NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

[R09-19]

PREAMBLE

1. Sections Affected **Rulemaking Action**
R4-23-205 Amend

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

Authorizing statutes: A.R.S. §§ 32-1904(A)(1), (2), (5), and (6)

Implementing statutes: A.R.S. §§ 32-1924. 32-1925, and 32-1931

3. The effective date of the rule:

March 7, 2009

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 14 A.A.R. 2376, June 13, 2008

Notice of Proposed Rulemaking: 14 A.A.R. 3474, September 5, 2008

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

Name:	Dean Wright, Compliance Officer
Address:	Board of Pharmacy 1700 W. Washington St., Suite 250 Phoenix, AZ 85007
Telephone:	(602) 771-2727
Fax:	(602) 771-2749
E-mail:	dwright@azpharmacy.gov

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

During the May 14-15, 2008 Board meeting, the Board discussed a projected revenue shortfall for FY2010, which begins on July 1, 2009. The Board staff explained that a new source of revenue is required by the November 2009 renewal period that will bring in at least $264,000. This can only be accomplished by cutting spending or by raising renewal fees for certain licenses and permits that are currently below the maximum amount as set by the legislature. Most of the targeted fees were last changed November 1, 2002 or have never been raised. The Board voted to increase revenue by raising fees for the following licenses and permits:

1. Pharmacist License Initial and Renewal currently at $145/ two years ($72.50 annually) will increase to $180/ two years ($90 annually) resulting in new annual revenue of $17.50 x 5,000 pharmacists = $87,500.
2. Pharmacy Permit Initial and Renewal currently at $400/ two years ($200 annually) will increase to $480/ two years ($240 annually) resulting in new annual revenue of $40 x 850 pharmacies = $34,000.
3. Nonprescription Drug Retail Permit, which have never been raised, are currently at: Category I - $100/ two years ($50 annually) and Category II - $200/ two years ($100 annually) will increase in Category I to $120/ two years ($10 annually) and Category II to $240/ two years ($20 annually) resulting in new annual revenue of $10 x 2,925 Category I permittees = $29,250 and $20 x 1,575 Category II permittees = $31,500.

4. Pharmacy Technician License Initial and Renewal currently at $50/ two years ($25 annually) will increase to $72/ two years ($22 annually) resulting in new annual revenue of $11 x 5,500 pharmacy technicians = $55,000.
5. Pharmacy Technician Trainee License Initial currently at $25/ two years ($12.50 annually) will increase to $36/ two years ($5.50 annually resulting in new annual revenue $5.50 x 4,000 pharmacy technicians trainees = $22,000.

These increases will provide a total annual revenue increase of $259,250 and leave an annual revenue shortfall of $4,750.

The rulemaking will include increases to the fees mentioned above in R4-23-205 (Fees). The rule will include format, style, and grammar necessary to comply with the current rules of the Secretary of State and the Governor's Regulatory Review Council.

The Board believes that amending this rule will benefit the public health and safety by establishing reasonable fees giving the Board needed additional revenue that will allow the Board to continue to operate and serve the pharmacy community and the public.

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

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

8. 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

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

The rule has a cost to the Board for the usual rulemaking-related costs, which are minimal. The rule is necessary to provide for the continued existence of the Board as a regulatory body. Because of the fund sweep by the Arizona Legislature in fiscal year 2008, the Board's fund was reduced to almost nothing. The Board has determined that a new source of revenue will be required by the November 2009 renewal period that results in at least $264,000 additional revenue. This can only be accomplished by cutting spending or by raising renewal fees for certain licenses and permits, which are currently below their maximum amount set by the legislature and last changed November 1, 2002 or never changed. The Board believes that the fee increases are the best action, because the alternative would require terminating over half the Board staff. Because the Category II Nonprescription Drug Retail Permit fee is already at the statutory maximum and cannot be increased with this rulemaking as indicated in item 10, the final rule will generate additional total new revenue of $227,750 annually for Board operations, which is $36,250 short of the target.

The amended rule will increase renewal costs for pharmacists, pharmacy technicians, pharmacy technician trainees, pharmacies, and nonprescription drug retailers. The impact on individual pharmacists will be minimal and amount to an annual increase of $17.50 or $35 per biennial renewal period. The impact on individual pharmacy technicians will be minimal and amount to an annual increase of $11 or $22 per biennial renewal period. The impact on pharmacy technician trainees will be minimal and amount to an annual increase of $5.50 or $11 per license period. The impact on individual pharmacies will be minimal and amount to an annual increase of $40 or $80 per biennial renewal period. The impact on individual nonprescription drug retailers in Category I will be minimal and amount to an annual increase of $10 or $20 per biennial renewal period.

