b. Be designed to train a graduate in classical homeopathy; and
    - c. Consist of the following:
      - i. 200 hours of education training; and
      - ii. 100 hours of supervised clinical experience; and
  - 3. Nutrition counseling and orthomolecular therapy procedures. A formal education program in nutrition counseling and orthomolecular therapy procedures shall:
    - a. Be provided at a public or private school, college, or technical institute; and
    - b. Consist of the following:
      - i. 500 hours of education training, and
      - ii. 175 hours of supervised clinical internship; or
    - c. Result in certification by the Clinical Nutrition Certification Board.
- B.** ~~Physicians proposing job descriptions for assistants in general medical or homeopathic practices and procedures not herein specified shall submit evidence that is satisfactory to the Board that the assistant has completed a degree of~~ If a homeopathic physician applies to register as a medical assistant an individual who completed a formal education program in a homeopathic modality other than those listed in subsection (A), the homeopathic physician shall submit to the Board evidence that the program consists of educational training and clinical supervision that is substantially equivalent to the formal educational requirements in the above areas specified in R4-38-103(C).

**R4-38-304. Approved Practical Educational Programs Education Program; Renewal**

- ~~**A.** Unlicensed persons who have not completed a Board approved formal educational program in delegated office procedures may receive on-the-job training and clinical supervision in a practical educational program conducted by the supervising homeopathic physician.~~
- ~~**B.A.** A homeopathic physician who wishes to provide on-the-job practical education to an unregistered individual shall apply for and obtain Board approval from the Board in order to conduct a~~ of a practical educational education program specifically designed for the unregistered individual before providing the practical education program. Separate written Board approval shall be obtained for each medical assistant that participates in the practical educational program.
- B.** The Board's approval of a practical education program is specific to the unregistered individual being trained. A homeopathic physician who wishes to provide on-the-job practical education to more than one unregistered individual shall apply for and obtain Board approval of a practical education program for each unregistered individual.
- C.** ~~Request for approval for~~ The Board shall approve a practical training education program shall be submitted on a form supplied by the Board and shall contain only if the program meets one of the following minimum standards:
- 1. A written training protocol for the procedure or procedures in question;
  - 2. A detailed description of the physician's background and expertise in the procedure or procedures being taught;
  - 3. A proposed job description which specifies how the assistant will eventually perform those procedures delegated by the supervising physician and within the supervising physician's practice; and
  - 4. Documentation of any previous on-the-job or formal training of the assistant.
- 1. Neuromuscular integration therapy procedures. For each therapy listed in R4-38-303(A)(1)(b) in which practical education is provided, 375 hours of instruction and 125 hours of supervised clinical experience;
  - 2. Homeopathic repertorization procedures.
    - a. If performed with an electrodermal testing device or kinesiology, 180 hours of homeotherapeutic instruction including at least 45 hours of supervised clinical experience;
    - b. If performed without an electrodermal testing device or kinesiology, 200 hours of homeotherapeutic instruction and 100 hours of supervised clinical experience;
  - 3. Nutrition counseling and orthomolecular therapy procedures, 500 hours of instruction and 170 hours of supervised clinical experience; and
  - 4. Other homeopathic procedure. Hours of instruction and supervised clinical experience that the Board determines is sufficient to enable the individual trained to perform as a medical assistant in a safe and competent manner.
- ~~**D.** Training protocols submitted for approval shall meet the following standards for the specified job descriptions:~~
- 1. ~~General medical job descriptions: completion of 400 hours of didactic instruction and clinical supervision;~~
  - 2. ~~Job descriptions delegating acupuncture treatments for medical and pain management applications: completion of the academic portion of a course of study offered by a member institution of the National Association of Colleges of Acupuncture and Oriental Medicine, a World Health Organization designated training facility for acupuncture, or an equivalent approved by the Board, plus a minimum of 500 hours of clinical supervision by a qualified supervising physician;~~

