NOTICES OF FINAL RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Final Rulemaking. Final rules have been through the regular rulemaking process as defined in the Administrative Procedures Act. These rules were either approved by the Governor's Regulatory Review Council or the Attorney General's Office. Certificates of Approval are on file with the Office.

The final published notice includes a preamble and text of the rules as filed by the agency. Economic Impact Statements are not published.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to Item #5 to contact the person charged with the rulemaking. The codified version of these rules will be published in the Arizona Administrative Code.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

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

[R18-55]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**

R9-10-120 — New Section

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statutes: A.R.S. §§ 36-132(A)(1), 36-136(G)

Implementing statutes: A.R.S. §§ 36-132(A)(17), 36-405(A) and (B)

3. The effective date of the rules:

March 6, 2018

The Arizona Department of Health Services (Department) requests an immediate effective date for this rule under A.R.S. § 41-1032 (A)(1) and (4). This rule is necessary to protect public health and safety and is less burdensome than the emergency rule currently in effect. Therefore, implementing the rule earlier than the usual 60-day time period will provide a benefit to both the regulated entities and the public. No additional penalties are assessed for a violation of this rule compared with the emergency rule.

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Emergency Rulemaking: 23 A.A.R. 2203, August 18, 2017

Notice of Rulemaking Docket Opening: 23 A.A.R. 2491, September 15, 2017

Notice of Proposed Rulemaking: 23 A.A.R. 3201, November 17, 2017

5. The agency's contact person who can answer questions about the rulemaking:

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6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Arizona Revised Statutes (A.R.S.) § 36-405 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 public health, safety, and welfare. In Arizona Administrative Code (A.A.C.) Title 9, Chapter 10, Article 1, the Department has implemented requirements related to this statute that are applicable to more than one class or subclass of health

care institution.

In the last 15 years, prescription opioid sales in the United States have risen by 300%, resulting in more than 33,000 opioid overdose deaths in 2015 nationwide. In Arizona, 790 individuals died in 2016 of an opioid overdose, a 74% increase since 2012. This figure represents over half of all drug overdoses in Arizona in 2016. In response to this epidemic, Governor Doug Ducey, on June 5, 2017, issued a Declaration of Emergency (Opioid Overdose Epidemic). In compliance with the Governor's Declaration of Emergency and after obtaining an exception from the rulemaking moratorium established by Executive Order 2017-02, the Department has adopted a rule in 9 A.A.C. 10, Article 1 for licensed health care institutions through emergency rulemaking. The emergency rule, effective July 28, 2017, requires licensed heath care institutions to establish, document, and implement policies and procedures for prescribing, ordering, or administering opioids as part of treatment; to include specific processes related to opioids in a licensed health care institution's quality management program; and to notify the Department of the death of a patient from an opioid overdose. The Department also specified requirements with which an individual will need to comply before prescribing opioids, ordering opioids, or administering opioids in the treatment of a patient. To reduce the burden on licensed health care institutions, the Department exempted the prescription, ordering, or administration of opioids as part of treatment for a patient with a terminal condition.

Concurrent with this emergency action, the Department initiated a regular rulemaking to address opioid-related activities in licensed health care institutions. As part of this rulemaking, the Department is revising what is in the emergency rulemaking to address stakeholder concerns and improve the effectiveness of the rule. These changes are described in paragraph 14. By providing licensed health care institutions with comprehensive requirements related to the prescription and use of opioids in treatment, the Department anticipates an immediate effect on opioid prescribing practices, a decrease in the number of unnecessary opioid prescriptions, and an attendant reduction in overdose-related events thereafter. The amendments will conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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 Department based the need for this rulemaking on the following two documents:

a. The Department's "2016 Arizona Opioid Report," available at http://azdhs.gov/documents/audiences/clinicians/clinical-guidelines-recommendations/prescribing-guidelines/arizona-opioid-report.pdf; and

b. The U.S. Centers for Disease Control and Prevention's Morbidity and Mortality Weekly Report (MMWR) "Vital Signs: Changes in Opioid Prescribing in the United States, 2006-2015," published July 7, 2017, available at https://www.cdc.gov/mmwr/volumes/66/wr/mm6626a4.htm?s_cid=mm6626a4_w.

Both documents present factual data describing the extent of the opioid epidemic in Arizona and the United States, respectively.

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

Not applicable

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

Annual cost/revenue changes are designated as minimal when $10,000 or less, moderate when between $10,000 and $50,000, and substantial when $50,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. The Department anticipates that persons affected by the rulemaking include the Department, licensed health care institutions, medical practitioners prescribing or ordering an opioid on behalf of a licensed health care institution, personnel members administering an opioid to a patient on behalf of a licensed health care institution or providing assistance in the self-administration of medication for a patient's prescribed opioid, patients of licensed health care institutions and their families, and the general public.

The Department will receive a significant benefit from having a rule that specifically addresses opioid prescribing and treatment in licensed health care institutions by being better able to, and more easily, assess whether a licensed health care institution is adequately addressing the opioid epidemic occurring in Arizona. Since AHCCCS pays for a large proportion of health care costs in Arizona, the Department believes that AHCCCS may receive up to a substantial cost savings through a reduction in the number of hospitalizations or emergency department visits from individuals suffering an opioid overdose as a result of opioids prescribed, ordered, or administered as part of treatment in licensed health care institutions. Other third-party payors may also receive up to a substantial cost savings, depending on the number of subscribers who are spared from an opioid overdose because of the rule.

For most licensed health care institutions, the Department believes that making changes to their policies and procedures to specifically address opioids would cause the licensed health care institution to incur a minimal cost, although there may be a few with extensive ordering, prescribing, or medication administration policies and procedures that could incur a moderate cost. Having these policies and procedures in place may provide a significant benefit to a licensed health care institution from the clarity and specificity of the requirements, which may lead to fewer opioid-related adverse reactions or other negative outcomes for a patient. The Department anticipates that specific processes related to opioids could be incorporated into a licensed health care institution's existing quality management program and, for most licensed health care institutions, believes that including these processes may cause the licensed health care institution to incur minimal costs. If a licensed health care institution identifies a larger number of opioid-related adverse reactions or other negative patient outcomes through their revised quality management program, and then investigates and makes changes or takes action as a result of the identification of a concern, the cost incurred by the licensed health care institution may be higher. As stated above, having specific processes related to opioids as part of a licensed health care institution's quality management program may provide a significant benefit to the licensed health care institution from the clarity and specificity of the requirements, which may lead to fewer opioid-related adverse reactions or other negative outcomes for patients. The Department anticipates that licensed health care institutions not already reporting deaths to the Department may incur a mini-

mal-to-moderate increase in costs for reporting these deaths, depending on the number of opioid-related deaths being reported. The rule also specifies some clinical requirements that the administrator of a licensed health care institution is required to ensure take place. These requirements may impose minimal-to-substantial increased costs on a health care institution depending on what practices the health care institution is currently employing. The requirements in the rule related to the administration of an opioid to a patient or to providing assistance in the self-administration of medication for a prescribed opioid may cause a licensed health care institution to incur at most a minimal increased cost.

The rule affects medical practitioners (physicians, physician assistants, and registered nurse practitioners) who work for licensed health care institutions through requirements imposed on these licensed health care institutions. The Department believes that the rule may cause an affected medical practitioner to incur minimal-to-moderate additional costs, depending on the number of patients for whom the medical practitioner orders, prescribes, or administers opioids, and to receive a significant benefit from providing better care to a patient. The Department estimates that the requirements in subsection (E) may cause a personnel member to incur at most a minimal cost and to receive a significant benefit from providing better care to a patient.

Since the requirements in the rule were designed to improve the health and safety of patients receiving an opioid medication as part of treatment in a licensed health care institution, the Department anticipates that patients and their families may receive a significant benefit from the requirements in the rule. If a licensed health care institution passes on any increases in cost due to the rule, a patient could incur a minimal increase in the cost of services provided by the licensed health care institution. The Department anticipates that the general public will receive a significant benefit from the rule, which was developed to help combat the opioid overdose epidemic and reduce the number of opioid overdose deaths.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

The following changes were made to the rule between the proposed rulemaking and the final rulemaking:

- Clarifying the definition of "prescribe";
- Replacing the definition of "substance use risk assessment" with a definition of "substance use risk" and changing subsections (B)(1)(c)(ii) and (g)(ii), (C)(1)(c), and (D)(1)(c) to use the phrase "assessment of the patient's substance use risk";
- Clarifying that the policies and procedures required in subsection (B)(1) may include in what situations informed consent would not be obtained before an opioid is prescribed or ordered for a patient;
- Correcting the typographical error and clarifying that the exceptions in (B)(3) and (E)(3) on reporting deaths apply only to subsection (G)(1);
- Clarifying that the exception in subsection (F) applies to subsection (D);
- Adding "patient's representative" to subsections (C)(1)(d) and (D)(1)(d);
- Clarifying that a physical examination conducted at a referring health care institution, but not necessarily by the referring medical practitioner at the health care institution, could be reviewed and used in lieu of a health care institution conducting a new physical examination of a patient;
- Clarifying that requirements in subsection (E) are also applicable to health care institutions in which an opioid is prescribed or ordered as part of treatment; and
- Correcting typographical or grammatical errors.

11. An agency's summary of the public stakeholder comments made about the rulemaking and the agency response to the comments:

The Department received two written comments during the public comment period. The Department held an oral proceeding for the proposed rule on December 18, 2017, which one stakeholder, who had also submitted a written comment, attended and provided a summarized version of the concerns identified in the written comment.