The public, Board, pharmacists, pharmacy technicians, pharmacy technician trainees, nonprescription drug retailers, and pharmacies benefit from rules that are clear, concise, and understandable. The rule benefits the public health and safety by establishing reasonable fees giving the Board needed additional revenue that will allow the Board to continue to operate and serve the pharmacy community and the public.

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

There are no substantial changes in the final rule from the proposed rule. G.R.R.C. staff noted that the fee for Category II Nonprescription Drug Retail Permit is already at the statutory maximum allowed in A.R.S. § 32-1931(D)(1). The final rule does not include a change to subsection R4-205(D)(4)(b) from $200 to $240. The fee for a Category II Nonprescription Drug Retail Permit will remain at $200 biennially. There are minor changes to style, format, grammar, and punctuation requested by G.R.R.C. staff.

11. A summary of the comments made regarding the rule and the agency response to them:

A public hearing was held October 6, 2008. Janet Elliott representing the Arizona Community Pharmacy Committee attended the public hearing. Ms. Elliott provided written comment from the Arizona Community Pharmacy Committee voicing support for the rulemaking. The Board thanked the committee for their support. No other comments were received.

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

Not applicable

13. Any material incorporated by reference and its location in the rule:
None

14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:
No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 2. PHARMACIST LICENSURE

Section
R4-23-205. Fees

ARTICLE 2. PHARMACIST LICENSURE

R4-23-205. Fees

A. Licensure fees:
1. Pharmacist:
   a. Initial licensure [Prorated according to A.R.S. § 32-1925(B)]: ~~$145.~~ $180.
   b. Licensure renewal: ~~$145.~~ $180.
2. Pharmacy or graduate intern. Initial licensure: $50.
3. Pharmacy technician:
   a. Initial licensure [prorated according to A.R.S. § 32-1925(B)]: ~~$50.~~ $72.
   b. Licensure renewal: ~~$50.~~ $72.
4. Pharmacy technician trainee: ~~$25.~~ $36.

B. Reciprocity fee: $300.

C. Application fee: $50.

D. Vendor permit fees (Resident and nonresident):
1. Pharmacy: ~~$400~~ $480 biennially (Including hospital, and limited service).
2. Drug wholesaler or manufacturer:
   a. Manufacturer: $1000 biennially.
   b. Full-service drug wholesaler: $1000 biennially.
   c. Nonprescription drug wholesaler: $500 biennially.
3. Drug packager or repackager: $1000 biennially.
4. Nonprescription drug, retail:
   a. Category I (30 or fewer items): ~~$100~~ $120 biennially.
   b. Category II (more than 30 items): $200 biennially.
5. Compressed medical gas distributor: $200 biennially.
6. Compressed medical gas supplier: $100 biennially.

E. Other Fees:
1. Wall license.
   a. Pharmacist: $20.
   b. Pharmacy or graduate intern: $10.
   c. Pharmacy technician: $10.
   d. Pharmacy technician trainee: $10.
2. Duplicate of any Board-issued license, registration, certificate, or permit: $10.
3. Duplicate current renewal license: $10.

F. Fees are not refunded under any circumstances except for the Board's failure to comply with its established licensure or permit time-frames under R4-23-202 or R4-23-602.

G. Penalty fee. Renewal applications submitted after the expiration date are subject to penalty fees as provided in A.R.S. §§ 32-1925 and 32-1931.
1. Licensees: A fee equal to half the licensee's biennial licensure renewal fee under subsection (A) and not to exceed $350.
2. Permittees: A fee equal to half the permittee's biennial permit fee under subsection (D) and not to exceed $350.

NOTICE OF FINAL RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY
UNEMPLOYMENT INSURANCE

[R09-07]

PREAMBLE

1. Section Affected | **Rulemaking Action**
R6-3-1810 | Amend

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

Authorizing statutes: A.R.S. §§ 41-1954(A)(1)(a) and 41-1954(A)(3)

Implementing statutes: A.R.S. §§ 23-634.01, 23-771, 23-775, and 23-776

3. The effective date of the rule:

March 7, 2009

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 13 A.A.R. 2592, July 20, 2007

Notice of Proposed Rulemaking: 14 A.A.R. 2034, May 23, 2008

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

Name: Beth Broeker

Address: Department of Economic Security
P.O. Box 6123, Site Code 837A
Phoenix, AZ 85005

or

Department of Economic Security
1789 W. Jefferson St., Site Code 837A
Phoenix, AZ 85007

Telephone: (602) 542-6555

Fax: (602) 542-6000

E-mail: bbroeker@azdes.gov

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

The Arizona Department of Economic Security administers the state Unemployment Insurance (UI) program, authorized under Titles III and IX of the Social Security Act, the Federal Unemployment Tax Act, and Arizona Revised Statutes Title 23, Chapter 4.

