

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 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION PERSONNEL ADMINISTRATION

Editor's Note: The following Notice of Final Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 on page 708.) The Governor's Office authorized the notice to proceed through the rulemaking process on December 8, 2009.

[R10-45]

PREAMBLE

- 1. Sections Affected**
R2-5-105
- Rulemaking Action**
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statute: A.R.S. § 41-763(2) and (6)
Implementing statute: A.R.S. § 39-128
- 3. The effective date of the rule:**
June 5, 2010
- 4. A list of all previous notices appearing in the Register addressing the final rule.**
Notice of Rulemaking Docket Opening: 14 A.A.R. 4669, December 19, 2008
Notice of Rulemaking Docket Opening: 16 A.A.R. 11, January 1, 2010
Notice of Proposed Rulemaking: 16 A.A.R. 4, January 1, 2010
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Christine Bronson, Employee Relations Manager
Address: 100 N. 15th Ave., Suite 261
Phoenix, AZ 85007
Telephone: (602) 542-1423
Fax: (602) 542-1980
E-mail: Christine.Bronson@azdoa.gov
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
R2-5-105 delineates the documents that are to be maintained in an employee's official personnel file, who may have access to the file, and what employee information may be released and to whom it may be released. R2-5-105 has been amended to conform to H.B. 2159, Laws 2008, Ch. 277, which allows disciplinary actions of state employees and employees' responses to disciplinary actions to be open to inspection and copying under Arizona public records law. In addition, in the Department's five-year review report, approved by the Governor's Regulatory Review Council (G.R.R.C.) in September 2006, the Department had indicated this rule would be amended to require that immigration records be kept in a file separate from the employee's official personnel file. Clarifications and housekeeping revisions have also been made along with the specific 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:**

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

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:

This rule affects only state agencies and state service employees and will not have an impact on small businesses or consumers. The financial impact of this rulemaking would include the costs associated with staff hours to retrieve and copy records, review documents prior to release to redact personally identifying information and any other information protected by law, and the proper dissemination of the requested information. Since this is a new requirement imposed on state agencies, the financial impact is difficult to anticipate. Any financial impact or administrative expenses will need to be covered by the affected agency's ordinary operating funds.

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

Minor, non-substantive changes were made between the publication of the notice of proposed rulemaking and this notice of final rulemaking.

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

As part of the initial rulemaking process, the agency solicited input from ADOA Human Resources/Personnel Managers and staff assigned to the satellite Human Resources (HR) offices.

An oral proceeding on the Notice of Proposed Rulemaking published January 1, 2010, was held on February 3, 2010. No one appeared to speak and no comments were received at the oral proceeding.

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

None

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

None

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rule follows:

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION
PERSONNEL ADMINISTRATION

ARTICLE 1. GENERAL

Section

R2-5-105. Personnel Records

ARTICLE 1. GENERAL

R2-5-105. Personnel Records

A. Purpose. An employee's official personnel file is the official record and documentation of the administration of the employee's employment.

B. Content. An ~~employee's agency head shall, for each agency employee, maintain an~~ official personnel file ~~that shall contain~~ contains:

1. A copy of the job application or resumé for the employee's current regular position;
2. A copy of all performance appraisal reports completed as required by R2-5-503;
3. Personnel action forms that ~~have authorized~~ authorize changes in employment status, position, classification, pay, or leave status;
4. Letters of commendation as established by agency policy;
5. Correspondence concerning:
 - a. ~~disciplinary~~ Disciplinary actions as described in Article 8; and letters of reprimand;
 - b. ~~documents acknowledging~~ Acknowledgments of receipt of letters of reprimand or other disciplinary communications; ~~or and~~
 - c. ~~other related employee~~ Employee objections or responses to correspondence described in subsection (B)(5)(a) that are not filed as grievances under Article 7, if the objection or response is received within 30 calendar days of

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- the date of the disciplinary action or letter of reprimand; and
6. Corrective action plans and performance planning documents.
- C. Insurance and medical records. An agency head may maintain Group group insurance enrollment forms ~~may be contained~~ in an employee's official personnel file. An agency head shall maintain All medical records ~~shall be maintained~~ in a separate file that is not part of the employee's official personnel file.
- D. Immigration records. An agency head shall retain ~~The I-9 form~~ forms and other documents required by law to prove employment eligibility ~~may be retained in an employee's official personnel file or~~ a separate file: that is not part of the employee's official personnel file.
- E. Access. For the purpose of this subsection, an official is an individual who provides identification verifying that the individual is exercising powers and duties on behalf of the chief administrative head of a public body. ~~Access~~ An agency head shall limit access to an employee's official personnel file ~~shall be limited~~ to:
1. The employee or an individual who has written authorization from the employee to review the personnel file;
 2. Agency personnel designated by the agency head as having a need for the information;
 3. A Department official in the normal line of duty;
 4. An official acting in response to a court order or subpoena;
 5. An official of an agency to which the employee has applied; and
 6. An official of an agency of the federal government, state government, or political subdivision, ~~but only if the agency head of the employing agency deems it access to the file to be appropriate, to a proper function of the official requesting access.~~
- F. Disclosure of information.
1. Definitions. For the purposes of this subsection:
 - a. "Disciplinary actions" means correspondence concerning disciplinary actions as described in Article 8, and letters of reprimand.
 - b. "Records that are reasonably necessary or appropriate to maintain an accurate knowledge of the employee's disciplinary actions" means an official notice of charges of misconduct, the final disciplinary letter, and any responses related to grievances or appeals upholding, amending, or overturning the discipline.
 - c. "Employee responses" means any written documents, submitted and signed by the employee, either:
 - i. In response to an official notice of charges of misconduct;
 - ii. As a formal complaint filed under the provisions of Article 7 of these rules to grieve a specific disciplinary action; or
 - iii. As an objection to a specific disciplinary action and contained in the employee's official personnel file under subsection (B)(5).
 2. The Director, or designee, shall ensure that except as provided in subsection (E), only the following information about an employee is provided to any person making a public records request under A.R.S. Title 39, Chapter 1, Article 2.
 - 1-a. Name of employee;
 - 2-b. Date of employment;
 - 3-c. Current and previous class titles and dates ~~received of appointment to the class;~~
 - 4-d. Name and location of current and previous agencies to which the employee has been assigned;
 - 5-e. Current and previous salaries and dates of each change; ~~and~~
 - 6-f. Name of employee's current or last known supervisor; and
 - g. Records that are reasonably necessary or appropriate to maintain an accurate knowledge of the employee's disciplinary actions, including the employee responses to all disciplinary actions, unless providing this information is contrary to law.
- G. Employee Access access to ~~other~~ files. An employee has the right to access only the employee's official personnel file.
- H. Control.
1. When an employee moves from one state service agency to another, the losing agency shall forward the employee's official personnel file to the gaining agency within 10 days of the effective date of the move.
 2. When a former employee returns to state service to an agency other than the agency in which the employee was last employed, the gaining agency shall request that the last agency forward the employee's official personnel file. The last agency shall forward the file within 10 days of the receipt of the request.