A summary of the comments received and the Department's responses follows:

Comment	Department's Response
In a written comment submitted by a representative of the Arizona Hospital and Health Care Association, several statements of support and several concerns were expressed: - Support for the informed consent requirement in subsection (C) was expressed.	The Department thanks the commenter for the support.

- The commenter expressed opposition to the inclusion of a requirement for informed consent for an opioid ordered for administration to a patient within a facility, citing that the "risk of addiction associated with opioid treatment in an inpatient setting is not well-documented" and that "[p]atients are very closely monitored" . . . "by and under the supervision of a team of qualified medical professionals."	The Department believes that there is a risk of addiction associated with an opioid begun as part of treatment in an inpatient setting. There are also other risks for a patient administered an opioid as part of treatment in an acute inpatient setting. According to a 2012 publication of the Joint Commission, opioids were among the medications most often associated with adverse reactions, with 47% of the opioid-related adverse reactions reported to The Joint Commission due to "wrong dose medication errors" and 29% related to "improper monitoring of the patient." In addition, since so many individuals have been prescribed opioids, constituting an opioid epidemic, many have developed a substance use disorder. If efforts to reduce the opioid epidemic in Arizona result in more individuals with a substance use disorder obtaining treatment and beginning recovery, it would be counterproductive to have an individual in recovery be admitted to an acute, inpatient setting for a non-emergency situation and be administered an opioid without having an opportunity to ask if there were alternatives to an ordered opioid and giving informed consent for the opioid to be administered. The rule contains exceptions in subsections (F), and (G)(1), (3), and (4), which should cover situations in which obtaining informed consent would be impossible, overly burdensome without a benefit to patients, or against requirements of good medical practice. These exceptions should be included in the policies and procedures required by subsection (B)(1)(c)(v). The Department believes that a patient, under usual circumstances, should have a right to know of the risks, benefits, and alternatives to an opioid and give informed consent for the opioid to be administered. The Department is not changing the rule based on this comment.
- Support for the inclusion in the rule of R9-10-120(B)(2)(a), requiring review of opioid-related adverse reactions through the health care institution's quality management program was expressed.	The Department thanks the commenter for the support.
- The commenter expressed concern that subsection (D)(1)(a)(ii) may disrupt transitions of care to less acute settings if the physical examination from the referring health care institution were conducted by a different medical practitioner from the one who discharges the patient and refers the patient to the receiving health care institution.	It was the Department's intent to ensure a smooth transition of care by including this subsection in the proposed rule. However, a patient may also be referred for admission to a health care institution by the patient's medical practitioner in private practice, rather than by another health care institution. To address the commenter's concern, the Department intends to clarify the requirement as follows: Within the previous 30 calendar days, at a health care institution transferring the patient to the health care institution or by the medical practitioner who referred the patient for admission to the health care institution;
- The commenter suggested that subsection (D)(1)(c) could also be changed "to specifically allow a receiving HCI to meet the substance use risk assessment requirements by reviewing documentation from an assessment conducted by a medical practitioner at a health care institution that transferred the patient for admission to the healthcare institution."	Subsection (D)(1)(c), as proposed, allowed the assessment to be done by any individual licensed under A.R.S. Title 32 and authorized by policies and procedures to conduct an assessment. This is broader than the suggested change in that an individual other than a medical practitioner could conduct the assessment, and the assessment would not need to have been from the referring health care institution. A health care institution could specify in policies and procedures from whom an assessment would be accepted, as long as the health and safety of a patient was protected. The Department is not changing the rule based on this comment.
- The commenter suggested the addition of a new subsection in (D), requiring that a new physical examination and risk assessment be conducted within 48 hours after admission to the receiving health care institution if the receiving health care institution relied on the documentation from the transferring health care institution.	Many of the Articles in 9 A.A.C. 10 specific to a class of health care institutions already contain requirements for when a physical examination must be conducted for a patient of the health care institution. These include: within 48 hours of admission for a hospital; within 72 hours for a behavioral health inpatient facility; within 30 calendar days before or seven calendar days after for a behavioral health residential facility; and within 30 calendar days before or 48 hours after for an outpatient treatment center authorized to provide dialysis services. Therefore, the Department does not believe there is need for an additional, and potentially conflicting, requirement to be imposed on a health care institution. The Department is not changing the rule based on this comment.

- The commenter requested clarification about the applicability of subsection (E) to health care institutions where opioids are prescribed or ordered.	In all classes of health care institution, medication may be administered or assistance in the self-administration of medication may be provided to a patient. Therefore, although subsections (B), (C), and (D) do not apply to a health care institution that does not prescribe or order an opioid, and only administers an opioid or provides assistance in the self-administration of medication for a prescribed opioid, subsection (E) applies to all health care institutions, including a health care institution that prescribes or orders an opioid. The Department is changing the rule as follows to clarify this requirement: For a health care institution where opioids are administered as part of treatment or where a patient is provided assistance in the self-administration of medication for a prescribed opioid, including a health care institution in which an opioid may be prescribed or ordered as part of treatment, an administrator, a manager as defined in R9-10-801, or a provider, as applicable to the health care institution, shall:
In a written comment and oral comments submitted by a representative of the Health System Alliance of Arizona, several concerns were expressed: - The commenter suggested that the definition of "prescribe" be revised to read: "'Prescribe' means to issue written or electronic instructions to a pharmacist to dispense directly to a patient a specific dose of a specific medication in a specific quantity and route of administration."	This wording would imply that a child's prescribed opioid could not be dispensed to the child's parent and that an adult child could not pick up the opioid prescription for an invalid parent. To better clarify the distinction between "prescribe" and "order," the Department is changing the rule as follows: "Prescribe" means to issue written or electronic instructions to a pharmacist to deliver to the ultimate user, or another individual on the ultimate user's behalf, a specific dose of a specific medication in a specific quantity and route of administration.
- The commenter expressed concern that the use of the term "co-occurring behavioral health issues" in subsection (B)(1)(d)(iii) "may be overly broad" and that the Department should be more specific as to what should be screened for.	The intent of the Department is not to dictate the practice of medicine, but to leave up to medical judgement what additional risks different behavioral health issues may pose to a patient for whom an opioid may be prescribed or ordered, balanced against the benefits to the patient. Since other behavioral health issues, such as schizophrenia, depression, or bipolar disorder, may increase a patient's risk, even in the absence of a "history of overdose or suicide attempts," the Department is not changing the rule but would expect a health care institution to develop policies and procedures, to protect the health and safety of a patient, specific to the scope of services provided, the method of delivery of these services, and the patient population served.
- The commenter expressed concern about the requirement for informed consent in an acute, inpatient treatment setting, citing situations where obtaining informed consent would be impractical or not in the best interests of a patient, and stating that patients in these settings "are under continuous medical supervision." The commenter requested that subsection (G) be changed to exempt acute inpatient hospital settings.	As stated above, the rule contains exceptions in subsections (F), and (G)(1), (3), and (4), which should cover situations in which obtaining informed consent would be impossible, overly burdensome without a benefit to patients, or against requirements of good medical practice. The Department believes that a patient, under usual circumstances, should have a right to know of the risks, benefits, and alternatives to an opioid and is not changing the exemptions based on this comment. However, the Department is changing subsection (B)(1)(c)(v) as follows to clarify that situations in which informed consent may not be obtained can be included in a health care institution's policies and procedures: Informed consent is obtained from a patient or the patient's representative and, if applicable, in what situations, described in subsection (F) or (G), informed consent would not be obtained before an opioid is prescribed or ordered for a patient;