The underlying purpose of the national unemployment insurance program is to provide benefits to workers who are temporarily unemployed through no fault of their own. In consonance with this philosophy, various statutes, including A.R.S. §§ 23-775(1), (2), and 23-776, provide for the disqualification of an applicant if the Department determines that the applicant caused the unemployment by leaving work voluntarily without good cause, being discharged for willful or negligent misconduct connected with employment, or refusing an offer of suitable work. The various statutory disqualifications addressed in the proposed rule remain in effect until the individual is reemployed and earns a specified amount of money.

The Department is amending R6-3-1810 to clarify what constitutes "requalifying" earnings needed to terminate the disqualification. The rule also clarifies what constitutes requalifying wages for a subsequent benefit year. The rule also describes how the amount is calculated and specifies the time-frame wherein these wages must be earned.

The amendment provides no substantive changes to the existing rule that has been in effect since 1976 and was last revised in 1984. Rather, the amendment is in accord with the Five-year Review Report approved by the Governor's Regulatory Review Council on June 5, 2007, corrects an erroneous statutory citation, and meets current standards for language, style, and format.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, 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

8. 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

9. The summary of the economic, small business, and consumer impact:
The proposed rule change will have no impact on either small or large businesses, as the rule is only applicable to unemployment insurance applicants who need to requalify following a disqualification from the receipt of benefits.

Further, the proposal will have no effect on workers who apply for unemployment insurance, as there is no substantive change in the rule. This rule has been essentially in effect for over 30 years and has received no negative comment from the public.

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):
Minor clarifying typographical and formatting changes were made at the recommendation of Council staff.

11. A summary of the comments made regarding the rule and the agency response to them:
The Department received no comments regarding this rule.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rule:
None

13. Incorporations by reference and their locations in the rule:
None

14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:
No

15. The full text of the rule follows:

TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY
UNEMPLOYMENT INSURANCE

ARTICLE 18. BENEFITS

Section
R6-3-1810. Requalifications

ARTICLE 18. BENEFITS

R6-3-1810. Requalifications

A. The Department shall apply the definitions of wages ~~contained~~ in ~~regulation~~ R6-3-1705 ~~shall be used as the definition of wages for the purposes of A.R.S. §§ 23-634.01, 23-771(7), 23-775(1), 23-775(2), and 23-776(A)~~ for requalification under this Section.

~~**A.**~~**B.** In determining whether a claimant has earned sufficient wages to requalify under ~~any of the above Sections~~ A.R.S. §§ 23-634.01, 23-771(A)(7), 23-775(1), (2), or 23-776(A), the following shall apply:

1. ~~Wages required to requalify will include~~ The Department shall use both insured and non-insured wages, but ~~will~~ shall not ~~include~~ use ~~earnings~~ income from self-employment.
2. ~~Any~~ The Department shall use any income, including wages from agricultural and domestic work, that would be reportable as wages on a continued claim for unemployment insurance, ~~(except~~ but shall not use income from self-employment~~) can be used as wages to requalify, including wages from agricultural and domestic work~~.

~~**B.**~~**C.** ~~The following will govern the determination of~~ In determining whether wages are usable for requalification purposes, the following shall apply:

1. In considering requalification under A.R.S. §§ 23-775(1), ~~23-775(2)~~ (2), and 23-776(A), the Department shall consider ~~work~~ services ~~must have been~~ performed subsequent to the date of the act ~~which~~ that resulted in the disqualification ~~which will be satisfied by the requalification~~.
2. In considering requalification under A.R.S. § ~~23-771(7)~~ 23-771(A)(7), the Department shall consider ~~dates the ser-~~

~~vice was performed will be controlling. The~~ services ~~must have been~~ performed during the period ~~between~~ starting with the beginning date of a benefit year and prior to the effective date of a subsequent benefit year.

3. In considering requalification under A.R.S. § 23-634.01, the Department shall consider ~~the work~~ services ~~must have been~~ performed subsequent to the week in which the failure to apply for, accept, or seek work occurred. The ~~individual must have~~ claimant shall document that the claimant has worked in each of at least four calendar weeks and the claimant's total ~~earnings must~~ wages equal at least four times the weekly benefit amount. The weeks need not be consecutive.