Notices of Proposed Rulemaking

3. Job descriptions delegating acupuncture treatments for drug detoxification purposes: completion of a course of training in acupuncture drug detoxification consisting of a minimum of 70 hours in both diagnostic and supervised apprenticeship conducted by the National Acupuncture Detoxification Association (NADA) and approved by the Board, plus clinical supervision of a least 160 hours by a qualified supervising physician.
  4. Job descriptions delegating information gathering using electro-diagnostic procedures and devices: completion of a didactic course of study of at least 35 hours in electro-diagnostic methodology, plus at least 160 hours of clinical supervision by a qualified supervising physician;
  5. Job descriptions delegating physical medicine treatment modalities require completion of one of the following:
    - a. Technical massage course of at least 50 hours of study and certification by any Arizona jurisdiction; or
    - b. On-the-job training of at least 50 hours in a specified physical medicine modality including didactic instruction and clinical supervision; or
  6. Job descriptions delegating homeopathic repertorization procedures: completion of at least 180 hours in homeotherapeutics including at least 40 hours of didactic instruction and at least 40 hours of clinical supervision.
- D.** To obtain the Board's approval of a practical education program, the homeopathic physician who will provide the training shall:
1. Provide the following information on a form obtained from the Board:
    - a. Name of the unregistered individual for whom the practical education program is designed;
    - b. Residential address and telephone number of the unregistered individual;
    - c. Social Security number of the unregistered individual;
    - d. A training protocol that identifies the:
      - i. Procedure in which the unregistered individual will be trained;
      - ii. Subject matter on which instruction will be provided and the hours devoted to each subject; and
      - iii. Manner in which supervised clinical experience will be provided;
    - e. Address at which the practical education program will be conducted;
    - f. Name of the homeopathic physician who will provide the practical education; and
    - g. License number of the homeopathic physician who will provide the practical education;
  2. Attach the following to the form required under subsection (D)(1):
    - a. Documentation of any previous on-the-job training or formal education completed by the unregistered individual for whom the practical education program is designed;
    - b. Documentation that the homeopathic physician is qualified in the procedure in which training will be provided. For the procedures in which training may be provided, the Board shall accept certificates of attendance or other evidence that the homeopathic physician completed postgraduate course work in the homeopathic procedure to be taught equal to the number of hours specified in R4-38-103(C)(1) through (6).
  3. Sign the application form affirming that the homeopathic physician shall:
    - a. Ensure that the unregistered individual being trained is not held out or represented to be a medical assistant;
    - b. Ensure that the unregistered individual is supervised at all times;
    - c. Ensure that the unregistered individual is assigned only tasks that the unregistered individual can perform safely and competently;
    - d. Ensure that the unregistered individual is not registered by the Board as a medical assistant before completing the practical education program; and
    - e. Provide the unregistered individual with a certificate or other evidence of completion when the unregistered individual completes the Board-approved practical education program. The homeopathic physician shall include the following information on the certificate or other evidence of completion:
      - i. Name of the unregistered individual completing the practical education program;
      - ii. Name and license number of the homeopathic physician who provided the practical education program;
      - iii. Date on which Board approval was obtained for the practical education program;
      - iv. Dated signature of the homeopathic physician affirming that the practical education program completed met the standards established by the Board.
- E.** The Board's approval of a practical education program is valid for one year. If the homeopathic physician who obtained approval of the practical education program does not complete the program within one year, the homeopathic physician may renew the program by submitting to the Board a letter affirming continued compliance with this Section and paying the fee listed in R4-38-105.

**R4-38-305. Supervision of Practical Educational Programs Minimum Requirements for Registration of a Homeopathic Medical Assistant**

- A.** The Board shall review and approve the qualifications of a physician seeking to conduct a practical educational program.
- B.** A physician shall document on the request for approval his or her background in formal training and his or her experience in the particular procedure in which the medical assistant will be trained. The following levels of training are required for a physician to conduct a training program in the specified delegated procedures:

Notices of Proposed Rulemaking

1. General medical assistant training program: two years of active practice following completion of M.D. or D.O. post-graduate education;
2. General Acupuncture therapeutics practical educational program: 220 hours of post graduate training in medical acupuncture and two years of clinical experience in acupuncture therapeutics;
3. Practical educational program in Acupuncture Detoxification procedures:
  - a. A fellowship or certification in addiction medicine plus 25 hours of post graduate education, approved by the Board, in acupuncture therapy for drug detoxification; or
  - b. Two years of documented, Board approved experience in conducting clinical addiction treatments or therapy plus 25 hours of post graduate education, approved by the Board, in acupuncture therapy for drug detoxification;
4. Practical educational program for an assistant performing electro-diagnostic procedures: completion of at least 80 hours of formal training in electro diagnosis and two years of clinical experience in electro diagnostic methodology.
5. Practical educational program in specified aspects of neuromuscular integration therapies or physical medicine modalities:
  - a. Completion of a residency or fellowship in physical medicine;
  - b. At least 220 hours of post graduate training in neuromuscular integration therapies; or
  - c. Two years of clinical experience in medical orthopedies, physical medicine modalities, osteopathic manipulative medicine, chiropractic manual therapy, or an equivalent neuromuscular integration therapy, such as those listed in R4-38-302.(A)(2)(c); or
6. Practical educational program in homeopathic repertorization:
  - a. Five years of clinical practice and 200 hours of continuing medical education in classical homeotherapeutics; or
  - b. Diplomate status granted by the American Board of Homeotherapeutics or by the British Institute of Homeopathy.

**A.** The Board shall approve the registration of an individual as a homeopathic medical assistant only if the homeopathic physician who will supervise the individual submits evidence that the individual:

1. Completed a formal education program that meets the standards at R4-38-303; or
2. Completed a practical education program that is approved by the Board under R4-38-304.

**B.** The Board shall approve the registration of an individual as a homeopathic medical assistant only if the individual is employed and supervised by a homeopathic physician who submits the evidence required under R4-38-302(C) showing that the homeopathic physician is qualified in the homeopathic modality in which the individual will work.