- The commenter expressed concern that the use of the term "episode of care" in subsection (C)(1)(C) is unclear and suggested establishing in rule a time frame during which a risk assessment must be conducted. The commenter also expressed concerns about not using "a recognized and reliable risk assessment tool" and liability for selecting an inappropriate tool.	The definition of "episode of care" is similar to the definition for this term in A.A.C. R9-11-101 for hospitals submitting health care institution facility data, but allows for a different ending time for the episode of care to accommodate other classes of health care institutions. As such, a hospital should be very familiar with the duration of an episode of care as it applies to its class of health care institution. Because the duration of an episode of care varies with the class of health care institution, the Department believes that establishing a specific time period in rule would impose an undue burden on some classes of health care institution, without improving patient health or safety, and the Department is not changing the rule based on this comment. Although a hospital assesses the physical, psychological, or behavioral health condition of patients on a continual basis, as well as assessing the effect that the patient's medical history, treatment, disease progression, or other parameters have on the patient, the Department recognizes the concern about selecting a specific "substance use risk assessment" tool. Therefore, the Department is replacing the definition of "substance use risk assessment" with a definition of "substance use risk" and changing subsections (B)(1)(c)(ii) and (g)(ii), (C)(1)(c), and (D)(1)(c) to use the phrase "assessment of the patient's substance use risk" to specify that the assessment being required is to determine the unique likelihood for addiction, misuse, diversion, or another adverse consequence resulting from the individual being prescribed or receiving treatment with opioids, without requiring a specific tool to be used.
- The commenter suggested that "patient's representative" be added to subsections (C)(1)(d) and (D)(1)(d).	The Department thanks the commenter for pointing out the oversight and is changing these subsections of the rule to include the phrase "patient's representative."
- The commenter expressed concern that "[t]here is not a practical or safe opportunity to obtain informed consent or in the event of a medical emergency or incapacitation, conduct a full physical exam, obtain medical history etc." and requested that subsection (D) be removed because its requirements "would not only impede patient care, in some instances, they could compromise patient safety."	As stated above, the rule contains an exception in subsection (F) for emergency situations. The Department is clarifying that a health care institution's policies and procedures can include situations, described in subsections (F) or (G)(1), (3), or (4), when informed consent would not be obtained before an opioid is ordered for a patient, as already inferred from subsection (F)(1). The Department is also changing subsection (D) to clarify that the exception in subsection (F) is applicable to subsection (D).
- The commenter stated that subsection (E)(1)(b) "appears to be intended to be applicable to residential settings" but that this was unclear. The commenter also was uncertain about the intention of the phrases "knowledge and qualifications" and "assist in self-administration."	Subsection (E)(1)(b) is applicable to any health care institution in which assistance in the self-administration of medication for a prescribed opioid is provided, just as subsection (B)(1)(a) is applicable to any health care institution where opioids are prescribed or ordered as part of treatment. The phrase "knowledge and qualifications" is used in the same context as "qualifications, skills, and knowledge" is used throughout 9 A.A.C. 10. The term "assistance in the self-administration of medication" is defined in R9-10-101. The Department is not changing the rule based on this comment.
- The commenter requested that the exemption in subsection (F) be expanded to also include physicians who prescribe opioids.	Subsection (F) does not give a blanket exemption to a medical practitioner who orders an opioid, just to those instances in which a medical practitioner orders an opioid as part of treatment for a patient in an emergency, if the specified requirements are met. The nature of an emergency situation, requiring immediate treatment to protect the life or health of a patient, would not be one in which a medical practitioner would be prescribing an opioid. The Department is not changing the rule based on this comment.
- The commenter requested that "the exemption that is implied in Subsection G be clarified to explicitly exempt acute inpatient hospital settings from Subsections C, D & E for patients receiving a surgical procedure or other invasive inpatient procedures."	Subsection (G)(4)(a) exempts the applicable requirements when ordering an opioid for a patient receiving a surgical procedure or other invasive inpatient procedure. The Department believes that when this patient is ready for discharge, a health care institution should be required to comply with the requirements in the rule when prescribing an opioid for use by the patient after discharge. The Department is not changing the rule based on this comment.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rule does do not require a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No business competitiveness analysis was received by the Department.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

Not applicable

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Notice of Emergency Rulemaking: 23 A.A.R. 2203, August 18, 2017

Between the initial emergency rulemaking and the final rulemaking packages, the rule was changed by: adding definitions to improve clarity; making subsection (B) applicable only for health care institutions prescribing or ordering an opioid for a patient; revising the list of guidelines in subsection (B)(1)(b); changing the wording in subsection (B)(1)(d) to clarify the intended reason for added attention to be given when prescribing or ordering an opioid and to better describe conditions that may put a patient at a higher risk; adding a requirement that a method for continuing pain control will be addressed after discharge if medically indicated, in response to stakeholder concerns about patients being discharged without a needed prescription; clarifying that documenting a dispensed opioid in the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database is as required by A.R.S. § 36-2608; moving the components of informed consent into the administrative requirements in subsection (B) and removing some requirements and clarifying others; separating and revising requirements for prescribing an opioid for use outside a health care institution (subsection (C)) and for ordering an opioid for administration in a health care institution (subsection (D)) because of the differences in risk to a patient; separating clinical aspects and documentation aspects of prescribing or ordering an opioid; moving applicable subsections from subsection (B) into subsection (E) for health care institutions where opioids are administered as part of treatment or where a patient is provided assistance in the self-administration of medication for a prescribed opioid; changing the phrase "patient's pain" to "patient's need" to recognize that an opioid may be prescribed for a reason other than pain control; adding an exception from requirements for an opioid ordered and administered to a patient in an emergency if the specified conditions are met; expanding the circumstances where a health care institution would be exempt from requirements in the rule; and making the changes described in paragraph 10.

Between the renewed emergency rulemaking and the final rulemaking packages, the rule was changed as described in paragraph 10.

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
R9-10-120. Opioid Prescribing and Treatment

ARTICLE 1. GENERAL

R9-10-120. Opioid Prescribing and Treatment

A. In addition to the definitions in A.R.S. § 36-401(A) and R9-10-101, the following definitions apply in this Section:

1. "Active malignancy" means a cancer for which:
   a. A patient is undergoing treatment, such as through:
      i. One or more surgical procedures to remove the cancer;
      ii. Chemotherapy, as defined in A.A.C. R9-4-401; or
      iii. Radiation treatment, as defined in A.A.C. R9-4-401;
   b. There is no treatment; or
   c. A patient is refusing treatment.
2. "Benzodiazepine" means any one of a class of sedative-hypnotic medications, characterized by a chemical structure that includes a benzene ring linked to a seven-membered ring containing two nitrogen atoms, that are commonly used in the treatment of anxiety.
3. "End-of-life" means that a patient has a documented life expectancy of six months or less.
4. "Episode of care" means medical services, nursing services, or health-related services provided by a health care institution to a patient for a specific period of time, ending in discharge or the completion of the patient's treatment plan, whichever is later.
5. "Opioid" means a controlled substance, as defined in A.R.S. § 36-2501, that meets the definition of "opiate" in A.R.S. § 36-2501.
6. "Order" means to issue written, verbal, or electronic instructions for a specific dose of a specific medication in a specific quantity and route of administration to be obtained and administered to a patient in a health care institution.
7. "Prescribe" means to issue written or electronic instructions to a pharmacist to deliver to the ultimate user, or another individual on the ultimate user's behalf, a specific dose of a specific medication in a specific quantity and route of administration.
8. "Sedative-hypnotic medication" means any one of several classes of drugs that have sleep-inducing, anti-anxiety, anti-convulsant, and muscle-relaxing properties.
9. "Short-acting opioid antagonist" means a drug approved by the U.S. Department of Health and Human Services, Food and Drug Administration, that, when administered, quickly but for a small period of time reverses, in whole or in part, the pharmacological effects of an opioid in the body.
10. "Substance use disorder" means a condition in which the misuse or dependence on alcohol or a drug results in adverse physical, mental, or social effects on an individual.
11. "Substance use risk" means an individual's unique likelihood for addiction, misuse, diversion, or another adverse consequence resulting from the individual being prescribed or receiving treatment with opioids.

12. "Tapering" means the gradual reduction in the dosage of a medication administered to a patient, often with the intent of eventually discontinuing the use of the medication for the patient.

B. An administrator of a health care institution where opioids are prescribed or ordered as part of treatment shall:

1. Establish, document, and implement policies and procedures for prescribing or ordering an opioid as part of treatment, to protect the health and safety of a patient, that:
   a. Cover which personnel members may prescribe or order an opioid in treating a patient and the required knowledge and qualifications of these personnel members;
   b. As applicable and except when contrary to medical judgment for a patient, are consistent with the Arizona Opioid Prescribing Guidelines or national opioid-prescribing guidelines, such as guidelines developed by the:
      i. Centers for Disease Control and Prevention, or
      ii. U.S. Department of Veterans Affairs and the U.S. Department of Defense;
   c. Include how, when, and by whom:
      i. A patient's profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database is reviewed;
      ii. An assessment is conducted of a patient's substance use risk;
      iii. The potential risks, adverse outcomes, and complications, including death, associated with the use of opioids are explained to a patient or the patient's representative;
      iv. Alternatives to a prescribed or ordered opioid are explained to a patient or the patient's representative;
      v. Informed consent is obtained from a patient or the patient's representative and, if applicable, in what situations, described in subsection (F) or (G), informed consent would not be obtained before an opioid is prescribed or ordered for a patient;
      vi. A patient receiving an opioid is monitored; and
      vii. The actions taken according to subsections (B)(1)(c)(i) through (vi) are documented;
   d. Address conditions that may impose a higher risk to a patient when prescribing or ordering an opioid as part of treatment, including:
      i. Concurrent use of a benzodiazepine or other sedative-hypnotic medication,
      ii. History of substance use disorder,
      iii. Co-occurring behavioral health issue, or
      iv. Pregnancy;
   e. Cover the criteria for co-prescribing a short-acting opioid antagonist for a patient;
   f. Include that, if continuing control of a patient's pain after discharge is medically indicated due to the patient's medical condition, a method for continuing pain control will be addressed as part of discharge planning;
   g. Include the frequency of the following for a patient being prescribed or ordered an opioid for longer than a 30-calendar-day period:
      i. Face-to-face interactions with the patient,
      ii. Conducting an assessment of a patient's substance use risk,
      iii. Renewal of a prescription or order for an opioid without a face-to-face interaction with the patient, and
      iv. Monitoring the effectiveness of the treatment;
   h. If applicable according to A.R.S. § 36-2608, include documenting a dispensed opioid in the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
   i. Cover the criteria and procedures for tapering opioid prescription or ordering as part of treatment; and
   j. Cover the criteria and procedures for offering or referring a patient for treatment for substance use disorder;
2. Include in the plan for the health care institution's quality management program a process for:
   a. Review of known incidents of opioid-related adverse reactions or other negative outcomes a patient experiences or opioid-related deaths, and
   b. Surveillance and monitoring of adherence to the policies and procedures in subsection (B)(1);
3. Except as prohibited by Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2, or as provided in subsection (G)(1), ensure that, if a patient's death may be related to an opioid prescribed or ordered as part of treatment, written notification, in a Department-provided format, is provided to the Department of the patient's death within one working day after the health care institution learns of the patient's death; and
4. Ensure that informed consent required from a patient or the patient's representative includes:
   a. The patient's:
      i. Name,
      ii. Date of birth or other patient identifier, and
      iii. Condition for which opioids are being prescribed;
   b. That an opioid is being prescribed or ordered;
   c. The potential risks, adverse reactions, complications, and medication interactions associated with the use of an opioid;
   d. If applicable, the potential risks, adverse outcomes, and complications associated with the concurrent use of an opioid and a benzodiazepine or another sedative-hypnotic medication;
   e. Alternatives to a prescribed opioid;
   f. The name and signature of the individual explaining the use of an opioid to the patient; and
   g. The signature of the patient or the patient's representative and the date signed.