~~C.~~**D.** The proof required to establish wages for requalification ~~purposes~~ under ~~any of the above Sections~~ A.R.S. §§ 23-634.01, 23-771(A)(7), 23-775(1), (2), or 23-776(A) may consist of a check ~~stubs~~ stub or other payment ~~records~~ record, an employer statement, or W-2 form ~~(if the beginning date of a prior benefit or the disqualifying act was such that the W-2 establishes wages were paid after this date)~~. When the employer's quarterly wage reports ~~available in~~ submitted to the Department show the contended wage items, the Department may accept the ~~report(s)~~ reports as proof of the wages. ~~If necessary for a determination under B. above, the period during which the wages were earned shall be established by other proof. When other evidence cannot be obtained, the affidavit of the claimant, together with affidavit(s) from other individuals with knowledge of the claimant's employment, may be accepted as proof.~~

~~D.~~**E.** Except for wages ~~of which the Department has knowledge through~~ that are included on ~~employers'~~ an employer's quarterly wage reports to the Department, the burden of establishing requalifying wages shall rest on the claimant. The Department may~~, as it deems appropriate,~~ assist the claimant in the verification of wages ~~which~~ that the claimant states ~~he~~ the claimant has earned but ~~of which he~~ has no proof, or insufficient proof, by contacting the ~~employer(s)~~ employer either by telephone, ~~or~~ in writing, or through electronic communication.

~~E.~~**F.** ~~A disqualification shall not be terminated prior to~~ The Department shall not terminate a disqualification period before the end of the week in which the claimant's ~~earnings subsequent to the disqualifying act totaled~~ wages total an amount sufficient to requalify.

~~F.~~**G.** In determining whether a disqualification carries over from one benefit year to a subsequent benefit year, the following shall apply:

1. Unless ~~A~~ a disqualification is terminated within the benefit year, the Department shall carry over a disqualification assessed in a benefit year under A.R.S. §§ 23-775(1), ~~23-775(2)~~ (2), or 23-776(A) ~~and not satisfied within the benefit year shall be carried into the next benefit year,~~ unless ~~it is established by~~ the Department's wage records establish that the claimant earned sufficient wages to requalify subsequent to the date of the act ~~resulting~~ that resulted in the disqualification.
2. ~~A~~ The Department shall not carry over a disqualification assessed under A.R.S. § 23-634.01 ~~will not be carried over~~ into a subsequent benefit year.

~~G.~~**H.** In determining the amount of wages required to requalify after disqualifications, the following shall apply:

1. The amounts required to requalify after disqualification imposed under A.R.S. §§ 23-634.01, 23-775(1), ~~23-775(2)~~ (2), or 23-776(A) shall not be cumulative. The amount of wages required to ~~purge~~ terminate the largest disqualification shall remove all disqualifications, as long as the wages ~~which~~ that are used to requalify were earned subsequent to the date of occurrence of the act ~~which~~ that resulted in the disqualification~~;~~. ~~except that~~
2. For disqualifications under A.R.S. § 23-634.01, ~~requires~~ the work ~~must~~ shall have been performed subsequent to the week of occurrence of the act ~~which~~ that resulted in the disqualification and in each of at least four weeks, as shown in ~~(B)(3) above~~ subsection (C)(3).

~~H.~~**I.** ~~The following shall govern the determination of~~ In determining the amount of wages required to requalify:

1. The amount of required wages to requalify under A.R.S. §§ 23-634.01, 23-775(1), ~~23-775(2)~~ (2), or 23-776(A) ~~shall be determined~~ is based on the weekly benefit amount payable at the time the disqualification is imposed. When a revised ~~monetary~~ determination of wages earned results in a change in the weekly benefit amount, the Department shall adjust the amount required to requalify after any disqualification not previously terminated, ~~satisfied shall be adjusted~~ in accordance with the new weekly benefit amount~~,~~ and notify the claimant ~~shall be notified~~ of the change. ~~Once a disqualification is satisfied by requalification, the amount required to satisfy that disqualification shall not be adjusted due to any subsequent revision of the weekly benefit amount.~~
2. The amount of required wages to requalify under ~~A.R.S. § 23-771(7)~~ A.R.S. § 23-771(A)(7) ~~shall be determined~~ is based ~~upon~~ on the weekly benefit amount that would be calculated under A.R.S. § 23-779 for ~~each monetary determination or redetermination~~ a subsequent benefit year. ~~When~~ If a revised ~~monetary~~ determination of wages earned results in ~~a change~~ an increase in the weekly benefit amount, the claimant shall ~~be required to~~ requalify in terms of the ~~new~~ increased weekly benefit amount. If the claimant cannot requalify at the ~~new rate~~ higher amount, and has received benefits based on requalification at the previous ~~rate~~ lower amount, the Department shall establish an overpayment ~~shall be established~~.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

[R09-15]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R9-22-1001	Amend
R9-22-1002	Amend
R9-22-1003	Amend
R9-22-1004	Amend
R9-22-1007	Amend
R9-22-1008	Amend

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. §§ 36-2901, 36-2903(F), 36-2903.01 (K), and 36-2915

Implementing statute: A.R.S. §§ 36-2901, 36-2903(F), 36-2903.01 (K), 36-2923, and 36-2915

3. The effective date of the rules:

March 7, 2009

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

Notice of Rulemaking Docket Opening: 14 A.A.R. 2244, June 6, 2008

Notice of Proposed Rulemaking: 14 A.A.R. 2310, June 13, 2008

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

Name: Mariaelena Ugarte

Address: AHCCCS
Office of Administrative Legal Services
701 E. Jefferson St., Mail Drop 6200
Phoenix, AZ 85034

Telephone: (602) 417-4693

Fax: (602) 253-9115

E-mail: AHCCCSRules@azahcccs.gov

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

The AHCCCS Administration proposes to amend the Sections identified above as a result of a Five-year Review Report approved by the Governor's Regulatory Review Council on May 6, 2008. The subjects requiring amendment are definitions, payor-of-last-resort requirements, cost-avoidance requirements and other technical changes.