**~~R4-38-308. R4-38-306. Registration Procedures for Application to Register a Medical Assistants and Practical Educational Programs Assistant~~**

**A.** ~~The supervising If a homeopathic physician wishes to employ as a medical assistant an individual who meets one of the minimum requirements listed in R4-38-305(A), shall register each medical assistant the homeopathic physician shall with submit to the Board an application to register the individual within two weeks of employment by submitting an application on a form supplied by the Board which documents the following:~~

1. ~~The medical assistant's proposed job description;~~
2. ~~The medical assistant's educational qualifications for the proposed delegated procedures;~~
3. ~~A complete curriculum vitae of the medical assistant; and;~~
4. ~~The supervising physician's qualifications to supervise the proposed delegated procedures after employing the individual.~~

**B.** ~~The application shall be accompanied by certificates of participation in training; proficiency certifications by relevant Boards, associations, or societies; individual letters of documentation of preceptorships; or letters confirming on the job training by the parties who supervised such training.~~

**B.** To register an individual who meets one of the standards at R4-38-305(A) as a medical assistant, a homeopathic physician shall submit to the Board the following information on a form obtained from the Board:

1. About the individual being registered.
  - a. Name;
  - b. Residential address;
  - c. Residential and mobile telephone numbers;
  - d. E-mail address;
  - e. Social Security number;
  - f. Address of the clinic at which the individual will perform delegated procedures;
  - g. Telephone and fax numbers of the clinic at which the individual will perform delegated procedures;
  - h. Statement of whether the individual completed a formal education program that meets the standards at R4-38-303 or a practical education program approved by the Board under R4-38-304;
  - i. Statement of whether the individual is or ever has been licensed as a health care practitioner in a U.S. jurisdiction in a profession subject to regulation by licensure in Arizona and if so:
    - i. A list of all jurisdictions in which the individual is or ever has been licensed as a health care professional.

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**Notices of Proposed Rulemaking**

- and
      - ii. A list of the health care professions in which the individual is or ever has been licensed;
    - j. Statement of whether the individual has ever been charged with or convicted of any criminal act and if so, the nature of the criminal act, date, jurisdiction, and current status;
    - k. Statement of whether the individual is a U.S. citizen and if not, whether the individual is an alien qualified to work in the U.S.; and
    - l. Dated signature of the individual being registered affirming that the information provided under subsections (B)(1)(a) through (k) is true, correct, and complete;
  - 2. Description of the homeopathic procedures and other duties that will be delegated to the individual being registered; and
  - 3. About the homeopathic physician:
    - a. Name,
    - b. License number, and
    - c. Dated signature of the homeopathic physician affirming that:
      - i. All information provided, including the materials listed in subsection (C), is true, correct, and complete; and
      - ii. The homeopathic physician has reviewed the standards for supervision listed at R4-38-302 and agrees to comply with the standards.
- ~~C. Job descriptions or functions other than generally recognized homeopathic office procedures specified in these rules will be subject to individual review and approval by the full Board.~~
- ~~C. In addition to the form required under subsection (B), a licensed homeopathic physician applying to register an individual as a medical assistant shall attach the following materials to the form:~~
  - 1. A curriculum vitae or resume of the individual being registered;
  - 2. If the individual being registered completed a formal education program that meets the standards at R4-38-303, an official transcript from the school, college, or technical institution that provided the program;
  - 3. If the individual being registered completed a practical education program approved by the Board under R4-38-304, a copy of the certificate or other evidence of completion required under R4-38-304;
  - 4. If the individual being registered has ever been charged with or convicted of any criminal act, a certified copy of the original charging document and a copy of all court documents relating to the individual's current status;
  - 5. If the individual being registered is not a U.S. citizen, a copy of the document that shows the individual is qualified to work in the U.S.;
  - 6. The evidence required under R4-38-302(C) showing that the homeopathic physician is qualified in the homeopathic modality to be delegated; and
  - 7. The fee required under R4-38-105.
- ~~D. Multiple homeopathic physicians who work in the same medical practice may apply jointly to register one individual as a medical assistant. If multiple homeopathic physicians apply jointly to register one individual as a medical assistant, each shall:~~
  - 1. Provide the information and affirmation required under subsection (B)(3); and
  - 2. Provide the evidence required under subsection (C)(6).
- ~~E. A homeopathic physician who has registered a medical assistant may amend the medical assistant's job description provided under subsection (B)(2). To amend the job description of a registered medical assistant, the homeopathic physician shall submit to the Board:~~
  - 1. A new job description that identifies the homeopathic procedures and other duties that will be delegated to the registered medical assistant;
  - 2. The documentation required under subsection (C)(2) or (3) showing that the registered medical assistant is qualified to perform the procedures and other duties to be delegated; and
  - 3. The evidence required under subsection (C)(6) showing that the homeopathic physician is qualified in the homeopathic modality to be delegated.
- ~~D. Upon approval of the application by the Board, the medical assistant shall perform his or her duties while wearing a clearly labeled name tag stating the designation, "medical assistant", and the specific modality or class of expertise.~~
- ~~E. A medical assistant's registration shall be valid until the end of the calendar year in which the application was approved. This registration shall be deemed valid by the Board for an additional two years as long as the supervising physician remits annual payment of the renewal fee concurrent with his or her own annual physician's license renewal. A registration shall expire either:~~
  - 1. Upon termination of the medical assistant's employment by the supervising physician;
  - 2. Upon nonpayment by the supervising physician of the renewal extension fees by their due dates; or
  - 3. On December 31st of the second year subsequent to the year that the registration was initially approved.
- ~~F. Once a medical assistant's registration has expired, the employing supervising physician shall submit a complete and updated registration application and initial registration fee for re-approval by the Board.~~
- ~~G. Each physician proposing to conduct an on-the-job or practical educational program for medical assistants shall apply for~~

Notices of Proposed Rulemaking

such approval within two weeks of employment of the medical assistant by submitting an application on a form supplied by the Board. This form is in addition to the medical assistant registration form.