C. Except as provided in subsection (G), an administrator of a health care institution where opioids are prescribed as part of treatment shall ensure that a medical practitioner authorized by policies and procedures to prescribe an opioid in treating a patient:

1. Before prescribing an opioid for a patient of the health care institution:

a. Conducts a physical examination of the patient or reviews the documentation from a physical examination conducted during the patient's same episode of care;
b. Except as exempted by A.R.S. § 36-2606(G), reviews the patient's profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
c. Conducts an assessment of the patient's substance use risk or reviews the documentation from an assessment of the patient's substance use risk conducted during the same episode of care by an individual licensed under A.R.S. Title 32 and authorized by policies and procedures to conduct an assessment of the patient's substance use risk;
d. Explains to the patient or the patient's representative the risks and benefits associated with the use of opioids or ensures that the patient or the patient's representative understands the risks and benefits associated with the use of opioids, as explained to the patient or the patient's representative by an individual licensed under A.R.S. Title 32 and authorized by policies and procedures to explain to the patient or the patient's representative the risks and benefits associated with the use of opioids;
e. Explains alternatives to a prescribed opioid; and
f. Obtains informed consent from the patient or the patient's representative that meets the requirements in subsection (B)(4), including the potential risks, adverse outcomes, and complications associated with the concurrent use of an opioid and a benzodiazepine or another sedative-hypnotic medication, if the patient:
i. Is also prescribed or ordered a sedative-hypnotic medication, or
ii. Has been prescribed a sedative-hypnotic medication by another medical practitioner;

2. Includes the following information in the patient's medical record, an existing treatment plan, or a new treatment plan developed for the patient:
a. The patient's diagnosis;
b. The patient's medical history, including co-occurring disorders;
c. The opioid to be prescribed;
d. Other medications or herbal supplements being taken by the patient;
e. If applicable:
i. The effectiveness of the patient's current treatment,
ii. The duration of the current treatment, and
iii. Alternative treatments tried by or planned for the patient;
f. The expected benefit of the treatment and, if applicable, the benefit of the new treatment compared with continuing the current treatment; and
g. Other factors relevant to the patient's being prescribed an opioid; and

3. If applicable, specifies in the patient's discharge plan how medically indicated pain control will occur after discharge to meet the patient's needs.

D. Except as provided in subsection (F) or (G), an administrator of a health care institution where opioids are ordered for administration to a patient in the health care institution as part of treatment shall ensure that a medical practitioner authorized by policies and procedures to order an opioid in treating a patient:

1. Before ordering an opioid for a patient of the health care institution:
a. Conducts a physical examination of the patient or reviews the documentation from a physical examination conducted:
i. During the patient's same episode of care; or
ii. Within the previous 30 calendar days, at a health care institution transferring the patient to the health care institution or by the medical practitioner who referred the patient for admission to the health care institution;
b. Except as exempted by A.R.S. § 36-2606(G), reviews the patient's profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
c. Conducts an assessment of the patient's substance use risk or reviews the documentation from an assessment of the patient's substance use risk conducted within the previous 30 calendar days by an individual licensed under A.R.S. Title 32 and authorized by policies and procedures to conduct an assessment of the patient's substance use risk;
d. Explains to the patient or the patient's representative the risks and benefits associated with the use of opioids or ensures that the patient or the patient's representative understands the risks and benefits associated with the use of opioids, as explained to the patient or the patient's representative by an individual licensed under A.R.S. Title 32 and authorized by policies and procedures to explain to the patient or the patient's representative the risks and benefits associated with the use of opioids;
e. If applicable, explains alternatives to a prescribed opioid; and
f. Obtains informed consent from the patient or the patient's representative, according to subsection (C)(1)(f); and

2. Includes the following information in the patient's medical record, an existing treatment plan, or a new treatment plan developed for the patient:
a. The patient's diagnosis;
b. The patient's medical history, including co-occurring disorders;
c. The opioid being ordered and the reason for the order;
d. Other medications or herbal supplements being taken by the patient; and
e. If applicable:
i. The effectiveness of the patient's current treatment,
ii. The duration of the current treatment,
iii. Alternative treatments tried by or planned for the patient,
iv. The expected benefit of a new treatment compared with continuing the current treatment, and
v. Other factors relevant to the patient's being ordered an opioid.

E. For a health care institution where opioids are administered as part of treatment or where a patient is provided assistance in the self-administration of medication for a prescribed opioid, including a health care institution in which an opioid may be prescribed or

ordered as part of treatment, an administrator, a manager as defined in R9-10-801, or a provider, as applicable to the health care institution, shall:

1. Establish, document, and implement policies and procedures for administering an opioid as part of treatment or providing assistance in the self-administration of medication for a prescribed opioid, to protect the health and safety of a patient, that:
   a. Cover which personnel members may administer an opioid in treating a patient and the required knowledge and qualifications of these personnel members;
   b. Cover which personnel members may provide assistance in the self-administration of medication for a prescribed opioid and the required knowledge and qualifications of these personnel members;
   c. Include how, when, and by whom a patient's need for opioid administration is assessed;
   d. Include how, when, and by whom a patient receiving an opioid is monitored; and
   e. Cover how, when, and by whom the actions taken according to subsections (E)(1)(c) and (d) are documented;
2. Include in the plan for the health care institution's quality management program a process for:
   a. Review of incidents of opioid-related adverse reactions or other negative outcomes a patient experiences or opioid-related deaths, and
   b. Surveillance and monitoring of adherence to the policies and procedures in subsection (E)(1);
3. Except as prohibited by Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2, or as provided in subsection (G)(1), ensure that, if a patient's death may be related to an opioid administered as part of treatment, written notification, in a Department-provided format, is provided to the Department of the patient's death within one working day after the patient's death; and
4. Except as provided in subsection (G), ensure that an individual authorized by policies and procedures to administer an opioid in treating a patient or to provide assistance in the self-administration of medication for a prescribed opioid:
   a. Before administering an opioid or providing assistance in the self-administration of medication for a prescribed opioid in compliance with an order as part of the treatment for a patient, identifies the patient's need for the opioid;
   b. Monitors the patient's response to the opioid; and
   c. Documents in the patient's medical record:
      i. An identification of the patient's need for the opioid before the opioid was administered or assistance in the self-administration of medication for a prescribed opioid was provided, and
      ii. The effect of the opioid administered or for which assistance in the self-administration of medication for a prescribed opioid was provided.

F. A medical practitioner authorized by a health care institution's policies and procedures to order an opioid in treating a patient is exempt from the requirements in subsection (D), if:

1. The health care institution's policies and procedures, required in subsection (B)(1) or the applicable Article in 9 A.A.C. 10, contain procedures for:
   a. Providing treatment without obtaining the consent of a patient or the patient's representative,
   b. Ordering and administering opioids in an emergency situation, and
   c. Complying with the requirements in subsection (D) after the emergency is resolved;
2. The order for the administration of an opioid is:
   a. Part of the treatment for a patient in an emergency, and
   b. Issued in accordance with policies and procedures; and
3. The emergency situation is documented in the patient's medical record.

G. The requirements in subsections (C), (D), and (E)(4), as applicable, do not apply to a health care institution's:

1. Prescribing, ordering, or administration of an opioid as part of treatment for a patient with an end-of-life condition or pain associated with an active malignancy;
2. Prescribing an opioid as part of treatment for a patient when changing the type or dosage of an opioid, which had previously been prescribed by a medical practitioner of the health care institution for the patient according to the requirements in subsection (C):
   a. Before a pharmacist dispenses the opioid for the patient; or
   b. If changing the opioid because of an adverse reaction to the opioid experienced by the patient, within 72 hours after the opioid was dispensed for the patient by a pharmacist;
3. Ordering an opioid as part of treatment for no longer than three calendar days for a patient remaining in the health care institution and receiving continuous medical services or nursing services from the health care institution; or
4. Ordering an opioid as part of treatment:
   a. For a patient receiving a surgical procedure or other invasive procedure; or
   b. When changing the type, dosage, or route of administration of an opioid, which had previously been ordered by a medical practitioner of the health care institution for a patient according to the requirements in subsection (D), to meet the patient's needs.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ARIZONA LONG-TERM CARE SYSTEM

[R18-56]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) **Rulemaking Action**
R9-28-408 Amend

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):
Authorizing statute: A.R.S. §§ 36-2903.01, 36-2903, 36-2932
Implementing statutes: A.R.S. §§ 36-2904, 36-2933

3. The effective date of the rule:
March 6, 2018

AHCCCS requests an immediate effective date citing A.R.S. § 41-1032(A)(2). The immediate effective date is necessary to ensure consistency with CMS interpretation of 42 CFR 435.726. CMS and the Administration have worked together to craft new language for the Administration's State Plan Amendment that reflects how share of cost is determined. This rulemaking mirrors that language. However, CMS has made it clear that prompt revision of the State Plan is necessary to conform to CMS interpretation.