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

No study was reviewed during this rulemaking and the Agency does not anticipate reviewing any studies.

8. 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

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

It is anticipated that the contractors, private sector, members, providers, small businesses, political subdivisions, the Department, and the Administration will be minimally impacted by the changes to the rule language. The areas requiring revision are for clarity as a result of a Five-year Rule Review approved by the Governor's Regulatory Review Council. The Administration is proposing amendments to the rules to revise, reorganize, and clarify areas, such as, that county requirements are no longer used; reflecting changes as required by Deficit Reduction Act (DRA) and 42 CFR 433.139; describing when the Administration or a contractor may pay the difference between Third-Party

Liability, Medicare, or a contracted rate and the Capped Fee-For-Fervice Schedule; and clarifying when the Administration is not the payor of last resort.

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

Proposed changes to R9-22-1005 have been removed as a result of public comments. R9-22-1003 was restructured to clarify the reimbursement responsibility of the Administration and a contractor when there is a third-party liability that could be other insurance or Medicare. The Administration also made the rules more clear, concise, and understandable by making grammatical, verb tense, punctuation, and structural changes throughout the rules.

11. A summary of the comments made regarding the rule and the agency response to them:

Commenter:

A public comment was received by the close of record 5:00 p.m. on July 15, 2008 from:

Susan L. Watchman, Gammage and Burnham
Rule: R9-22-1005

Comment:

The law firm, Gammage and Burnham, which represents hospital providers, commented that proposed R9-22-1005 appears to place an (exclusive) obligation on providers, rather than health plans, to bill third parties when third-party liability is identified. The commenter also stated that the proposed rule fails to implement the DRA provisions specified in A.R.S. § 36-2923, does not address situations when adjustments occur outside of the 12-month statutory timeframe specified in A.R.S. § 36-2904, and appears to require providers to refund monies to the health plan regardless of the outcome of the third-party action.

Response:

In response to the public comment, the Administration is striking any changes to this rule. A.R.S. § 36-2923 was added effective February 29, 2008 by Arizona Laws 2007, Chapter 263, Section 11. The proposed change was intended to bring the existing rule into conformance with certain aspects of that statutory change, but does not reflect all of the necessary changes. The agency has not resolved all of the details associated with implementation of the statutory change. The agency has decided not to amend the rule at this time and will initiate future rulemaking when all of the details of implementing the statutory change have been resolved.

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

Not applicable

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

Not applicable

14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

Section
R9-22-1001. Definitions
R9-22-1002. General Provisions
R9-22-1003. Cost Avoidance
R9-22-1004. Member Participation
R9-22-1007. Notification for Perfection, Recording, and Assignment of AHCCCS Liens
R9-22-1008. Notification Information for Liens

ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

R9-22-1001. Definitions

In addition to the definitions in A.R.S. §§ 36-2901, 36-2923 and 9 A.A.C 22, Article 1, the following definitions apply to this Article:

"Cost avoid" means to deny a claim and return the claim to the provider for a determination of the amount of first- or third-party liability.

"First-party liability" means the obligation of any insurance plan or other coverage obtained directly or indirectly by a member that provides benefits directly to the member to pay all or part of the expenses for medical services incurred by AHCCCS or a member.

"Third-party" means a person, entity, or program that is, or may be, liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or member.

~~"Third-party liability" means the obligation of a person, entity, or program by agreement, circumstance, or otherwise, to pay all or part of the medical expenses incurred by an applicant or member.~~

"Third-party liability" means any individual, entity, or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished to a member under a state plan.

R9-22-1002. General Provisions

AHCCCS is the payor of last resort unless specifically prohibited by applicable state or federal law. Entities that pay before AHCCCS include but are not limited to:

1. Indian Health Services (IHS/638),
2. Title IV-E,
3. Arizona Early Intervention Program (AZEIP), and
4. Contract health.