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TITLE 9. HEALTH SERVICES

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

Editor's note: The following Notice of Final Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28 (page 708) and the Governor's Regulatory Review Plan memorandum, January 22, 2009 and the continuations issued April 30, June 29 and October 16, 2009 (15 A.A.R. 241, January 23, 2009; 15 A.A.R. 735, May 1, 2009; 15 A.A.R. 1130, July 3, 2009; and 15 A.A.R. 1759, October 23, 2009; respectively.) The Governor's Office authorized the notice to proceed through the rulemaking process on March 13, 2009.

[R10-43]

PREAMBLE

1. Sections Affected

R9-10-115
R9-10-203
R9-10-1501
R9-10-1503
R9-10-1505
R9-10-1506
R9-10-1507
R9-10-1508
R9-10-1511
R9-10-1702

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend

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

Authorizing statutes: A.R.S. §§ 36-104(3), 36-132(A)(3), and 36-136

Implementing statutes: A.R.S. §§ 36-405, 36-406, and 36-449.03

3. The effective date of the rules:

November 1, 2010. The Department has determined that good cause exists for a delayed effective date and the public interests will not be harmed by the later effective date.

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

Notice of Rulemaking Docket Opening: 15 A.A.R. 300, January 30, 2009

Notice of Proposed Rulemaking: 15 A.A.R. 786, May 15, 2009

Notice of Public Information: 15 A.A.R. 798, May 15, 2009

Notice of Rulemaking Docket Opening: 15 A.A.R. 1858, November 6, 2009

Notice of Supplemental Proposed Rulemaking: 15 A.A.R. 1822, November 6, 2009

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

Name: Thomas Salow, Acting Manager

Address: Department of Health Services
Office of Administrative Counsel and Rules
1740 W. Adams St., Suite 203
Phoenix, AZ 85007

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: salowt@azdhs.gov

or

Name: Kathy McCanna, Program Manager

Address: Department of Health Services
Division of Licensing Services
Office of Medical Facilities

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Phoenix, AZ 85007

Telephone: (602) 364-2841

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

A.R.S. § 36-405(A) requires the Arizona Department of Health Services (Department) to adopt rules establishing minimum standards and requirements for the construction, modification, and licensure of health care institutions necessary to assure the public health, safety, and welfare. It further requires that the standards and requirements relate to the construction, equipment, sanitation, staffing for medical, nursing, and personal care services, and recordkeeping pertaining to the administration of medical, nursing, and personal care services according to generally accepted practices of health care. A.R.S. § 36-405(B) allows the Department to classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care, and standard of patient care required. Laws 1999, Ch. 311, § 2, defined and added abortion clinics as a health care institution class.

A.R.S. §§ 36-449 and 36-449.01 through 36-449.03, effective August 6, 1999, establish the requirements for abortion clinics. A.R.S. § 36-449.01 defines "abortion clinic" as a "facility, other than an accredited hospital, in which five or more first trimester abortions in any month or any second or third trimester abortions are performed." A.R.S. § 36-449.03 directs the Department to adopt rules regarding an abortion clinic's physical facilities, personnel, medical screening and evaluation of patients, abortion procedures, incident reporting, and standards for supplies, equipment, recovery rooms, and follow-up visits.

Arizona Administrative Code (A.A.C.) Title 9, Chapter 10, Article 15, provides the minimum standards and requirements for abortion clinics in Arizona. The rules address an abortion clinic's application requirements, administration, incident reporting, personnel qualifications and records, staffing requirements, patient rights, abortion procedures, patient transfer and discharge, medications and controlled substances, medical records, environmental and safety standards, equipment standards, and physical facilities. The rules were adopted by exempt rulemaking, effective April 1, 2000, and amended by exempt rulemaking, effective January 1, 2001.

On March 1, 2000, the Center for Reproductive Rights filed a federal challenge to the abortion clinic rules on behalf of several abortion providers, including Tucson Woman's Clinic, seeking to block implementation. After the suit was filed, the Department agreed not to enforce the rules during the District Court proceedings and subsequent appeals. Accordingly, the abortion clinic rules have not been implemented.

In *Tucson Woman's Clinic v. Eden*, No. CV-00-00141-RCC (D. Ariz., Sept. 30, 2002), the District Court in substantial part upheld the abortion clinic rules but struck down rule provisions that provided state officials with unannounced access to abortion clinics during business hours and allowed state officials to review unredacted patient records and ultrasound prints. The District Court's decision was appealed to the U.S. Court of Appeals for the Ninth Circuit, and the decision was affirmed in part, reversed in part, and remanded to the District Court for further proceedings. *Tucson Woman's Clinic v. Eden*, No. 02-17375, No. 02-17381, No. 02-17382, 379 F. 3d 531(9th Cir., August 23, 2004). In the ruling, the Court of Appeals:

- Agreed with the District Court that the statutory and regulatory scheme authorized boundless, warrantless searches and violated the plaintiffs' Fourth Amendment rights;
- Held that allowing access to unredacted medical records and sending ultrasound prints to a private contractor violated an abortion patient's right to privacy;
- Agreed with the District Court that some provisions were not clear enough to let physicians know when they have violated the rule and were unconstitutionally vague; and
- Disagreed with the District Court's decision that the law did not impose an undue burden on women seeking abortions and ruled that this was an issue of material fact, remanding the matter for trial.