~~H.~~ Each physician who continues to actively train medical assistants shall renew the practical education training program registration annually by submitting an updated application for each of his or her current training protocols.

~~R4-38-310.~~ **R4-38-307. Additional Requirements to Register a Previously Licensed Practitioners Health Care Practitioner**

A. Medical assistant status with supervision by an Arizona licensed homeopathic physician is not intended to allow An individual who is or ever has been licensed as a health care practitioner who would otherwise be in a U.S. jurisdiction in a profession subject to regulation by licensure in Arizona this state shall not attempt to practice his or her the health care profession outside of that profession's formal this state's regulatory authority by obtaining registration as a medical assistant under this Chapter.

B. Homeopathic physicians proposing to employ A homeopathic physician may register as a medical assistant a person an individual previously licensed or subject to professional regulation as a health care professional in a U.S. jurisdiction, only if the individual meets one of the standards in R4-38-305(A). To register as a medical assistant an individual previously licensed or subject to professional regulation as a health care professional in a U.S. jurisdiction, a homeopathic physician shall document and submit for approval to the Board on forms supplied by the Board the following information: the application form and materials required under R4-38-306(B) and (C).

1. A complete curriculum vitae of the applicant in question; and

2. An affidavit from the applicant, stating the reasons for which the applicant seeks employment as a homeopathic medical assistant rather than as a licensed Arizona health care provider in accordance with his or her professional training.

C. In addition to complying with subsection (B), a homeopathic physician applying to register as a medical assistant an individual previously licensed or subject to professional regulation as a health care professional in a U.S. jurisdiction shall submit to the Board an affidavit from the individual being registered stating the reason for which the individual seeks employment as a homeopathic medical assistant rather than as a licensed Arizona health care practitioner in accordance with the individual's professional training.

~~C.D.~~ The Board shall conduct a background check an investigation of the applicant's individual's previous health care professional practice in all jurisdictions previously in which the individual is or ever has been licensed. The Board shall ensure that the investigation is sufficient to determine if whether the applicant individual has or had ever engaged in unprofessional conduct, or is or was deemed incompetent, or was physically or mentally unable to safely engage in the rendering of provide health care services safely.

~~D.E.~~ The Board shall conduct a personal interview with the supervising homeopathic physician and the proposed assistant individual being registered to determine whether:

1. the accuracy of the The proposed job description of homeopathic procedures and delegated duties provided under subsection (B) is accurate,

2. The supervisory relationship between the homeopathic physician and individual will not constitute a violation of A.R.S. § 32-2933(11), and an understanding by the

3. The homeopathic physician of his or her understands the supervisory responsibilities, and by the

4. The proposed assistant of his or her individual being registered understands the limitations under these rules this Article and applicable statutes.

**R4-38-308. Renewal of Medical Assistant Registration**

A. The registration of a medical assistant expires:

1. When the medical assistant ceases to be employed by the homeopathic physician who registered the medical assistant; or

2. When the supervising homeopathic physician fails to comply with subsection (B) by December 31.

B. To renew the registration of a medical assistant, on or before December 31, the supervising homeopathic physician shall submit to the Board:

1. A renewal application form, which is available from the Board, and provide the following information:

a. About the homeopathic physician.

i. Name;

ii. Name of medical facility at which the homeopathic physician is employed;

iii. Address of the medical facility;

iv. Telephone and fax numbers of the medical facility;

v. E-mail address of the homeopathic physician; and

vi. Dated signature of the homeopathic physician affirming that the information provided is true, correct, and complete;

b. About the medical assistant.

i. Name;

Notices of Proposed Rulemaking

- ii. Residential address;
- iii. Residential telephone number;
- iv. Homeopathic procedures delegated to the medical assistant;
- v. Practice locations at which the medical assistant works;
- vi. Statement of whether the medical assistant has been arrested or charged with a criminal act during the last year; and
- vii. Dated signature of the medical assistant affirming that the information provided is true, correct, and complete.

2. The fee specified in R4-38-105 for annual renewal of a medical assistant registration.

**C.** When a medical assistant's registration expires, the supervising homeopathic physician may register the medical assistant again by complying with R4-38-306.