R9-22-1003. Cost Avoidance

~~**A.** AHCCCS shall cost avoid a claim if AHCCCS establishes the probable existence of first- or third-party liability or has information that establishes that first- or third-party liability exists.~~

~~**B.** When the amount of first- or third-party liability is determined, AHCCCS or a contractor, when reimbursing a non-contracting provider, shall pay no more than the difference between the Capped Fee-For-Service Schedule amount and the amount of the first- or third-party liability.~~

A. The Administration's reimbursement responsibility.

1. The Administration shall pay no more than the difference between the Capped Fee-For-Service schedule and the amount of the third-party liability, unless Medicare is the third-party.
2. If Medicare is the third-party that is liable, the Administration shall pay the Medicare copayment and deductible regardless of the Capped Fee-For-Service Schedule.

B. The Contractor's reimbursement responsibility.

1. If the contract between the contractor and the provider does not state otherwise, a contractor shall pay no more than the difference between the contracted rate and the amount of the third-party liability.
2. If the provider does not have a contract with the contractor, a contractor shall pay no more than the difference between the Capped Fee-For-Service rate and the amount of the third-party liability.

C. The requirement to cost avoid applies to all AHCCCS-covered services under Article 2 of this Chapter, unless otherwise specified in this Section. The following parties shall take reasonable measures to identify potentially legally liable first- or third-party sources:

1. AHCCCS, the Administration, or a contractor;
2. A provider~~,~~;
3. A noncontracting provider~~,~~; and
4. A member.

D. When the Administration or a contractor determines that a third party may be liable for services provided, the Administration or contractor shall pay the full amount of the claim according to the Capped-Fee-For-Service Schedule and then seek reimbursement, when:

1. The claim is for labor and delivery and postpartum care; or
2. The liability is from an absent parent, and the claim is for prenatal care or EPSDT services.

R9-22-1004. Member Participation

A member shall cooperate in identifying potentially legally liable first- or third-parties and timely assist ~~AHCCCS~~ the Administration and a contractor, provider, or noncontracting provider in pursuing any first- or third-party who may be liable to pay for covered services.

R9-22-1007. Notification for Perfection, Recording, and Assignment of AHCCCS Liens

~~**A.** County requirements. The member's county of residence shall notify AHCCCS under R9-22-1008 within 30 days after providing hospital or medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- or third party to enable AHCCCS to preserve lien rights under A.R.S. §§ 36-2915 and 36-2916.~~

~~**B.**~~**A.** Hospital requirements. A hospital providing medical services to a member for an injury or condition resulting from cir-

cumstances reflecting the probable liability of a first- or third-party shall within 30 days after a member's discharge:
1. Notify AHCCCS via facsimile or mail under R9-22-1008, or
2. Mail AHCCCS a copy of the lien the hospital proposes to record or has recorded under A.R.S. § 33-932.

~~C.~~**B.** Provider and noncontracting provider requirements. A provider or noncontracting provider, other than a hospital, rendering medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- or third-party shall notify AHCCCS via facsimile or mail under R9-22-1008 within 30 days after providing the service.

R9-22-1008. Notification Information for Liens

A. Except as provided in subsection (B), a ~~county,~~ hospital, provider, and noncontracting provider identified in R9-22-1007 shall provide the following information to AHCCCS in writing:
1. Name of the hospital, provider or noncontracting provider;
2. Address of the hospital, provider or noncontracting provider;
3. Name of member;
4. Member's Social Security Number or AHCCCS identification number;
5. Address of member;
6. Date of member's admission or date service is provided;
7. Amount estimated to be due for care of member;
8. Date of discharge, if member has been discharged;
9. Name of county in which injuries were sustained; and
10. Name and address of all persons, firms, and corporations and their insurance carriers ~~claimed~~ identified by the member or legal representative ~~to be~~ as being liable for damages.

B. If the date of discharge is not known at the time the information in subsection (A) is provided, a party identified in subsection (A) shall notify AHCCCS of the date of discharge within 30 days after the member has been discharged.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION ADMINISTRATION

[R09-18]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

Article 4	Repeal
R17-1-401	Repeal
R17-1-402	Repeal
R17-1-403	Repeal
R17-1-404	Repeal
R17-1-405	Repeal
R17-1-406	Repeal
R17-1-407	Repeal

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

Authorizing statute: A.R.S. § 28-366

Implementing statute: A.R.S. §§ 28-374

3. The effective date of the rules:

March 7, 2009

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

Notice of Rulemaking Docket Opening: 14 A.A.R. 3130, August 1, 2008

Notice of Proposed Rulemaking: 14 A.A.R. 3171, August 8, 2008

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

Name: John Lindley, Administrative Rules Analyst

Address: Administrative Rules Unit

Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 530M
Phoenix, AZ 85007

Telephone: (602) 712-8804

Fax: (602) 712-3081

E-mail: jlindley@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.azdot.gov/mvd/MVDRules/rules.asp.

6. An explanation of the rules, including the agency's reason for initiating the rule:

The Arizona Department of Transportation, Motor Vehicle Division proposes to repeal antiquated language within existing rules regulating electronic funds transfers and create new rules under Chapter 8.