On September 10, 2008, the Department and the other defendants and the plaintiffs filed a Stipulation of Settlement and a Joint Request for an Order Approving and Mandating Compliance with Stipulation of Settlement that was approved by the District Court. The Department agreed to begin the rulemaking process to amend the abortion clinic rules within 120 calendar days of the District Court's approval according to Exhibit A of the Stipulation. Pursuant to the Stipulation, a Notice of Rulemaking Docket Opening for 9 A.A.C. 10, Article 15, Abortion Clinics, was filed on January 6, 2009. The Department also agreed to follow all requirements in the rulemaking process in proposing and supporting the rule revisions in the Stipulation. This rulemaking contains the amendments that the Department agreed to propose and support as part of the Stipulation including:

- Adding definitions for "admission," "admitting privileges," and "personally identifiable patient information";
- Deleting provisions requiring the Department's immediate access to the abortion clinic and adding provisions for the Department's access to the abortion clinic by appointment or with an administrative search warrant;

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- Amending provisions for training requirements for individuals performing ultrasounds;
- Deleting requirements for a patient care staff and volunteer written work schedule;
- Deleting the requirement for a patient to be treated with consideration, respect, and full recognition of the patient’s dignity and individuality;
- Amending the requirement for establishing an intravenous access on a patient undergoing an abortion after the first trimester;
- Deleting the requirement for submitting an ultrasound to a person or corporation contracted with the Department in compliance with A.R.S. § 36-2301.02;
- Amending the requirements for scheduling a follow-up visit; and
- Amending the requirements for providing patient medical records for the Department’s review.

The Department worked with and obtained approval from the plaintiffs for the changes made to the rule revisions in the Stipulation during the rulemaking process.

There are licensed health care institutions regulated by the Department that provide abortions. These health care institutions are currently required to comply with the rules in 9 A.A.C. 10 for the health care institution’s applicable class or subclass. When the abortion clinic rules are implemented, health care institutions that meet the definition of “abortion clinic” in A.R.S. § 36-449.01 will be required to comply with the requirements in the abortion clinic rules when providing abortions. If the health care institution provides medical services, nursing services, or health-related services other than those services related to abortions, the health care institution can select any of the following three licensing options: 1) continue to comply with and be licensed under the rules in 9 A.A.C. 10 that are applicable to the health care institution’s class or subclass and comply with the rules in 9 A.A.C. 10, Article 15, when providing abortions; 2) comply only with and be licensed under the rules in 9 A.A.C. 10, Article 15 and limit the services the health care institution provides only to those abortion services regulated in A.R.S. § 36-449.01(1); or (3) delineate a portion of the currently licensed premises that will provide abortions and related services in compliance with and licensed under 9 A.A.C. 10, Article 15 and delineate a separate portion of the currently licensed premises that will not provide abortions or related services but will continue to comply with and be licensed under the specific rules in 9 A.A.C. 10 for the health care institution’s class or subclass. Regardless of which option the health care institution chooses, the protections of R9-10-1511(B) will apply to patient records related to the provision of an abortion.

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 studies were reviewed.

8. A showing of good cause why the rule is 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:

Annual costs/revenue changes are designated as minimal when less than \$10,000, moderate when between \$10,000 and \$50,000, substantial when greater than \$50,000, and significant when meaningful or important but not readily subject to quantification.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
A. State and Local Government Agencies			
Department	Limiting access to the abortion clinic and medical records by requiring an: – appointment for a licensing or compliance inspection, and – administrative search warrant for a complaint investigation	Minimal-to-moderate	None
	Removing the requirement to submit ultrasound to a person contracted by the Department	None	Substantial
B. Privately Owned Business			

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Abortion clinics (non-accredited hospitals, outpatient treatment centers (OTCs), outpatient surgical centers (OSCs), and physicians in private practice licensed as abortion clinics)	Limiting access to the abortion clinic and medical records by requiring an: – appointment for a licensing or compliance inspection, and – administrative search warrant for a complaint investigation	Minimal-to-moderate	Significant
	Removing the requirement to maintain schedules of staff assigned to provide services and actually providing services	None	Minimal/significant
	Clarifying that intravenous (IV) access is not required if a physician determines that IV access is not appropriate for the patient	Minimal	Minimal
	Clarifying that an ultrasound may be maintained in a patient’s medical record in either electronic or paper form	None	Minimal-to-moderate
	Removing the requirement to submit an ultrasound to a person contracted by the Department	None	Minimal-to-moderate
Physicians and other staff of an abortion clinic	Revising requirements to perform an ultrasound	None	Minimal
	Removing requirement to maintain schedules of staff assigned to provide services and actually providing services	None	Significant
C. Consumers			
Women seeking abortion services	Limiting access to the abortion clinic and medical records by requiring an: – appointment for a licensing or compliance inspection – administrative search warrant for a complaint investigation	Minimal	Significant
	Clarifying that intravenous (IV) access is not required if a physician determines that IV access is not appropriate for the patient	None	Minimal/significant
	Removing the requirement to submit an ultrasound to a person contracted by the Department	None	Significant

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

Based on written and oral comments, the Department made the following changes to the proposed rules:

Preamble

In item 5 of the Preamble of the Notice of Proposed Rulemaking, it was stated that the only way for a facility to comply with the abortion rules and any other applicable health care institution rules was to have premises and records for the abortion clinic separate from the premises and records for the licensed health care institution. The Department has deleted the references to separate premises and separate records, and instead has provided three options for currently licensed health care institutions that meet the definition of “abortion clinic” in A.R.S. § 36-449.01.

R9-10-115

The Department amended the rule by deleting outdated references and language, restructuring subsections for clarity, and adding a subsection requiring a health care institution that meets the definition of “abortion clinic” in A.R.S. § 36-449.01, to comply with the requirements in 9 A.A.C. 10, Article 15 when providing abortions and related services.

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R9-10-203(E)

The Department added a subsection requiring a hospital that meets the definition of “abortion clinic” in A.R.S. § 36-449.01, to comply with the requirements in 9 A.A.C. 10, Article 15 when providing abortions and related services.

R9-1501(4)

In the definition of “admitting privileges” the Department deleted the phrase “within 30 miles of the abortion clinic” and added the phrase “in this state” consistent with A.R.S. § 36-449.03(C)(3).

R9-10-1501(21)

The Department deleted the definition of “hospital” and renumbered the remaining definitions accordingly.

R9-10-1501(39)

The Department restructured the definition of “personally identifiable patient information” using labeled subsections and added the term “carrier” to provide more clarity.