**R4-38-306. R4-38-309. Restrictions on Delegated Procedures**

A homeopathic physician may shall not delegate the following procedures to an unlicensed person a registered medical assistant:

- 1. Psycho-therapeutic procedures, including individual and or group psychotherapy, clinical hypnosis, or other behavioral health interventions subject to independent regulation in Arizona this state; or
- 2. The dispensing of Dispensing drugs, homeopathic agents, herbal products, natural products, and or therapy devices when if the supervising homeopathic physician has not registered with obtained from the Board to include a dispensing privileges as part of the supervising physician's practice permit.

**R4-38-309. R4-38-310. Registration not Transferable; Multiple Supervisors Employers**

**A.** A medical assistant employed by more than one homeopathic physician shall have his or her job description registered with the Board for each place of employment.

**B-A.** Registration The registration and job description approval of a medical assistant are not transferable upon change in employment, and a new application shall be made by the new employer upon hiring a new medical assistant from one employing homeopathic physician to another or from one medical assistant to another.

- 1. If a medical assistant changes from one employer to another, the new employer shall apply to the Board to register the medical assistant;
- 2. If a homeopathic physician employs a new medical assistant, the homeopathic physician shall apply to the Board to register the new medical assistant.

**B.** A medical assistant may be employed by more than one homeopathic physician.

- 1. If the multiple homeopathic physicians by whom a medical assistant is employed are part of the same medical practice, they shall apply jointly under R4-38-306(D) to register the medical assistant;
- 2. If the multiple homeopathic physicians by whom a medical assistant is employed are not part of the same medical practice, each shall apply under R4-38-306 to register the medical assistant.

**C.** An employing physician may, at the time of initial registration, or as an addendum to a current registration, add to the medical assistant's job description the name and qualifications of one or more alternative supervising physicians within the employing physician's medical group, or who provides on-site coverage for the supervising physician during periods of absence who will insure proper supervision and documentation of the performance of the delegated procedures by the medical assistant.

**R4-38-311. Deadlines for Compliance with Rules Responsibilities of a Registered Medical Assistant**

**A.** Physicians employing medical assistants as of the effective date of this rule shall complete the initial registration within six months, or as of the annual renewal date for the supervising physician's license, whichever comes first.

**B.** Any person employed as a medical assistant as of the effective date of this rule shall complete all training required by his or her job description category within 12 months of the effective date of this rule. His or her supervising physician shall document the medical assistant's completion of this training.

**C.** Within three months of the effective date of this rule, all physicians conducting on-the-job training as part of a practical educational program shall submit the necessary documentation in order to receive Board approval to conduct practical educational training in the various procedures included in their assistant's job descriptions.

**D.** Following initial registration, renewals will be due concurrent with the next and each subsequent renewal of the homeopathic physician's license.

After approval by the Board, a registered medical assistant shall:

- 1. Perform only the homeopathic procedures and duties specified under R4-38-306(B);
- 2. Wear a clearly labeled name tag stating the designation "medical assistant" and the specific homeopathic modality in which the registered medical assistant is approved to work; and
- 3. Ensure that any advertisement includes:
  - a. The designation "medical assistant,"
  - b. The name of the supervising physician, and

- c. A clear indication of the supervised nature of the delegated procedures provided.

**~~R4-38-307, R4-38-312, Unprofessional Conduct~~**

The following conduct by a homeopathic physician who supervises a medical assistant in regard to the delegating of procedures to medical assistants is unprofessional conduct or practice which because the conduct does or might constitute a danger to the health, welfare, or safety of the patient or the public:

1. Failure of the physician to perform and document in the medical record the following for each patient on whom delegated procedures are performed:
  - a. Initial evaluation;
  - b. Treatment planning;
  - c. Periodic re-evaluation of the patient's health status; and
  - d. Termination or modification of the patient's treatment program at the conclusion of the prescribed course of therapy;
2. Obtaining board approval for ~~training a practical education program and/or~~ or supervision of Medical Assistants ~~the~~ medical assistant under false pretenses;
3. Failure Failing to adhere to the a standard for supervision criteria outlined listed in, R4-38-301(H)(1-7) and R4-38-309 R4-38-302(D);
4. Failure Failing to register and maintain registration for the medical assistant register or re-register medical assistants as required by these rules this Article;
5. Allowing assistants the medical assistant to perform procedures a procedure not specified in their the medical assistant's Board-approved job description; or
6. Failure to obtain approval by the Board to conduct a practical educational program to supervise Delegating a procedure to an unlicensed person individual who has is not yet completed a Board-approved registered with the Board or for whom the homeopathic physician has not obtained approval of a practical medical assistant medical educational education program;
6. Holding out or representing that an unregistered individual for whom the homeopathic physician is providing an approved practical education program is a medical assistant; and
7. Failing to ensure that the medical assistant complies with A.R.S. § 32-2933 and this Article.

**ARTICLE 4. ~~APPLICATION AND RENEWAL PROCESS; LICENSING TIME-FRAMES~~**

**~~R4-38-401. Definitions Licensing Time-frames~~**

In this Article, the following terms apply:

1. "Application period" means 365 days, starting from the date an initial application and fee are received in the Board office under A.R.S. § 32-2912(F)(3) and (4).
2. "Deficiency notice" means a written, comprehensive list of missing information or documents.
3. "Prescribed fee" means a fee permitted by A.R.S. § 32-2914 or prescribed by R4-38-104.
4. "Serve" means sending the document by U.S. mail to the last address provided by the applicant.
5. "Staff" means any person employed or designated by the Board to perform administrative tasks.