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:
Notice of Rulemaking Docket Opening: 23 A.A.R. 3430, December 15, 2017
Notice of Proposed Rulemaking: 23 A.A.R. 3397, December 15, 2017

5. The agency's contact person who can answer questions about the rulemaking:

Name:	Nicole Fries
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6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:
There are two major changes in this rulemaking. First, the proposed rulemaking will amend and clarify rules to provide further flexibility as to the amount of money that may be retained in limited situations for persons who are ALTCS eligible, residents of a nursing facility, and who are responsible for court ordered spousal and/or child support. In particular, this rulemaking is requested to allow institutionalized members subject to court ordered child and/or spousal support to increase their personal needs allowance beyond the current limit of 15% of the Federal Benefit Rate (FBR) in limited circumstances. An individual's personal needs allowance is deducted from the member's share of cost which is the monthly amount an individual contributes to his or her cost of care calculated from the individual's income. With respect to share of cost for the ALTCS Program, ARS §36-2932 (L)(1) provides that rules "shall provide that a portion of income may be retained for: 1. A personal needs allowance for members receiving institutional services of at least fifteen per cent of the maximum monthly supplemental security income payment for an individual or a personal needs allowance for members receiving home and community based services based on a reasonable assessment of need." AHCCCS Rule R9-28-408(E)(5)(a) limits the personal needs allowance for institutionalized member to 15% of the FBR, stating the following with respect to calculation of share of cost: "The following expenses are deducted from the share-of-cost of an eligible person to calculate the person's share of-cost: a. A personal-needs allowance equal to 15 percent of the FBR for a person residing in a medical institution for a full calendar month." Some ALTCS members have had income garnished for payment of child or spousal support, and, as a result, the nursing facility did not receive full payment for institutional services provided to the member. This rulemaking will address these unusual situations, allowing providers to receive full payment for these residents.

Second, the rulemaking clarifies the requirements for deduction of medical or remedial care expenses from the share of cost calculation. As a result of the revisions, the rule specifies a three month time frame for incurring the expense as well as the requirement that the individual have a legal liability to pay the expense. Since the description of the list of services eligible for share of cost deductions was clarified, there was no longer a need for an itemized description of qualified services. Moreover the list of qualifying services in the current rule does not reflect the full scope of expenses that may be deducted.

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:
A study was not referenced or relied upon when revising these regulations.

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

Not applicable

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

It is anticipated that the members and the Administration will be minimally impacted by the changes to the rule language although these changes will require system and policy changes. There will be a minimal small business or private industry economic impact because these articles deal with members' share of cost and the Administration's reimbursement of certain expenses. The economic impact upon members and the Administration is unknowable because it is not determined how members' behavior may change in response to this rulemaking and therefore which expenses will be submitted for reimbursement going forward.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

The changes made between the proposed rulemaking and the final rulemaking were mainly a reorganization of the order of subsection (E)(5) to make it more easily understandable by stakeholders and members.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

Only one member of the public attended the oral proceeding and provided comments.

Item #	Comment From and Date rec'd.	Comment	Analysis/ Recommendation
1.	Kathleen Collins-Pagels 01/04/18 Executive Director of the AZHCA	I am writing to offer my support for the revision of Article 4. Eligibility and Enrollment R9-28-408 Income Criteria for AHCCCS eligibility. This addresses an issue we brought to AHCCCS a few years ago, the growing number of younger residents of skilled nursing facilities who had their Share of Cost (SOC) garnished for spousal maintenance and child support, thereby creating financial hardship for them and the facilities providing their care. We appreciate your consideration of our documentation of the issue, and your subsequent effort in revising the rule to address this problem. We know there are other SOC issues that may arise in the future as our ever changing SNF resident population evolves- tax and insurance liens, for example, are now presenting. The future may lie in some sort of a universal policy for an exception to the personal needs allowance and SOC calculation. That said, we are very grateful for this current proposed change. It will be of great service to our high Medicaid facilities, particularly those serving younger behavioral care residents…a great need in Arizona, and a vulnerable population to be sure. Thank you for your responsiveness to stakeholders, and AHCCCS members.	AHCCCS thanks Ms. Collins-Pagels for the support.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters have been prescribed.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

The rules were updated to align with CMS's current interpretation of post-eligibility treatment-of-income (PETI) rules found at 42 CFR 435.726. However, the Administration's rules are not more stringent than the federal regulations.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

Not applicable

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 4. ELIGIBILITY AND ENROLLMENT

Section
R9-28-408. Income Criteria for Eligibility

ARTICLE 4. ELIGIBILITY AND ENROLLMENT

R9-28-408. Income Criteria for Eligibility

A. The following Medicaid-eligible persons shall be deemed to meet the income requirements for ALTCS eligibility unless ineligible due to federal and state laws regarding trusts.
1. A person receiving Supplemental Security Income (SSI);
2. A person receiving Title IV-E Foster Care Maintenance Payments; or
3. A person receiving Title IV-E Adoption Assistance.

B. If the person is not included in subsection (A), the Administration shall count the income described in 42 U.S.C. 1382a and 20 CFR 416 Subpart K to determine eligibility with the following exceptions:
1. Income types excluded by 42 U.S.C. 1382a(b) for determining net income are also excluded in determining gross income to determine eligibility;
2. Income of the parent or spouse of a minor child is counted as part of income under 42 CFR 435.602, except that the income of the parent or spouse is disregarded for the month beginning when the person is institutionalized;
3. In-kind support and maintenance, under 42 U.S.C. 1382a(a)(2)(A), are excluded for both net and gross income tests;
4. The income exceptions under A.A.C. R9-22-1503(B) apply to the net income test; and
5. Income described in subsection (C) is excluded.

C. The following are income exceptions:
1. Disbursements from a trust are considered in accordance with federal and state law; and
2. For an institutionalized spouse, a person defined in 42 U.S.C. 1396r-5(h)(1), income is calculated in accordance with 42 U.S.C. 1396r-5(b).

D. Income eligibility. Except as provided in R9-28-406(B)(2)(b), countable income shall not exceed 300 percent of the FBR.

E. The Administration shall determine the amount a person shall pay for the cost of ALTCS services and the post-eligibility treatment of income (share-of-cost) under A.R.S. § 36-2932(L) and 42 CFR 435.725 or 42 CFR 435.726. The Administration shall consider the following in determining the share-of-cost:
1. Income types excluded by 42 U.S.C. 1382a(b) for determining net income are excluded in determining share-of-cost.
2. SSI benefits paid under 42 U.S.C. 1382(e)(1)(E) and (G) to a person who receives care in a hospital or nursing facility are not included in calculating the share-of-cost.
3. The share-of-cost of a person with a spouse is calculated as follows:
   a. If an institutionalized person has a community spouse under 42 U.S.C. 1396r-5(h), share-of-cost is calculated under R9-28-410 and 42 U.S.C. 1396r-5(b) and (d); and
   b. If an institutionalized person does not have a community spouse, share of cost is calculated solely on the income of the institutionalized person.
4. Income assigned to a trust is considered in accordance with federal and state law.
5. The following expenses are deducted from the share-of-cost of an eligible person to calculate the person's share-of-cost:
   a. ~~A personal-needs allowance equal to 15 percent of the FBR for a person residing in a medical institution for a full calendar month. A personal-needs allowance equal to 300 percent of the FBR for a person who receives or intends to receive HCBS or who resides in a medical institution for less than the full calendar month;~~A personal-needs allowance (PNA) equal to 300 percent of the FBR for a person who receives or intends to receive HCBS or who resides in a medical institution for less than the full calendar month. A personal-needs allowance equal to 15 percent of the FBR for a person residing in a medical institution for a full calendar month, except:
      i. The PNA shall be increased above 15% of the FBR by the amount of income garnished for child support under a court order, including administrative fees garnished for collection efforts, but only to the extent that the amount garnished is not deducted as a monthly allowance for the dependent under any other provision of the post-eligibility process. The increase to the PNA due to the garnishment shall not exceed the actual garnishment paid in the month for which the PNA is calculated; and
      ii. The PNA shall be increased above 15% of the FBR by the amount of income garnished for spousal maintenance under a judgment and decree for dissolution of marriage, including administrative fees garnished for collection efforts, but only to the extent that the amount garnished is not deducted as a monthly allowance for the spouse under any other provision of the post-eligibility process. The increase to the PNA due to the garnishment shall not exceed the actual garnishment paid in the month for which the PNA is calculated.
   b. A spousal allowance, equal to the FBR minus the income of the spouse, if a spouse but no children remain at home;
   c. A household allowance equal to the standard specified in Section 2 of the Aid for Families with Dependent Children (AFDC) State Plan as it existed on July 16, 1996 for the number of household members minus the income of the household members if a spouse and children remain at home;
   d. Expenses for ~~the~~ medical and remedial care services ~~listed in subsection (6)~~ if the expenses were for services rendered to the applicant or beneficiary and prescribed by a health care practitioner acting within the scope of practice as defined by