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

Not applicable

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

Not applicable

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

Exempt under A.R.S. § 41-1055(D)(2).

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

Not applicable

11. A summary of the comments made regarding the rules and the agency response to them:

Not applicable

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

Not applicable

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

Not applicable

14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION ADMINISTRATION

ARTICLE 4. ~~ELECTRONIC FUNDS TRANSFER~~ REPEALED

Section
R17-1-401. ~~Definitions~~ Repealed
R17-1-402. ~~General Requirements~~ Repealed
R17-1-403. ~~Authorization Agreement~~ Repealed
R17-1-404. ~~Methods of Electronic Funds Transfer~~ Repealed
R17-1-405. ~~Departmental Termination of EFT Agreement~~ Repealed
R17-1-406. ~~Payment Procedures~~ Repealed
R17-1-407. ~~Timely Payment~~ Repealed

ARTICLE 4. ~~ELECTRONIC FUNDS TRANSFER~~ REPEALED

R17-1-401. ~~Definitions~~ Repealed

The following definitions apply for purposes of this Article:

~~1. "Automated clearing house" or "ACH" means a central distribution and settlement point for the electronic clearing of debits and credits between financial institutions.~~
~~2. "ACH credit" means an electronic funds transfer:~~
~~a. Generated by a payer, and~~
~~b. Cleared through an ACH for deposit to the Department account.~~
~~3. "ACH debit" means an electronic transfer of funds from a payer's account:~~
~~a. Authorized by a payer-signed authorization agreement,~~
~~b. Generated at a payer's instruction, and~~
~~c. Cleared through an ACH for deposit to the Department account.~~
~~4. "Addendum record" means the information required by the Department in an ACH credit transfer or wire transfer, in the approved electronic format prescribed in R17-1-405(B).~~
~~5. "Authorized means of transmission" means the deposit of funds into the Department account by electronic funds transfer.~~
~~6. "Cash Concentration or Disbursement plus" or "CCD plus" means the standardized data format approved by the National Automated Clearing House Association for remitting tax payments electronically.~~
~~7. "Data Collection Center" means a third party that, under contract with the Department, collects and processes electronic funds transfer payment information from payers.~~
~~8. "Department" or "ADOT" means the Arizona Department of Transportation.~~
~~9. "EFT Program" means the payment of taxes by electronic funds transfer under this Article.~~
~~10. "Electronic Funds Transfer" or "EFT" means any transfer of funds initiated:~~
~~a. By a person authorizing a financial institution to debit or credit an account under this Article; and~~
~~b. Through one of the following:~~
~~i. Electronic terminal,~~
~~ii. Telephone,~~
~~iii. Computer, or~~
~~iv. Magnetic tape.~~
~~11. "Financial institution" means:~~
~~a. A state or national bank,~~
~~b. A trust company,~~
~~c. A state or federal savings and loan association,~~
~~d. A mutual savings bank, or~~
~~e. A state or federal credit union.~~
~~12. "IFTA" means International Fuel Tax Agreement.~~
~~13. "IRP" means International Registration Plan.~~
~~14. "Payment information" means the data that the Department requires of a payer making an electronic funds transfer payment.~~
~~15. "Payer" means a taxpayer or a third party representing a taxpayer.~~
~~16. "Payer information number" means a confidential code assigned by the Department that identifies a payer and allows the payer to give payment information to the Department's Data Collection Center.~~
~~17. "State Servicing Bank" means a bank designated under A.R.S. Title 35, Chapter 2, Article 2.~~
~~18. "Taxpayer verification number" means an optional taxpayer-generated number that a payer may use to verify an ACH credit transaction.~~
~~19. "Tax type" means the category of tax imposed by the Department.~~
~~20. "Wire transfer" means an instantaneous electronic funds transfer initiated by a payer.~~

R17-1-402. ~~General Requirements~~ Repealed

~~**A.** Mandatory Participation. Beginning on the first day of the month at least 120 days after this Section becomes effective, a payer owing motor vehicle or use fuel taxes of $20,000 or more for the immediately preceding tax year under A.R.S. Title 28, Chapter 16, Article 1 or 2, shall remit payment by a Department authorized method of EFT under R17-1-404. A payer with remittance requirements under this subsection shall initiate electronic funds transfer by submitting to the Department an EFT authorization agreement in compliance with R17-1-403.~~
~~**B.** Voluntary Participation. Beginning on the first day of the month at least 180 days after this Section becomes effective, the following payers may elect to participate in the EFT Program by submitting to the Department an EFT authorization agreement specified in R17-1-403.~~
~~1. A payer with a recurring fee or tax liability,~~
~~2. An authorized third party,~~
~~3. An IRP or IFTA jurisdiction, and~~
~~4. Other entity or payer determined by the Director.~~
~~**C.** Voluntary Discontinuance. A voluntary participant in the EFT Program shall give written notice to the Department at least 45 days before discontinuing EFT Program participation.~~