R9-10-1506(B)

The Department deleted the phrase “If a physician is not present in the facility” and added the phrases “A physician” and “or, if a physician is able to provide direct supervision as defined in A.R.S. § 32-1401, a medical assistant under the direct supervision of the physician” to the list of individuals allowed to monitor a patient in a recovery room.

R9-10-1702(B)(10)

The Department relabeled incorrectly labeled subsections and added a subsection requiring an outpatient surgical center that meets the definition of “abortion clinic” in A.R.S. § 36-449.01, to comply with the requirements in 9 A.A.C. 10, Article 15 when providing abortions and related services.

Based on written and oral comments, the Department made the following changes to the supplemental proposed rules:

R9-10-1501(39)

The Department changed the definition of “personally identifiable patient information” by adding “any ‘individually identifiable health information’ as proscribed in 45 CFR 164.514.”

R9-10-1508(H)(1)

The Department deleted the phrase “a member of the patient care staff, except a surgical assistant,” and added the phrase “a physician, a nurse, a nurse practitioner, a physician assistant, or, if a physician is able to provide direct supervision as defined in A.R.S. § 32-1401, a medical assistant under the direct supervision of the physician” for consistency with the requirements in R9-10-1506(B).

R9-10-1511(B)(1)

The Department added the phrase “Subject to the redaction permitted by subsection (B)(5)” so that it is clear that subsection (B)(5) applies when an abortion clinic is providing patient records to the Department.

Based on comments from G.R.R.C. staff minor technical changes were made to the supplemental proposed rules in addition to the following change:

R9-10-1511(B)(3)

The Department reorganized the subsection and added the phrase “conducted before the current inspection of the abortion clinic” to provide clarity. The rule now reads:

“The licensee is not required to provide patient medical records regarding medical services associated with an abortion that occurred before:

- a. The effective date of these rules, or
- b. A licensing or compliance inspection conducted before the current inspection of the abortion clinic.”

To provide consistency and clarity, the Department made the following change:

R9-10-1511(A)(1) contains requirements for patient’s medical records. R9-10-1511(B)(1) contains a list of information in a patient’s medical record that a licensee is required to provide to the Department. Due to a clerical error the list in R9-10-1511(B)(1) is not consistent with the requirements for a patient’s medical record in R9-10-1511(A)(1). The Department is changing the list in R9-10-1511(B)(1) to be consistent with the list in R9-10-1511(A)(1).

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

COMMENTS RECEIVED DURING THE PROPOSED RULEMAKING PROCESS

COMMENT: There were comments from plaintiff’s counsel, Planned Parenthood, and hospital representatives requesting a delayed effective date to allow time for facilities to prepare for the implementation of the rules.

RESPONSE: The Department is requesting an effective date of November 1, 2010 to allow facilities and the Department time to prepare for the implementation of the rules.

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COMMENT: There were comments from hospital and Planned Parenthood representatives about the statement in the Notice of the Proposed Rulemaking that a currently licensed health care institution that meets the definition of “abortion clinic” will need to provide separate premises for an “abortion clinic” and the “licensed health care institution.”

RESPONSE: Item 5 of the Preamble of the Notice of Proposed Rulemaking stated that the only way for a facility to comply with the abortion clinic rules and any other applicable health care institution rules was to maintain and designate premises and records for the abortion clinic separate from the premises and records for the licensed health care institution. The Department has deleted the references to separate premises and separate records, and instead has provided the following three licensing options for currently licensed health care institutions that meet the definition of “abortion clinic” in A.R.S. § 36-449.01: 1) continue to comply with the rules in 9 A.A.C. 10 that are applicable to the health care institution’s class or subclass and comply with the rules in 9 A.A.C. 10, Article 15, when providing abortions; 2) comply only with the rules in 9 A.A.C. 10, Article 15 and limit the services the health care institution provides only to those abortion services regulated under A.R.S. § 36-449.01(1); or (3) delineate a portion of the currently licensed premises that will provide abortions and related services in compliance with and licensed under 9 A.A.C. 10, Article 15 and delineate a separate portion of the currently license premises that will not provide abortions or related services but will continue to comply with and be licensed under the specific rules in 9 A.A.C. 10 for the health care institution’s class or subclass.

COMMENT: There was a comment from a hospital representative that the Department cannot require a health care institution to be dually licensed.

RESPONSE: The Department agrees and does not plan to require dual licenses.

COMMENT: There were comments from hospital representatives requesting dual licenses or concurrent licenses for health care institutions that are currently licensed.

RESPONSE: The Department has determined that dual or concurrent licenses are not necessary. A currently licensed health care institution that meets the definition of “abortion clinic” in A.R.S. § 36-449.01(2) is required to comply with the requirements in 9 A.A.C. 10, Article 15 when providing abortion services.

COMMENT: There was a comment from a Planned Parenthood representative that although Planned Parenthood Clinics are currently licensed as unclassified health care institutions, after the rules are effective, the Planned Parenthood Clinics will be licensed as abortion clinics.

RESPONSE: The Department disagrees. There are no requirements in the rules for the provision of medical services, nursing services, or health-related services other than services related to the provision of an abortion. A currently licensed health care institution that meets the definition of “abortion clinic” in A.R.S. § 36-449.01(2) will retain the current license and comply with the requirements for the current health care institution license in 9 A.A.C. 10 when providing services other than abortion services and with the requirements in 9 A.A.C. 10, Article 15 when providing abortion services.

COMMENT: There were comments from individuals affiliated with Planned Parenthood that requiring a patient, after the patient receives abortion services, to go to a separate location to receive birth control is not in the best interest of the patient and may, in fact, be detrimental to the patient’s health.

RESPONSE: The Department agrees and made changes to the implementation of the rules to allow a facility to provide all services. Services other than abortion services must comply with the requirements for the current health care institution license in 9 A.A.C. 10 and abortion services must comply with the requirements in 9 A.A.C. 10, Article 15.

COMMENT: There were comments from hospital and Planned Parenthood representatives that costs would increase and services provided would be less efficient and less medically effective if patients were required to go to a separate facility for services other than abortion services.

RESPONSE: The Department agrees and made changes to the implementation of the rules to allow a facility to provide all services. Services other than abortion services must comply with the requirements for the current health care institution license in 9 A.A.C. 10 and abortion services must comply with the requirements in 9 A.A.C. 10, Article 15.