State law. The applicant or recipient must have, or have had, a legal obligation to pay the medical or remedial expense. Deductions do not include the cost of services to the extent a third party paid for, or is liable for, the service. Deductions for expenses incurred prior to application are limited to expenses incurred during the three months prior to the filing of an application. Documents shall be submitted within a reasonable time as determined by the Director.~~have not been paid or are not subject to payment by a third-party, the person still has the obligation to pay the expense, and one of the following conditions is met:~~

~~i. The expense represents a payment made and reported to the Administration during the application period or a payment reported to the Administration no later than the end of the month following the month in which the payment occurred and the expense has not previously been allowed a share-of-cost deduction; or~~

~~ii. The expense represents the unpaid balance of an allowed, noncovered medical or remedial expense, and the expense has not been previously a share-of-cost deduction;~~

e. An amount determined by the Director for the maintenance of a single person's home for not longer than six months if a physician certifies that the person is likely to return home within that period; or

f. An amount for Medicare and other health insurance premiums, deductibles, or coinsurance not subject to third-party reimbursement; and

6. The deductible expense under subsection (5)(~~b~~d) shall not include any amount for a service covered under the Title XIX State Plan.~~ The deductible expense may include the TPL deductible, co-insurance, and co-payment charges for the following medically necessary services:~~

~~a. Nonemergency dental services for a person who is age 21 or older;~~

~~b. Hearing aids and hearing aid batteries for a person who is age 21 or older;~~

~~c. Nonemergency eye care and prescriptive lenses for a person who is age 21 or older;~~

~~d. Chiropractic services, including treatment for subluxation of the spine, demonstrated by x-ray;~~

~~e. Orthognathic surgery for a person who is age 21 or older; or~~

~~f. Co-payments for Medicare Part D prescriptions, if not paid by the State.~~

~~g. On a case-by-case basis, other noncovered medically necessary services that a person petitions the Administration for and the Director approves.~~

F. A person shall provide information and verification of income under A.R.S. § 36-2934(G) and 20 CFR 416.203.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ARIZONA LONG-TERM CARE SYSTEM

[R18-57]

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	Rulemaking Action
R9-28-801	Amend
R9-28-801.01	Repeal
R9-28-802	Amend
R9-28-803	Amend
R9-28-806	Amend
R9-28-807	Amend

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 36-2932

Implementing statute: A.R.S. § 36-2915, 36-2916, 36-2935, 36-2956

3. The effective date of the rule:

May 5, 2018

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 23 A.A.R. 3431, December 15, 2017

Notice of Proposed Rulemaking: 23 A.A.R. 3400, December 15, 2017

5. The agency's contact person who can answer questions about the rulemaking:

Name: Nicole Fries
Address: AHCCCS
Office of Administrative Legal Services
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4232
Fax: (602) 253-9115
E-mail: AHCCCSRules@azahcccs.gov
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6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The rulemaking is necessary to comport with federal law and to ensure that AHCCCS maximizes the opportunity for recovery of payments made for medical assistance to ALTCS members consistent with federal law. In addition, the rulemaking will likely increase State revenues and improve the fiscal health of the State by extending the imposition of TEFRA liens to members under the age of 55 years.

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:

A study was not referenced or relied upon when revising these regulations.

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

Not applicable

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

The economic impact will be minimal on consumers and the Administration, because the changes are anticipated to affect only a small number of ALTCS members. Additionally, any economic impact on the economy of the State will be minimal because when AHCCCS does make recoveries, roughly 70% is returned to the federal government.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

The only changes made between the proposed rulemaking and the final rulemaking were minor typographical changes for consistency and clarity across the agency's rules.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

No comments were received.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters have been prescribed.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

The TEFRA lien provisions are codified at 42 U.S.C. 1396p(a), providing AHCCCS the authority to file TEFRA liens on the real property of certain Medicaid members who are determined to be permanently institutionalized (PI) and cannot return home. However, the Administration's TEFRA regulations are not more stringent than the applicable federal law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

Not applicable

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 8. TEFRA LIENS AND RECOVERIES

Section

ARTICLE 8. TEFRA LIENS AND RECOVERIES

R9-28-801. Definitions Related to TEFRA Liens

In addition to the definitions in A.R.S. §§ 36-2901 and 36-2931, 9 A.A.C. 22, Article 1, and 9 A.A.C. 28, Article 1, the following definitions apply to this Article:

"Consecutive days" means days following one after the other without an interruption resulting from a discharge.

"File" means the date that AHCCCS receives a request for a State Fair Hearing under R9-28-805, as established by a date stamp on the request or other record of receipt.

"Home" means property in which a member has an ownership interest and that serves as the member's principal place of residence. This property includes the shelter in which a member resides, the land on which the shelter is located, and related outbuildings.

"Recover" means that AHCCCS takes action to collect from a claim.

"TEFRA lien" means a lien under 42 U.S.C. 1396p of the Tax Equity and Fiscal Responsibility Act of 1982. This type of lien is placed on an AHCCCS member's interest in any real property before the member is deceased.

R9-28-801.01. ~~TEFRA Liens – General~~ Repeal

~~Purpose. The purpose of TEFRA is to allow AHCCCS to file a lien on an AHCCCS member's interest in any real property before the member is deceased, including but not limited to life estates and beneficiary deeds.~~

R9-28-802. TEFRA Liens – ~~Affected Members~~Filings

A. Except for members under R9-28-803, AHCCCS shall file a TEFRA lien against the real property of all members who are:
1. Receiving ALTCS services, and
2. ~~55 years of age or older, and~~
~~3.~~ Permanently institutionalized.

B. A rebuttable presumption exists that a member is permanently institutionalized if the member has continually resided in a nursing facility, ~~ICF/MR~~ Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), or other medical institution defined in 42 CFR 435.1010 for 90 or more consecutive days. A member may rebut the presumption by providing a written opinion from a treating physician, rendered to a reasonable degree of medical certainty, that the member's condition is likely to improve to the point that the member will be discharged from the medical institution and will be capable of returning home by a date certain.

C. A TEFRA lien may also be imposed against the property of a member where a court judgment determined that benefits were incorrectly paid on behalf of the member.

R9-28-803. TEFRA Liens – Prohibitions

AHCCCS shall not file a TEFRA lien against a member's home if one of the following individuals is lawfully residing in the member's home:
1. Member's spouse;
2. Member's child who is under the age of 21;
3. Member's child who is blind or disabled under 42 U.S.C. 1382c; or
4. Member's sibling who has an equity interest in the home and who was residing in the member's home for at least one year immediately before the date the member was admitted to a nursing facility, ~~ICF/MR~~ ICF/IID, or other medical institution as defined under 42 CFR 435.1010.

R9-28-806. TEFRA Liens – Recovery

A. AHCCCS shall seek to recover a TEFRA lien for the amount of the medical assistance provided up to the amount of the sale upon the sale or transfer of the real property subject to the lien made prior to the member's death.

B. After the member's death, AHCCCS shall seek to recover a TEFRA lien for the amount of the medical assistance received by the member at the age of 55 years or older from the member's estate after the sale or transfer of the real property subject to the lien. However, AHCCCS shall not seek to recover the TEFRA lien or attempt recovery against any real property subject to the TEFRA lien so long as the member is survived by the member's:
1. Spouse;
2. Child under the age of 21; or
3. Child who receives benefits under either Title II or Title XVI of the Social Security Act as blind or disabled, as defined under 42 U.S.C. 1382c.

~~B.~~**C.** AHCCCS shall not seek to recover a TEFRA lien on an individual's home if the member is survived by:
1. A sibling of the member who currently resides in the deceased member's home and who has resided in the member's home on a continuous basis since at least one year immediately before the date of the member's admission to the nursing facility, ~~ICF/MR~~ ICF/IID, or other medical institution as defined under 42 CFR 435.1010 and has; or
2. A child of the member who resides in the deceased member's home and who:
   a. Was residing in the member's home for a period of at least two years immediately before the date of the member's admission to the nursing facility, ~~ICF/MR~~ ICF/IID, or other medical institution as defined under 42 CFR 435.1010; ~~and~~
   b. Provided care to the member that allowed the member to reside at home rather than in an institution~~.~~; and
   c. Has resided in the member's home on a continuous basis since the admission of the deceased member to the medical institution.

~~C.~~**D.** To determine whether a child of the member provided care under subsection (B)(2), AHCCCS shall require the following information:
1. A physician's written statement that describes the member's physical condition and service needs for the previous two years before the member's death;
2. Verification that the child actually lived in the member's home;

3. A written statement from the child providing the services that describes and attests to the services provided;
4. A written statement, if any, made by the member prior to death regarding the services received; and
5. A written statement from physician, friend, or relative as witness to the care provided.