**A.** For each type of license or approval issued by the Board, the overall time-frame described in A.R.S. § 41-1072(2) is listed in Table 1.

**B.** For each type of license 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 on the date the Board receives an application.

1. If an application is administratively complete, the Board may send a notice of administrative completeness to the applicant. If the Board does not send a notice of administrative completeness to the applicant, the application is deemed administratively complete when the administrative completeness review time-frame listed in Table 1 expires.
2. If an application is not administratively complete, the Board shall send a deficiency notice to the applicant that specifies each piece of information or document needed to complete the application. If an applicant for licensure under A.R.S. § 32-2912 has not taken the examination required under A.R.S. § 32-2913, the Board shall specify in the deficiency notice the need to take the examination. Within the time provided in Table 1 for response to a deficiency notice, beginning on the mailing date of the deficiency notice, the applicant shall submit to the Board the missing information or document specified in the deficiency notice. The time-frame for the Board to finish the administrative completeness review is suspended from the date the Board mails the deficiency notice to the applicant until the date the Board receives the missing information or document.

**C.** For each type of license 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 on the date the Board sends written notice of administrative completeness to the applicant or the administrative completeness review time-frame listed in Table 1 expires. During the substantive review time-frame, an applicant shall complete the oral examination and interview required under R4-38-106. During the substantive review time-frame, the Board may make one comprehensive written request for additional information. Within the time provided in Table 1 for response to a comprehensive written request for additional information, beginning on the



mailing date of the comprehensive written request for additional information, the applicant shall submit to the Board the requested additional information. The time-frame for the Board to finish the substantive review is suspended from the date the Board mails the comprehensive written request for additional information to the applicant until the Board receives the requested additional information.

- D. The Board and the applicant may agree in writing to extend the period referenced in subsection (B)(2) or (C) upon written request by the applicant before the end of the period.
- E. Except as otherwise provided by law, if an applicant fails to provide information requested under subsection (B)(2) or (C) within the time provided in Table 1 or within the time as extended under subsection (D), the Board shall consider the application withdrawn under A.R.S. § 32-2912(F). To receive further consideration from the Board, an individual whose application is withdrawn shall apply again.
- F. Within the overall time-frame listed in Table 1, the Board shall:
  - 1. Deny a license or approval to an applicant if the Board determines that the applicant does not meet all of the substantive criteria required by statute and this Chapter; or
  - 2. Grant a license or approval to an applicant if the Board determines that the applicant meets all of the substantive criteria required by statute and this Chapter and the applicant pays any fee required under R4-38-105.
- G. If the Board denies a license or approval under subsection (F)(1), the Board shall provide a written notice of denial to the applicant that explains:
  - 1. The reason for the denial, with citations to supporting statutes or rules;
  - 2. The applicant's right to seek a fair hearing to challenge the denial;
  - 3. The time for appealing the denial; and
  - 4. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06.

**R4-38-402. Application; Initial License, Permit, or Registration Repealed**

- ~~A. An applicant shall submit to the Board office a signed, notarized application form, the contents of which are described by A.R.S. Title 32, Chapter 29 and 4 A.A.C. 38; any supporting information required; and the prescribed fee. Within 90 days after receipt of an initial application package, staff shall finish an administrative completeness review:
  - ~~1. If the application package is complete, staff shall serve the applicant with a written notice of administrative completeness informing the applicant of the date, time, and place of the Board's consideration of the application.~~
  - ~~2. If the application package is deficient, staff shall serve the applicant with a written deficiency notice. The 90-day time frame for staff to finish the administrative completeness review is suspended from the date the deficiency notice is served until all missing information is received.~~~~
- ~~B. Except as otherwise provided by law, the applicant shall provide all missing information within 180 days after the date on the deficiency notice, including information from other agencies, institutions, and persons. If the applicant has not already done so, the applicant shall take the written examination prescribed in R4-38-105 within the 180 days.~~
- ~~C. Within 90 days after receipt of a complete initial application package, the Board shall render a decision on the initial license, permit, or registration. The applicant shall undergo the oral examination and interview prescribed in R4-38-106 within the 90 days:
  - ~~1. If the Board finds the applicant meets the licensing requirements, the Board shall grant a license effective on the date that the Board receives the license issuance fee. If no license fee is required, the Board shall grant the permit or registration, which is effective on the date granted.~~
  - ~~2. If the Board finds the applicant does not meet the licensing requirements, the Board shall issue a written notice of denial of license.~~
  - ~~3. If the Board determines that there are substantive deficiencies in the application, the Board shall serve a single comprehensive written request for additional information.~~
  - ~~4. The 90-day substantive review time frame is suspended from the date on the request for additional information until the date that all requested information is received. Except as otherwise provided by law, the applicant shall provide the requested information within 60 days from the date on the notice.~~~~
- ~~D. If an applicant fails to provide the information required in subsections (B) and (C), the Board shall determine whether to deny the application or to consider it withdrawn under A.R.S. § 32-2912(F).~~