COMMENT: There were comments from hospital representatives that the abortion clinic rules were never intended to apply to licensed hospitals. The types of abortions performed in a licensed hospital are not comparable to abortions performed in a clinic setting. The requirements are not consistent with current hospital practices. There was a request for a review to determine whether licensed hospitals could be considered exempt from the abortion clinic requirements.

RESPONSE: When the statutory definition of “abortion clinic” was adopted almost all hospitals were accredited, and the definition specifically excludes accredited hospitals. The definition does include hospitals that have dropped JCAHO accreditation and are not currently accredited. The Department does not have the authority to exempt licensed hospitals that meet the statutory definition of “abortion clinic” from complying with the requirements in 9 A.A.C. 10, Article 15.

COMMENT: There was a comment from a Planned Parenthood representative that stated the Ninth Circuit Court of Appeals found that the statutes (A.R.S. § 36-424 (B) and (D)), which authorize broad, warrantless searches, violate the Fourth Amendment. Because A.R.S. § 36-424 (B) and (D) were found to be unconstitutional, these provisions cannot be enforced against any health care institution, not just with regard to abortion clinics.

RESPONSE: The Court of Appeals' decision addressed only the plaintiff's specific situation, which is that of an abortion provider operating a private office or clinic. The Court indicated that both abortions and services provided in private physicians' offices implicated heightened privacy expectations, and its holding was limited to the specific fact situation presented in the case. The Department, therefore, does not believe that the Court's decision is applicable to currently licensed health care institutions and does not plan to change the rule.

R9-10-1501(4)

COMMENT: There was a comment from a representative of Planned Parenthood that Flagstaff does not have an accredited hospital within 30 miles and requiring a written agreement with another physician who has admitting privileges to an accredited hospital within 30 miles of the abortion clinic would prohibit the operation of an abortion clinic in Flagstaff.

RESPONSE: The Department deleted the phrase "within 30 miles of the abortion clinic" and added the phrase "in this state" consistent with A.R.S. § 36-449.03(C)(3).

R9-10-1501(39)

COMMENT: There was a comment from a Planned Parenthood representative that the definition of "personally identifiable information" is too narrow and not consistent with HIPAA requirements and would require abortion clinics to turn over protected personal information in violation of patients' privacy rights.

RESPONSE: The Department changed the definition of "personally identifiable patient information" by adding "any 'individually identifiable health information' as proscribed in 45 CFR 164.514" to the list of information already in the definition.

R9-10-1508(A)(2), R9-10-1508(B)(1), R9-10-1508(C)

COMMENT: The subsections contain requirements for a physician to perform certain functions related to the provision of an abortion. Planned Parenthood representatives commented that the subsections that require a physician to be an active participant in the provision of abortion care are unconstitutional because they are not narrowly tailored to service a compelling state interest, given that registered nurse practitioners can provide first-trimester surgical abortions as safely as physicians.

RESPONSE: A.R.S. Title 36, Chapter 4, Article 10 contains specific requirements for physicians in an abortion clinic including requirements for a physician to demonstrate competency, provide postoperative monitoring and care, estimate the gestational age of the fetus based on the ultrasound and obstetric standards, remain on the premises until all patients are stable and ready to leave the recovery room, facilitate the transfer of emergency cases, sign a patient's discharge order, be readily accessible and available until the last patient is discharged, and discuss RhO(d) immune globulin with each patient for whom it is indicated. Although the statutes do not specifically require a physician to perform the physical examination, the Department believes that in order for the physician to estimate the gestational age of the fetus as required in statute, it is necessary for the physician to perform the physical examination. Because the rules are consistent with the specific requirements for physicians in A.R.S. Title 36, Chapter 4, Article 10, the Department does not plan to change the rules.

R9-10-1506(B)(2) and R9-10-1508(H)(2)

COMMENT: There was a comment from a Planned Parenthood representative that the portions of the proposed rules that address when a physician must physically be on the premises of a licensed abortion clinic must be amended because they both are inconsistent with underlying statute and fail to give consistent direction to licensees.

COMMENT: There was a comment from a hospital representative that an anesthesiologist, not the physician who performed the abortion procedure, remains in the recovery room with the patient.

RESPONSE: There are two statutes that address the presence or availability of a physician in A.R.S. Title 36, Chapter 4, Article 10. A.R.S. § 36-449.03(C)(3) states that the director shall adopt rules relating to abortion clinic personnel that at a minimum require a physician with admitting privileges at an accredited hospital in this state to be available. A.R.S. § 36-449.03(C)(4) states that the rules at a minimum must require that if a physician is not present, a registered nurse, nurse practitioner, licensed practical nurse, or physician's assistant is present and remains at the clinic when abortions are performed to provide postoperative monitoring and care until each patient who had an abortion that day is discharged. In addition, A.R.S. § 36-449.03(F)(4) states that the director shall adopt rules for minimum recovery room standards that require a physician with admitting privileges at an accredited hospital in this state to remain on the premises of the abortion clinic until all patients are stable and are ready to leave the recovery room and to facilitate the transfer of emergency cases if hospitalization of the patient or viable fetus is necessary. The statutes address patients in different locations and conditions. After an abortion procedure, a patient recovers in a recovery room. At that point in time, a physician needs to be on the abortion clinic premises. After the patient is discharged from the recovery room, the patient may receive postoperative care and monitoring before leaving the abortion clinic.

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At that point in time, a physician needs to be available. The Department believes that R9-10-1506(B)(2), which requires a physician with admitting privileges at an accredited hospital in this state to remain on the premises of the abortion clinic until all patients are stable and ready to leave the recovery room, is consistent with the requirements in A.R.S. § 36-449.03(F)(4) and does not plan to change the rule.

R9-10-1511

COMMENT: There were comments from hospital and Planned Parenthood representatives that it is necessary for the safe and effective provision of health care to have a single medical record for a patient.

RESPONSE: The Department agrees. A licensed health care institution may have a single medical record for a patient. Because the Department's access to unredacted medical records pertaining to a patient's abortion services can be restricted, the licensed health care institution is responsible for complying with the requirements in R9-10-1511 when providing the patient's medical record to the Department.

R9-10-1511(B)(1)

COMMENT: There was a comment from a Planned Parenthood representative that the rule required an abortion clinic to provide protected information to the Department.