R9-28-807. TEFRA Liens – Release

AHCCCS shall issue a release of a TEFRA lien within 30 days of:

1. Satisfaction of the lien; or
2. Notice that the member has been discharged from the nursing facility, ~~ICF/MR~~ ICF/IID, or other medical institution, defined under 42 CFR 435.1010, and the member has returned home and is physically residing in the home with the intention of remaining in the home. Discharge to an alternative HCBS setting defined at R9-28-101 does not constitute a return to the home.~~; or~~
3. ~~Notice of the member's death, if a lien has been filed on a life estate.~~

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION - ADMINISTRATION

[R18-58]

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	Rulemaking Action
Article 7	New Article
R17-1-701	New Section
R17-1-702	New Section
R17-1-703	New Section
R17-1-704	New Section
R17-1-705	New Section
R17-1-706	New Section
R17-1-707	New Section
R17-1-708	New Section
R17-1-709	New Section
R17-1-710	New Section
R17-1-711	New Section
R17-1-712	New Section
R17-1-713	New Section
R17-1-714	New Section

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statutes: A.R.S. §§ 28-366 and 28-7045

Implementing statutes: A.R.S. §§ 28-7059, 28-7316, and 28-7913

3. The effective date of the rule:

May 7, 2018

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 22 A.A.R. 3139, November 4, 2016

Notice of Proposed Rulemaking: 23 A.A.R. 2033, July 28, 2017

5. The agency's contact person who can answer questions about the rulemaking:

Name: John Lindley, Administrative Rules

Address: Arizona Department of Transportation
Government Relations and Policy Development Office
206 S. 17th Ave., Mail Drop 140A
Phoenix, AZ 85007

Telephone: (602) 712-8804

E-mail: jlindley@azdot.gov

Web site: Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.azdot.gov/about/GovernmentRelations.

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The Arizona Department of Transportation (ADOT) engages in this rulemaking to establish guidelines necessary for the implementation of Laws 2016, Chapter 66 (HB2250), specifically A.R.S. § 28-7316, which authorizes the Department to establish a program to:

Lease or sell advertising on non-highway assets of the Department; and

Allow monetary sponsorship of other facilities and other assets of the Department.

This rulemaking contains provisions relating to the operation, modification, and termination of the Department's Advertising and Sponsorship Program. The rules provide advertisers, sponsors, and other potential contractors clarification on the types of facilities the Department deems suitable for advertising and sponsorship activities, establish reasonable time, place, and manner restrictions necessary to protect the public health, peace, and safety, and ensure that the Department remains in compliance with the Federal Highway Administration's policies on sponsorship acknowledgment, sponsorship agreements, and outdoor advertising control.

The Department's primary reason for entering into advertising and sponsorship agreements, and in establishing designated advertising venues involving its non-highway assets and facilities, is to generate additional revenue for the state highway fund. A secondary purpose is to provide useful information to Department customers and patrons about motor vehicle- and motorist-related goods and services that may be of value to the public or further promote efforts to enhance the public safety. The Federal Highway Administration (FHWA) has urged state Departments of Transportation to seek sponsorship opportunities for programs currently facing funding challenges, such as traffic congestion management and traveler information systems. This rulemaking provides potential advertisers and sponsors with information regarding the Department's sponsorship agreements and how a sponsor may be acknowledged for supporting or providing a service on behalf of the Department under a sponsorship agreement.

This rulemaking allows the Department to:

Generate additional funding for the state highway fund as provided under Laws 2016, Chapter 66 (HB2250);

Promote economic development by providing businesses with new and unique opportunities for the direct marketing of motor vehicle- and motorist-related goods, services, and safety information relevant to the motoring public;

Preserve the public health, peace, and safety by establishing and enforcing reasonable standards for appropriate content and viewpoint-neutral advertising and sponsorships that will not create a forum for public discourse or the exchange of viewpoints on any issue, subject matter, or topic;

Maintain compliance with federal requirements; and

Ensure continued eligibility for future federal highway grant funding.

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 for this rulemaking.

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

Not applicable

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

As the nature of highway financing continues to evolve, private sector investment promises to be a significant source of revenue for individual states to meet their current and future highway construction and maintenance needs. For this reason, the Federal Highway Administration (FHWA) has recently updated its policy on Sponsorship Acknowledgment and Sponsorship Agreements within Highway Rights-of-way (FHWA Order 5160.1A, dated April 7, 2014) to assist the growing number of states seeking to create their own advertising and sponsorship programs.

A.R.S. § 28-7316, as added by Laws 2016, Ch. 66, § 3, provides that the Department may establish a program to lease or sell advertising on *non*-highway assets of the Department and to allow monetary sponsorship of facilities and other assets of the Department. The Department intends to implement and administer an Advertising and Sponsorship Program that will generate additional revenue for deposit into the state highway fund for use as authorized under A.R.S. § 28-6993. The additional revenue generated will assist the Department in providing other services critical to enhancing the safety and efficiency of Arizona highways. A.R.S. § 28-7316 also authorizes the Department to contract with a third party to administer and operate all or portions of its advertising and sponsorship program.

In establishing an Advertising and Sponsorship Program at the state level, the Department has worked closely with the FHWA to ensure compliance and consistency with all existing federal laws and programs applicable to highway infrastructure funded, in whole or in part, with federal-aid. As required under FHWA Order 5160.1A, dated April 7, 2014, if federal-aid funds were used on a highway or facility for which a sponsored service is being provided, all monetary contributions received as part of that sponsorship agreement must be used for highway purposes. Sponsorship and acknowledgment opportunities will be made available on both highway and non-highway assets and facilities of the Department, while advertising opportunities under this program will be limited to *non*-highway assets and facilities of the Department or rest area facilities as prescribed under 23 U.S.C. 111.

Sponsorship

The Federal Highway Administration (FHWA) anticipates that sponsorship programs will grow in popularity and provide significant opportunities for highway agencies to secure the additional funding and critical support needed to build, operate, and maintain key highway facilities and services, including highway construction and maintenance activities, traffic management programs, rest area operation and maintenance, emergency service patrols, travel information services, parkway and interchange landscape main-

tenance, adopt-a-highway litter removal and other highway beautification programs.

Since the FHWA and A.R.S. § 28-7316 now provide the flexibility needed for the Department to pursue such innovative sources of financing for transportation system improvements, the Department anticipates that its advertising and sponsorship program will provide valuable benefits for the traveling public. Though not yet fully realized or quantifiable, a sponsor may provide a highway-related service, a monetary contribution toward a highway-related service, or a product that the Department or its contractor can use in providing a highway-related service. The funding source the Department would otherwise have used to provide that product or service is then made available for use in other critical transportation infrastructure projects.

One of the most common ways for the Department to recognize support provided by a sponsor is to arrange for the placement of an acknowledgment sign, which may display the name or logo of the sponsor to members of the public who may be interested in receiving information from or about the sponsor. Other options that can be used to recognize sponsors include acknowledgment on service patrol or maintenance vehicles, inclusion on outreach and educational materials, or identification on internet web sites or telephone messages such as those of 511 systems. The Department may use other opportunities for sponsor recognition or acknowledgment where possible, and appropriate, while minimizing the number of additional signs and informational load imposed on drivers.

Advertising

Advertising on *non*-highway assets and facilities of the Department may allow a sponsor to increase name recognition or commercial brand awareness by promoting motor vehicle- and motorist-related goods, services, and information directly to vehicle owners, operators, buyers, and sellers who are most likely interested in receiving such information.

Opportunities for advertising on Department designated non-highway assets and facilities are limited under A.R.S. § 28-7316, and may provide unique opportunities for advertisers and sponsors to distribute promotional information or other consideration involving:

Motor vehicle-related goods or services, including the promotion of:

Arizona-licensed automobile dealers;

Automotive insurance;

Automotive parts;

Automotive repair;

Automotive towing companies;

Car wash and detailing services;

Motor clubs;

Roadside assistance; or

Specialty license plates issued by the Department; and

Motorist-related goods or services, including the promotion of:

Automobile clubs;

Campgrounds;

Convenience stores;

Department authorized third-party providers of title, registration, and driver license services;

Department programs, including Grand Canyon State Logo Signs;

Department publications, including *Arizona Highways Magazine*;

Gasoline and service stations;

Legal service providers for motorists;

Pharmacies open 24 hours;

Professional driver training schools licensed by the Department;

Public service announcements (organ donation/highway beautification);

Restaurants;

Road maps and Global Positioning System (GPS) services;

Telecommunications providers;

Tourist and community attractions; or

Vehicle-for-hire services (taxis, limousines, livery vehicles, and transportation network companies).

Costs incurred under the Department's advertising and sponsorship program will be paid under agreements negotiated between the Department and the advertisers or sponsors seeking to join the Department in providing motor vehicle- and motorist-related goods, services, and information directly to the motoring public throughout the state.

Additional administrative costs to the Department may result from sales, contracting, billing and payment processing, and program management. Operational costs for sign fabrication, sign construction and installation, sign repair, and sign removal will also be incurred. The Department anticipates that these costs will be minimal, approximately equal to revenue (breakeven) for the first 12 to 18 months due to the initial infrastructure investment and then profitable thereafter, and no additional staffing is required.

Acknowledgment signs installed prior to the effective date of these rules will be subject only to the terms and conditions provided

in any existing lease or agreement already in force between the Department and the advertiser or sponsor. Replacement of an existing acknowledgment sign for compliance with this Article is not required unless the currently installed acknowledgment sign is no longer serviceable or the advertiser or sponsor requests a modification of the sponsor name or logo that is consistent with these rules.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

For clarification purposes, the definition of "highway-related service," as provided under item 9, paragraph 1, was added to the definitions Section R17-1-701 and more examples were provided.

R17-1-704(B) was amended for clarification purposes by removing the phrase "in the sole discretion of the Department" from the introductory paragraph, since the phrase is not applicable to all of the listed items, and adding the phrase "as determined by the Department in its sole discretion" to the few listed items that actually require a determination to be made by the Department.