**R4-38-403. Application; Renewal of License, Permit, or Registration Repealed**

- ~~A. On or before the deadlines prescribed in A.R.S. § 32-2915(D), an applicant for renewal of a license, permit or registration shall submit to the Board a renewal application form, the contents of which are prescribed by A.R.S. Title 32, Chapter 29 and 4 A.A.C. 38, and the appropriate fees.~~
- ~~B. Within 30 days after receipt of a renewal application package, staff shall notify the applicant that the package is either complete or deficient:
  - ~~1. If the application package is complete, staff may serve the applicant with a written notice of administrative completeness. If the notice of administrative completeness is not served within 30 days after receipt of a renewal application package, the package is deemed complete.~~~~

**Notices of Proposed Rulemaking**

2. If the renewal application package is deficient, staff shall serve the applicant with a written deficiency notice. The 30-day time frame for staff to finish the administrative completeness review is suspended from the date the deficiency notice is served until all missing information is received.
- ~~C.~~ Except as otherwise provided by law, an applicant for renewal shall provide all missing information within 10 days after the date on the deficiency notice or by the applicable deadline prescribed in A.R.S. § 32-2915, whichever is later.
- ~~D.~~ Within 90 days of receipt of a complete renewal application package, the Board shall either issue a license renewed notice, showing the effective year of renewal, or conduct a substantive review of those renewal applications which, when considered alone or in conjunction with additional information, raise a concern that the applicant's conduct may be in violation of A.R.S. Title 32, Chapter 29. The Board shall investigate and resolve such a concern under A.R.S. § 32-2934.
- ~~E.~~ If an applicant for renewal fails to provide the missing information required by subsection (C), the license, permit, or registration expires effective January 1 of the renewal year for which the application was made and the Board shall not refund any renewal fees paid for that year.

**Table 1. Time-frames (in days)**

<u>Type of License</u>	<u>Overall Time-frame</u>	<u>Administrative Review Time-frame</u>	<u>Time to Respond to Deficiency Notice</u>	<u>Substantive Review Time-frame</u>	<u>Time to Respond to Request for Additional Information</u>
<u>License to practice homeopathic medicine</u>	<u>180</u>	<u>90</u>	<u>180</u>	<u>90</u>	<u>180</u>
<u>Annual license renewal</u>	<u>120</u>	<u>30</u>	<u>30</u>	<u>90</u>	<u>30</u>
<u>Locum tenens registration</u>	<u>120</u>	<u>30</u>	<u>30</u>	<u>90</u>	<u>30</u>
<u>Initial and annual permit to dispense drugs and devices</u>	<u>120</u>	<u>30</u>	<u>30</u>	<u>90</u>	<u>30</u>
<u>Registration of medical assistant</u>	<u>90</u>	<u>30</u>	<u>30</u>	<u>60</u>	<u>30</u>
<u>Renewal of registration of medical assistant</u>	<u>60</u>	<u>30</u>	<u>30</u>	<u>30</u>	<u>30</u>
<u>Approval of a practical education course for an unregistered individual</u>	<u>60</u>	<u>30</u>	<u>30</u>	<u>30</u>	<u>30</u>

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 19. DEPARTMENT OF HEALTH SERVICES  
VITAL RECORDS AND STATISTICS**

[R08-319]

**PREAMBLE**

- 1. Sections Affected**  
R9-19-413
- Rulemaking Action**  
Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statutes: A.R.S. §§ 36-104(3) and 36-132(A)(3)  
Implementing statutes: A.R.S. § 36-341
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**  
Notice of Rulemaking Docket Opening: 14 A.A.R. 3128, August 1, 2008
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Kathleen Phillips, Esq.  
Administrative Counsel and Rules Administrator

Notices of Proposed Rulemaking

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

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: phillik@azdhs.gov

or

Name: Patricia Adams, Office Chief

Address: Department of Health Services  
Office of Vital Records  
1818 W. Adams St.  
Phoenix, AZ 85007

Telephone: (602) 364-1225

Fax: (602) 364-1257

E-mail: adamsp@azdhs.gov

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

Laws 2004, Ch. 117, § 8, effective August 25, 2004, established the Vital Records Electronic Systems Fund consisting of 40 percent of the fees collected for searches, copies of registered certificates, certified copies of registered certificates, amending registered certificates, and correcting registered certificates. Laws 2006, Ch. 331, § 30 required the Department to amend the fees so that the monies deposited in the Vital Records Electronic Systems Fund generated no more than \$500,000 in fiscal year 2006-2007. The Department amended the fees effective January 1, 2007 in order to comply with Laws 2006, Ch. 331, § 30. Subsequent to fiscal year 2006-2007, the Department determined it must raise fees to offset the costs of issuing certified copies of registered certificates.