R17-1-403. ~~Authorization Agreement~~ Repealed

~~**A.** A payer shall complete an electronic funds transfer authorization agreement in the form prescribed by the Department at least 45 days before initiation of the first applicable transaction. The payer shall provide the following information on the authorization agreement:~~

~~1. Payer's name and address;~~
~~2. Payer's federal tax identification number;~~
~~3. Payer's Arizona Tax Account Number, if applicable;~~
~~4. Type of action being authorized;~~
~~5. Fee or tax type;~~
~~6. Payment method;~~
~~7. Name and phone number of the payer's EFT contact person;~~
~~8. Financial institution name and address;~~
~~9. Bank account type;~~
~~10. Name on bank account;~~
~~11. Bank account number; and~~
~~12. Bank routing transit number.~~

~~**B.** A payer shall submit a revised authorization agreement to the Department at least 30 days before any change in information required in subsection (A) is made to the agreement.~~

~~**C.** The Department shall deny authorization for electronic funds transfer if a payer or voluntary payer does not submit the information in subsection (A).~~

R17-1-404. ~~Methods of Electronic Funds Transfer~~ Repealed

~~**A.** A payer shall authorize remittance by ACH debit for electronic funds transfer unless the Department grants permission to remit by ACH credit.~~

~~**B.** The Department may authorize remittance by ACH credit for a payer that requests it on an EFT authorization agreement form.~~

~~**C.** A payer unable to remit by an established payment method may request that the Department accept deposits to the Department account by wire transfer according to the following procedure:~~

~~1. A payer shall:~~
~~a. Contact the Department,~~
~~b. State the reason preventing timely compliance under either the ACH credit or debit method, and~~
~~c. Obtain verbal approval for wire transfer of tax payment to the Department account before initiating a transmission.~~
~~2. A payer making a wire transfer shall submit the addendum record required under R17-4-405 with an approved wire transfer.~~

R17-1-405. ~~Departmental Termination of EFT Agreement~~ Repealed

~~**A.** After finding grounds for withdrawal, the Department may:~~

~~1. Withdraw permission to use the ACH credit method of EFT, if the payer is an EFT Program participant under R17-1-402(A); or~~
~~2. Withdraw permission to pay by EFT, if the payer is an EFT Program participant under R17-1-402(B).~~

~~**B.** Each of the following is grounds for withdrawal:~~

~~1. Failure to make timely EFT payments,~~
~~2. Failure to provide payment information,~~
~~3. Failure to provide the required addendum record with EFT payment, or~~
~~4. Failure to make correct payment.~~

R17-1-406. ~~Payment Procedures~~ Repealed

~~**A.** A payer remitting by the ACH debit method shall report payment information to the Department Data Collection Center no later than the time prescribed by the State Servicing Bank on the last business day before the payment due date.~~

~~1. A payer shall communicate payment information by one of the following means:~~
~~a. Operator-assisted communication of payment information made orally by rotary or touch-tone telephone,~~
~~b. Touch-tone communication of payment information made by using a touch-tone telephone keypad,~~
~~c. Computer terminal link with the Data Collection Center, or~~
~~d. Other means available and approved by the Data Collection Center.~~
~~2. A payer shall communicate the following payment information to the Department Data Collection Center:~~
~~a. Payer information number,~~
~~b. Department-assigned account number,~~
~~c. Tax type,~~
~~d. Payment amount,~~
~~e. Tax period,~~

~~f. Payment due date, and~~
~~g. Payment sequence number.~~

~~**B.** A payer authorized to remit by the ACH credit method shall initiate a payment transaction directly with a financial institution to ensure a payment is deposited to the Department account by the payment due date. A payer shall make an ACH credit transfer in the CCD plus addendum format by providing the following information:~~
~~1. The Department-assigned account number,~~
~~2. The tax type,~~
~~3. The payment amount,~~
~~4. The tax or reporting period,~~
~~5. The payment sequence number,~~
~~6. The payer's taxpayer verification number provided optionally at the payer's discretion, and~~
~~7. The American Bank Association nine-digit number of the receiving bank.~~

R17-1-407. ~~Timely Payment~~ Repealed

~~**A.** A payer remitting a payment through EFT shall ensure the completion of each transaction by the payment due date.~~
~~**B.** If a tax due date occurs on a Saturday, Sunday, or legal holiday, a payer shall make the electronic funds transfer by 5:00 p.m. of the next business day.~~
~~**C.** An EFT program participant is subject to penalty prescribed under A.R.S. §§ 28-5621, 28-5721, or 28-5722 for past due payment.~~