RESPONSE: Subsection (B)(5) contains the provisions for redacting personally identifiable patient information. To clarify that the provisions in subsection (B)(5) apply when an abortion clinic provides the information in subsection (B)(1), the Department added the phrase "Subject to the redaction permitted by subsection (B)(5)" so that it is clear that subsection (B)(5) applies when an abortion clinic is providing patient medical records to the Department.

COMMENTS RECEIVED DURING THE SUPPLEMENTAL RULEMAKING PROCESS

COMMENT: There were comments received that stated the Ninth Circuit Court of Appeals found that the statutes (A.R.S. § 36-424(B) and (D)), which authorize broad, warrantless searches, violate the Fourth Amendment. Because A.R.S. § 36-424(B) and (D) were found to be unconstitutional, these provisions cannot be enforced against any health care institution, not just with regard to abortion clinics.

RESPONSE: The Court of Appeals' decision addressed only the plaintiff's specific situation, which is that of an abortion provider operating a private office or clinic. The Court indicated that both abortions and services provided in private physicians' offices implicated heightened privacy expectations, and its holding was limited to the specific fact situation presented in the case. The Department, therefore, does not believe that the Court's decision is applicable to currently licensed health care institutions and does not plan to change the rule.

R9-10-1501(39)

COMMENT: There was a comment from a Planned Parenthood representative that the definition of "personally identifiable information" is too narrow and not consistent with HIPAA requirements and would require abortion clinics to turn over protected personal information in violation of patients' privacy rights.

RESPONSE: The Department changed the definition of "personally identifiable patient information" by adding "any 'individually identifiable health information' as proscribed in 45 CFR 164.514" to the list of information already in the definition.

R9-10-1506(B)(2) and R9-10-1508(H)(2)

COMMENT: There was a comment from a Planned Parenthood representative that the portions of the proposed rules that address when a physician must physically be on the premises of a licensed abortion clinic must be amended because they both are inconsistent with underlying statute and fail to give consistent direction to licensees.

RESPONSE: There are two statutes that address the presence or availability of a physician in A.R.S. Title 36, Chapter 4, Article 10. A.R.S. § 36-449.03(C)(3) states that the director shall adopt rules relating to abortion clinic personnel that at a minimum require a physician with admitting privileges at an accredited hospital in this state to be available. A.R.S. § 36-449.03(C)(4) states that the rules at a minimum must require that if a physician is not present, a registered nurse, nurse practitioner, licensed practical nurse, or physician's assistant is present and remains at the clinic when abortions are performed to provide postoperative monitoring and care until each patient who had an abortion that day is discharged. In addition, A.R.S. § 36-449.03(F)(4) states that the director shall adopt rules for minimum recovery room standards that require a physician with admitting privileges at an accredited hospital in this state to remain on the premises of the abortion clinic until all patients are stable and are ready to leave the recovery room and to facilitate the transfer of emergency cases if hospitalization of the patient or viable fetus is necessary. The statutes address patients in different locations and conditions. After an abortion procedure, a patient recovers in a recovery room. At that point in time, a physician needs to be on the abortion clinic premises. After the patient is discharged from the recovery room, the patient may receive postoperative care and monitoring before leaving the abortion clinic. At that point in time, a physician needs to be available. The Department believes that R9-10-1506(B)(2), which requires a physician with admitting privileges at an accredited hospital in this state to remain on the premises of the abortion clinic until all patients are stable and ready to leave the recovery room, is consistent with the requirements in A.R.S. § 36-449.03(F)(4) and does not plan to change the rule.

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R9-10-1508(H)(1)

COMMENT: There was a comment from plaintiff's counsel that R9-10-1506(B)(3)(a) explicitly permits supervised medical assistants during recovery and changes were necessary because R9-10-1508(H)(1) contains requirements for the monitoring of patients during recovery and does not address medical assistants or the role they may play in patient monitoring.

RESPONSE: The Department deleted the phrase "a member of the patient care staff, except a surgical assistant," and added the phrase "a physician, a nurse, a nurse practitioner, a physician assistant, or, if a physician is able to provide direct supervision as defined in A.R.S. § 32-1401, a medical assistant under the direct supervision of the physician" for consistency with the requirements in R9-10-1506(B)(3)(a).

R9-10-1511(B)(1)

COMMENT: There was a comment from a Planned Parenthood representative that it is necessary for the safe and effective provision of health care to have a single medical record for a patient.

RESPONSE: The Department agrees. A licensed health care institution may have a single medical record for a patient. Because the Department's access to unredacted medical records pertaining to a patient's abortion services can be restricted, the licensed health care institution is responsible for complying with the requirements in R9-10-1511 when providing the patient's medical record to the Department.

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

None

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

No

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

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

ARTICLE 1. GENERAL

Section
R9-10-115. Unclassified Health Care Institutions

ARTICLE 2. HOSPITALS

Section
R9-10-203. Administration

ARTICLE 15. ABORTION CLINICS

Section
R9-10-1501. Definitions
R9-10-1503. Administration
R9-10-1505. Personnel Qualifications and Records
R9-10-1506. Staffing Requirements
R9-10-1507. Patient Rights
R9-10-1508. Abortion Procedures
R9-10-1511. Medical Records

ARTICLE 17. OUTPATIENT SURGICAL CENTERS

Section
R9-10-1702. Administration

ARTICLE 1. GENERAL

R9-10-115. Unclassified Health Care Institutions

~~Implementation of the provisions of R9-10-114(B) shall be at the sole discretion of the Director or the Director's representa-~~

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- d. No change
- e. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
- f. No change
- g. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
- h. No change
- i. No change
- j. No change
- k. No change
- l. No change
- m. No change
- n. No change
- 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change
 - ii. No change
 - i. No change
 - j. No change
- 3. No change
- 4. No change
- 5. No change
 - a. No change
 - b. No change
- 6. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
- D.** No change
 - 1. No change
 - 2. No change
- E.** An administrator of a hospital that meets the definition of “abortion clinic” in A.R.S. § 36-449.01, shall require that abortions and related services are provided in compliance with the requirements in 9 A.A.C. 10, Article 15.