In addition to obtaining a certified copy of an individual's registered vital record from the State Registrar, a person may obtain a certified copy of an individual's registered vital record from local registrars (county health departments) if the person meets the eligibility requirements in R9-19-403, R9-19-404, R9-19-405, or R9-19-406 and the application requirements in R9-19-402. Although Laws 2006, Ch. 331, § 30 allows local registrars to set the fees the local registrar charges for certified copies of registered certificates, local registrars currently charge the fees established by the State Registrar in R9-19-413.

**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:**

Not applicable

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

The Department estimates that the following parties will bear costs for this rulemaking: individuals and non-Arizona government agencies requesting services and certificates from the Office of Vital Records. Individuals requesting searches, copies of registered certificates, certified copies of registered certificates, amendments to registered certificates, and corrections to registered certificates will bear increased costs because they will be paying increased fees for these services and certificates. However, most individuals only request one or two copies of certificates, so the increased costs will be minimal to the individuals. Since the Department fulfilled 166,386 requests for these services and certificates in fiscal year 2008, the cumulative impact of the increased fees would be a substantial increase in costs to the general public as a whole. Non-Arizona government agencies (e.g. law enforcement, Medicaid, social services) will also bear increased costs because they will be paying increased fees for certificates. While the impact on individual agencies is likely to be minimal to moderate due to the low number of certificates each individual agency would be requesting, the cumulative impact on all non-Arizona government agencies is likely to be moderate to substantial.

The Department estimates the following parties will benefit from this rulemaking: the Department and local registrars. The Department fulfilled 166,386 requests for searches, copies of registered certificates, certified copies of registered certificates, amendments to registered certificates, and corrections to registered certificates in fiscal year 2008, which generated \$1,539,380 in revenue. If the proposed fee increases had been implemented in fiscal year 2008,

Notices of Proposed Rulemaking

\$2,316,937 would have been generated, leading to \$777,557 in increased revenue. Thus, the Department will benefit from substantial increased revenue from the fee increases.

Laws 2006, Ch. 331, § 30 allows local registrars to set the fees the local registrar charges for certified copies of registered certificates. Local registrars will most likely increase their fees to match those charged by the Department. In fiscal year 2008, local registrars issued 205,745 birth certificates and 270,745 death certificates. Thus, if the local registrars increase their fees to match the Department's increased fees, they are likely to benefit from a substantial increase in revenue.

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

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

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: phillik@azdhs.gov

or

Name: Patricia Adams, Office Chief

Address: Department of Health Services  
Office of Vital Records  
1818 W. Adams St.  
Phoenix, AZ 85007

Telephone: (602) 364-1225

Fax: (602) 364-1257

E-mail: adamsp@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: November 10, 2008

Time: 2:00 p.m.

Location: 1740 W. Adams St., Room 309  
Phoenix, AZ 85007

Close of record: 5:00 p.m., November 10, 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. on November 10, 2008, to the individuals listed in items 4 and 9. Persons with a disability may request reasonable accommodations by contacting Elizabeth Roig at roige@azdhs.gov or (602) 364-3959. 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 19. DEPARTMENT HEALTH SERVICES  
VITAL RECORDS STATISTICS

ARTICLE 4. ACCESS TO RECORDS; COPIES; FEES

Section

R9-19-413. Fee Schedule

ARTICLE 4. ACCESS TO RECORDS; COPIES; FEES

**R9-19-413. Fee Schedule**

- A. Except as provided in subsection (C), the Department shall charge the following fees:
1. ~~Three~~ Five dollars for a noncertified copy of a certificate;
  2. ~~Nine~~ Fourteen dollars for each certified copy of a:
    - a. Birth certificate,
    - b. Fetal death certificate,
    - c. Certificate of birth resulting in stillbirth,
    - d. Death certificate, or
    - e. Certificate of no record;
  3. ~~Five~~ Ten dollars for each search for a putative father in the Putative Father Registry;
  4. ~~Three~~ Five dollars for each search to verify birth or death data for statistical, medical, research, or administrative purposes;
  5. ~~Nine~~ Fourteen dollars for each submission of a request:
    - a. For the registration of a:
      - i. Foreign birth certificate,
      - ii. Delayed birth certificate,
      - iii. Delayed fetal death certificate,
      - iv. Delayed certificate of birth resulting in stillbirth, or
      - v. Delayed death certificate;
    - b. To issue an amended birth certificate based on adoption; or
    - c. To register and issue a death certificate based on a court order; and
  6. ~~Twenty-two~~ Twenty-four dollars for each submission of a request to amend information on a:
    - a. Birth certificate based on a voluntary acknowledgement of paternity, sex change operation, chromosomal count, or court order; or
    - b. Death certificate ~~based on a court order~~.
  7. Twenty-four dollars for each submission of a request to correct information on a:
    - a. Birth certificate based on a voluntary acknowledgement of paternity, sex change operation, chromosomal count, or court order; or
    - b. Death certificate.
- B. In addition to the fees charged in subsection (A), the Department shall charge an additional surcharge of one dollar for each certified copy of a:
1. Registered birth certificate as required in A.R.S. § 36-341(B), or
  2. Registered death certificate as required in A.R.S. § 36-341(E).
- C. The Department shall not charge an agency as defined in A.R.S. § 41-1001 any fee in this Section.