ARTICLE 15. ABORTION CLINICS

R9-10-1501. Definitions

In this Article, unless the context otherwise requires:

- 1. No change
- 2. No change
- 3. “Admission” means documented acceptance by a hospital of an individual as an inpatient as defined in R9-10-201 on the order of a physician.
- 4. “Admitting privileges” means permission extended by a hospital to a physician to allow admission of a patient:
 - a. By the patient’s own physician, or
 - b. Through a written agreement between the patient’s physician and another physician that states that the other phy-

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sician has permission to personally admit the patient to a hospital in this state and agrees to do so.

3-5. No change

4-6. No change

5-7. No change

6-8. No change

7-9. No change

8-10. No change

9-11. No change

10-12. No change

11-13. No change

12-14. No change

13-15. No change

14-16. No change

15-17. No change

16-18. No change

17-19. No change

18-20. No change

19-21. No change

20-22. No change

21-23. No change

22-24. No change

23-25. No change

24-26. No change

25-27. No change

26-28. No change

27-29. No change

28-30. No change

29-31. No change

30-32. No change

31-33. No change

32-34. No change

33-35. No change

34-36. No change

35-37. No change

36-38. No change

39. "Personally identifiable patient information" means:

a. The name, address, telephone number, e-mail address, Social Security number, and birth date of:

i. The patient.

ii. The patient's representative.

iii. The patient's emergency contact.

iv. The patient's children.

v. The patient's spouse.

vi. The patient's sexual partner, and

vii. Any other individual identified in the patient's medical record other than patient care staff.

b. The patient's place of employment;

c. The patient's referring physician;

d. The patient's insurance carrier or account;

e. Any "individually identifiable health information" as proscribed in 45 CFR 164.514; and

f. Any other information in the patient's medical record that could reasonably lead to the identification of the patient.

37-40. No change

38-41. No change

a. No change

b. No change

39-42. No change

40-43. No change

41-44. No change

42-45. No change

43-46. No change

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~~44-47.~~ No change

~~45-48.~~ No change

R9-10-1503. Administration

A. No change

B. A licensee shall:

1. No change

2. No change

3. No change

4. Ensure that the Department's director or director's designee is allowed ~~immediate access to the abortion clinic during the hours of operation;~~ as follows:

a. For a complaint inspection, upon presentation of an administrative search warrant authorizing the inspection of the abortion clinic; or

b. For a licensing or compliance inspection, at a date and time agreed to by the licensee and the Department that is no later than 10 business days after the date the Department submits a written request to the licensee to schedule the licensing or compliance inspection, unless the Department agrees to a later date and time;

5. No change

a. No change

b. No change

c. No change

C. No change

1. No change

2. No change

3. No change

4. No change

5. No change

6. No change

a. No change

b. No change

c. No change

d. No change

7. No change

8. No change

9. No change

R9-10-1505. Personnel Qualifications and Records

A licensee shall ensure that:

1. No change

a. No change

b. No change

2. No change

3. No change

a. A physician ~~who:~~

i. ~~Has completed a course in performing an ultrasound from a manufacturer or distributor of ultrasound equipment; or~~

ii. ~~Has performed ultrasounds during the physician's medical education;~~

b. A physician assistant, nurse practitioner, or nurse who completed a hands-on course in performing ultrasounds under the supervision of a physician ~~qualified as required in subsection (3)(a);~~ or

c. An individual who ~~completed:~~

i. ~~A postsecondary education institution course in performing ultrasound;~~ Completed a hands-on course in performing ultrasounds under the supervision of a physician, and

ii. ~~The hands-on course required in subsection (3)(b)~~ Is not otherwise precluded by law from performing an ultrasound.

4. No change

5. No change

a. No change

b. No change

c. No change

d. No change

e. No change

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- f. No change
- 6. No change

R9-10-1506. Staffing Requirements

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
- B. No change
 - 1. No change
 - 2. A physician with admitting privileges at an accredited hospital in this state ~~is in the physical facilities~~ remains on the premises of the abortion clinic until each patient is all patients are stable and ready to leave the recovery room; and
 - 3. A physician, A nurse, a nurse practitioner, or a physician assistant, or, if a physician is able to provide direct supervision as defined in A.R.S. § 32-1401, a medical assistant under the direct supervision of the physician:
 - a. No change
 - b. Remains in the ~~physical facilities~~ facility until each patient is discharged by a physician; and,
 - 4. ~~A written schedule is maintained in the physical facilities for at least six months from the last date on the schedule and includes:~~
 - a. ~~The date, work hours, and name of the patient care staff assigned to provide medical services, nursing services, health related services, and the name of the volunteers assigned to provide volunteer services; and~~
 - b. ~~The date, work hours and name of the patient care staff and volunteers who actually provided medical services, nursing services, health related services, or volunteer services.~~

R9-10-1507. Patient Rights

- A licensee shall ensure that a patient is afforded the following rights; and is informed of these rights:
- ~~1. To be treated with consideration, respect, and full recognition of the patient's dignity and individuality;~~
 - ~~2-1.~~ 2. To refuse treatment; or withdraw consent for treatment;
 - ~~3-2.~~ 3. No change
 - ~~4-3.~~ 4. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change

R9-10-1508. Abortion Procedures

- A. No change
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - 2. No change
 - 3. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
- C. No change
 - 1. No change
 - 2. No change
- D. No change
 - 1. No change
 - 2. No change
 - 3. No change

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- a. No change
- b. Maintained in the patient's medical record in either electronic or paper form; and
- 4. No change
- E. No change
 - 1. No change
 - 2. No change
- F. No change
- G. No change
 - 1. No change
 - 2. Intravenous access is established and maintained on a patient undergoing an abortion after the first trimester unless the physician determines that establishing intravenous access is not appropriate for the particular patient and documents that fact in the patient's medical record; and
 - 3. No change
 - a. No change
 - b. No change
 - c. No change
- H. No change
 - 1. A patient's vital signs and bleeding are monitored by ~~a member of the patient care staff, except a surgical assistant, a physician, a nurse, a nurse practitioner, a physician assistant, or, if a physician is able to provide direct supervision as defined in A.R.S. § 32-1401, a medical assistant under the direct supervision of the physician~~ to ensure the patient's health and safety; and
 - 2. A patient remains in the recovery room or recovery area until a physician, physician assistant, a nurse practitioner, or a nurse examines the patient and determines that the patient's medical condition is stable and the patient is ready to leave the recovery room or recovery area; and
 - 3. ~~An ultrasound result print of each fetus with a gestational age estimate of more than 12 weeks is sent to persons or corporations contracted with the Department in compliance with A.R.S. § 36-2301.02.~~
- I. No change
 - 1. No change
 - 2. A follow-up visit offered and scheduled, if requested, at least three weeks no more than 21 days after the abortion; ~~which includes. The follow-up visit shall include:~~
 - a. A physical examination; ~~and~~
 - b. A review of all laboratory tests as required in R9-10-1508(A)(3); ~~and~~
 - c. A urine pregnancy test.
- J. No change

R9-10-1511. Medical Records

- A. No change
 - 1. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change
 - j. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - ~~5.~~ No change
 - b. ~~A medical record maintained at the abortion clinic is provided to the Department for review no later than two hours from the time the Department requests the medical record; and~~
 - e. ~~A medical record maintained off site is provided to the Department for review no later than 24 hours from the time the Department requests the medical record;~~
 - ~~5-6.~~ No change

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6-7. No change

B. A licensee shall comply with Department requests for access to or copies of patient medical records as follows:

1. Subject to the redaction permitted in subsection (B)(5), for patient medical records requested for review in connection with a compliance inspection, the licensee shall provide the Department with the following patient medical records related to medical services associated with an abortion, including any follow-up visits to the facility in connection with the abortion:
 - a. Patient identification including:
 - i. The patient's name, address, and date of birth;
 - ii. The designated patient representative, if applicable; and
 - iii. The name and telephone number of an individual to contact in an emergency;
 - b. The patient's medical history required in R9-10-1508(A)(1);
 - c. The patient's physical examination required in R9-10-1508(A)(2);
 - d. The laboratory test results required in R9-10-1508(A)(3);
 - e. The physician's estimated gestational age of the fetus required in R9-10-1508(C);
 - f. The ultrasound results, if applicable, including the original print as required in R9-10-1508(D);
 - g. Each consent form signed by the patient or the patient's representative;
 - h. A record of all orders issued by a physician, physician assistant, or nurse practitioner;
 - i. A record of all medical, nursing, and health-related services provided to the patient; and
 - j. The patient's medication information.
2. For patient medical records requested for review in connection with an initial licensing or compliance inspection, the licensee is not required to produce for review by the Department any patient medical records created or prepared by a referring physician or any of that referring physician's medical staff.
3. The licensee is not required to provide patient medical records regarding medical services associated with an abortion that occurred before:
 - a. The effective date of these rules, or
 - b. A previous licensing or compliance inspection of the abortion clinic.
4. The patient medical records may be provided to the Department in either paper or in an electronic format that is acceptable to the Department.
5. When access to or copies of patient medical records are requested from a licensee by the Department, the licensee shall redact only personally identifiable patient information from the patient medical records before the disclosure of the patient medical records to the Department, except as provided in subsection (B)(8).
6. For patient medical records requested for review in connection with an initial licensing or compliance inspection, the licensee shall provide the redacted copies of the patient medical records to the Department within two business days of the Department's request for the redacted medical records if the total number of patients for whom patient medical records are requested by the Department is from one to 10 patients, unless otherwise agreed to by the Department and the licensee. The time within which the licensee shall produce redacted records to the Department shall be increased by two business days for each additional five patients for whom patient medical records are requested by the Department, unless otherwise agreed to by the Department and the licensee.
7. Upon request by the Department, in addition to redacting only personally identifiable patient information, the licensee shall code the requested patient medical records by a means that allows the Department to track all patient medical records related to a specific patient without the personally identifiable patient information.
8. The Department shall have access to or copies of unredacted patient medical records only pursuant to an administrative search warrant specifically authorizing the disclosure of unredacted patient medical records by the licensee.
9. If the Department obtains copies of unredacted patient medical records, the Department shall:
 - a. Allow the examination and use of the unredacted patient medical records only by those Department employees who need access to the patient medical records to fulfill their investigative responsibilities and duties;
 - b. Maintain all unredacted patient medical records in a locked drawer, cabinet, or file or in a password-protected electronic file with access to the secured drawer, cabinet, or file limited to those individuals who have access to the patient medical records pursuant to subsection (B)(9)(a);
 - c. Destroy all unredacted patient medical records at the termination of the Department's investigation or at the termination of any administrative or legal action that is taken by the Department as the result of the Department's investigation, whichever is later;
 - d. If the unredacted patient medical records are filed with a court or other judicial body, including any administrative law judge or panel, file the records only under seal; and
 - e. Prevent access to the unredacted records by anyone except as provided in subsection (B)(9)(a) or subsection (B)(9)(d).

~~B.C.~~ No change

1. No change
2. No change

- a. No change
 - b. No change
 - c. No change
 - d. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - a. No change
 - b. No change
 - c. No change
 - 6. No change
- ~~C.D.~~ No change

ARTICLE 17. OUTPATIENT SURGICAL CENTERS

R9-10-1702. Administration

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- B. No change
 - ~~a.1.~~ No change
 - ~~b.2.~~ No change
 - ~~e.3.~~ No change
 - ~~i.a.~~ No change
 - ~~ii.b.~~ No change
 - ~~iii.c.~~ No change
 - ~~iv.d.~~ No change
 - ~~v.e.~~ No change
 - ~~vi.f.~~ No change
 - ~~vii.g.~~ No change
 - ~~viii.h.~~ No change
 - ~~ix.i.~~ No change
 - ~~d.4.~~ No change
 - ~~e.5.~~ No change
 - ~~f.6.~~ No change
 - ~~g.7.~~ Ensure that a pharmacy maintained by the facility ~~shall be~~ is registered pursuant to A.R.S. Title 32, Chapter 18 or as otherwise provided by law;
 - ~~h.8.~~ Ensure that pathology services are provided by a laboratory licensed, or exempt from licensure, pursuant to A.R.S. Title 36, Chapter 4.1; ~~and~~
 - ~~i.9.~~ Designate, in writing, an individual to be on duty, in charge, and have access to all areas related to patient care and operation of the physical plant when the administrator is not present; and
 - 10. If the outpatient surgical center meets the definition of "abortion clinic" in A.R.S. § 36-449.01, ensure that abortions and related services are provided in compliance with the requirements in 9 A.A.C 10, Article 15.