Additionally, minor grammatical and technical corrections were made at the request of the Governor's Regulatory Review Council staff.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The Department received no public or stakeholder comments regarding this rulemaking.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

The Department and the Federal Highway Administration are both obligated to promote the reasonable, orderly, and effective display of outdoor advertising while remaining consistent with the national policy to protect the public investment in interstate and primary highways, to promote the safety and recreational value of public travel, and to preserve Arizona's natural beauty.

The Department is additionally responsible for balancing any new Advertising and Sponsorship Program requirements with all state and federal statutes, rules, and agreements currently in effect regarding Highway Beautification. The statutes and rules outlining the Department's obligations under the federal Highway Beautification Act are provided under 23 U.S.C. 131, Control of Outdoor Advertising, Arizona Revised Statutes, Title 28, Chapter 23, Highway Beautification, and 17 A.A.C. 3, Article 5, Highway Encroachments and Permits and Article 7, Highway Beautification.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

If the Department utilizes a contractor to administer its advertising and sponsorship program, the rules require the contractor to obtain an encroachment permit under 17 A.A.C. 3, Article 5, before installing, maintaining, or removing sponsorship content or copy from a highway-related facility or asset of the Department located along a state highway. The encroachment permit process allows the Department to closely analyze, monitor, approve, or disapprove placement of fixed or temporary sponsorship acknowledgment signs or plaques within a state highway right-of-way, or any activity requiring the temporary use of, or intrusion on, a state highway right-of-way. Issuance of a general permit for this purpose is not technically feasible, since some requirements for obtaining an encroachment permit are generally applicable to all encroachment activities while others are specific to the encroaching activity, the location under consideration, and the timing involved. Therefore, the Department believes that encroachment permits fall outside the criteria provided under A.R.S. § 41-1037 and are an exception to the general permit requirement.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

This rulemaking mirrors the most current FHWA policy directives, which serve to streamline and emphasize information pertaining to sponsorship acknowledgment, sponsorship of rest areas, and other sponsorship acknowledgment activities relative to any existing federal standards. The provisions in this rulemaking apply to new and modified installations of acknowledgment signs and are intended to promote a degree of national uniformity and consistency. Existing acknowledgment signs already installed will remain unchanged, except when a sponsor name or logo on an existing acknowledgment sign requires modification or the sign is no longer serviceable.

The Department and its contractor, as applicable, are obligated to follow all federal laws, rules, and guidelines relating to highways built or maintained with federal-aid funding. Although all of the following references apply to the subject matter of the rules, the rules are not more stringent than any of the federal laws, rules, or guidelines:

Title 23, United States Code (U.S.C.), Section 109(d), Standards for Federal-Aid Highways;

23 U.S.C. 111(b), Rest Areas;

23 U.S.C. 131, Control of Outdoor Advertising;

23 U.S.C. 156, Proceeds from the Sale or Lease of Real Property;

23 U.S.C. 402, Highway Safety Programs;

23 Code of Federal Regulations (CFR), Section 1.23(b), Rights-of-way;

Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), published by the Federal Highway Administration (FHWA) as prescribed under 23 CFR 655, Subpart F, Traffic Control Devices on Federal-Aid and Other Streets and Highways;

23 CFR 655.603, Standards for Traffic Control Devices on Federal-Aid and Other Streets and Highways;

23 CFR Part 750, Highway Beautification (for controlled routes);

49 CFR 1.85, Delegations to Federal Highway Administrator; and

FHWA Order 5160.1A, Policy on Sponsorship Acknowledgment and Agreements within the Highway Right-of-Way (April 7, 2014); and

IRC Sec. 170(c)(1) Charitable, etc., contributions and gifts.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted to the Department.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

This rulemaking incorporates no materials by reference.

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

The rules were not previously made, amended, repealed or renumbered as an emergency rule.

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION - ADMINISTRATION

ARTICLE 7. ADVERTISING AND SPONSORSHIP PROGRAM

Section

ARTICLE 7. ADVERTISING AND SPONSORSHIP PROGRAM

R17-1-701. Definitions

In addition to the definitions provided under A.R.S. §§ 28-601, 28-7316, and 28-7901, the following terms apply to this Article:

"Acknowledgment plaque" means a sign panel intended only to inform the traveling public that a highway-related service, product, or monetary contribution was provided by the sponsor portrayed on the sign panel.

"Acknowledgment sign" means a sign intended only to inform the traveling public that a highway-related service, product, or monetary contribution was provided by the sponsor portrayed on the sign. Acknowledgment signs are a way of recognizing a company, business, or volunteer group that provides a highway-related service.

"Advertise" means to display or promote commercial brands, products, or services on authorized non-highway assets and facilities of the Department. Advertising may contain descriptive words or phrases providing information relating to promotional offers, location directions, amenity listings, telephone numbers, internet addresses (including domain names), slogans, or any other message essential in identifying the advertiser or sponsor, and informing the public of where the promoted products or services can be obtained.

"Advertiser" means a person, firm, or entity authorized to enter into a lease agreement with the Department or its contractor for providing a motor vehicle-, motorist-, or highway-related service or product to the Department, or a monetary contribution to the state highway fund as provided under A.R.S. § 28-7316, in exchange for the ability to advertise on non-highway assets or facilities authorized by the Department.

"Advertising agreement" means a written lease agreement between an advertiser and the Department or its contractor allowing the advertiser to advertise on authorized non-highway assets and facilities of the Department.

"Contract" means a written agreement between a contractor and the Department, which describes the obligations and rights of both parties relative to the administration, operation, and maintenance of the advertising and sponsorship program, or an element thereof, when conducted on behalf of the Department.

"Contractor" means a person, firm, or entity that enters into a contract with the Department to administer, operate, and maintain on behalf of the Department the advertising and sponsorship program, or an element thereof, and that is responsible for conducting all aspects of the advertising and sponsorship program as outlined in the contract and this Article.

"Clear zone" means the unobstructed relatively flat area beyond the edge of a roadway that allows a driver to stop safely or regain control of a vehicle that leaves the main traveled way.

"Department" means the Arizona Department of Transportation as the owner of the highway on which signs are placed and the organization that directly receives the highway-related service, product, or monetary contribution from a sponsor, and to which the sponsorship policy and agreement applies.

"Driver distraction" means a driver's inattention to the driving task at hand, resulting from internal or external events or actions.

"FHWA" means the Federal Highway Administration of the U.S. Department of Transportation.

"Highway" has the same meaning as prescribed in A.R.S. § 28-101, under "street or highway."

"Highway-related service" means any activity customarily administered or delivered by the Department in the process of designing, building, operating, or maintaining key highway facilities, including, but not limited to, highway construction and maintenance activities, traffic management programs, rest area operation and maintenance, emergency response and service patrols, travel information services, parkway and interchange landscape maintenance, snow removal and ice control, dust abatement, or adopt-a-highway litter removal and other highway beautification programs.

"Highway right-of-way" means a strip of property, owned by the Department, within which a highway exists or is planned to be built. The highway right-of-way consists of all lands within the defined highway right-of-way limits, including the airspace above and below. This area typically includes: roadways; shoulders; sidewalks; rest areas; clear zones; and areas for drainage, utilities, landscaping, berms, and fencing.

"Interstate highway" or "Interstate highway system" has the meaning prescribed in A.R.S. § 28-7901, under "Interstate system."

"Lease" or "Lease agreement" means a written agreement between the Department, or its contractor, and an advertiser or sponsor, which authorizes the advertiser or sponsor to advertise in, or otherwise sponsor, certain assets or facilities of the Department subject to the terms and conditions outlined in the agreement and this Article.

"MUTCD" means the most recent edition of the federal Manual on Uniform Traffic Control Devices for Streets and Highways, as published by the FHWA at www.mutcd.fhwa.dot.gov and amended by the Department in the Arizona Supplement to the Manual on Uniform Traffic Control Devices for Streets and Highways available on the Department's web site at www.azdot.gov. The federal Manual on Uniform Traffic Control Devices for Streets and Highways is used by road managers nationwide for uniform installation and maintenance of traffic control devices.

"Primary highway" has the meaning prescribed in A.R.S. § 28-7901, under "Primary system."

"Rest area" means an area or site established and maintained within, or adjacent to, the right-of-way of an interstate or primary highway under the supervision and control of the Department for the safety, recreation, and convenience of the traveling public.

"Serviceable" means an acknowledgment sign or plaque that is usable, in working order, and adequately fulfills its function.

"Sponsor" means a person, firm, or entity authorized to enter into a lease agreement with the Department or its contractor for sponsorship of a certain element of the Department's operation of an asset or facility by providing a motor vehicle-, motorist-, or highway-related service or product to the Department, or a monetary contribution to the state highway fund as provided under A.R.S. § 28-7316, in exchange for placement of an acknowledgment sign or plaque to inform the public that a monetary contribution or a motor vehicle-, motorist-, or highway-related service or product was provided by the sponsor.

"Sponsorship agreement" means a written lease agreement between a sponsor and the Department or its contractor, which authorizes sponsorship of a certain element of the Department's operation of an asset or facility.

R17-1-702. Program Administration

A. The Department may operate an advertising and sponsorship program, or may select a contractor to administer its advertising and sponsorship program, to generate additional revenue for the state highway fund as provided under A.R.S. § 28-7316.

B. If the Department utilizes a contractor to administer its advertising and sponsorship program, the Department shall solicit offers to select a contractor as provided under A.R.S. Title 41, Chapter 23, Arizona Procurement Code.

C. Use of highway right-of-way for advertising purposes is prohibited, except as provided in 23 U.S.C. 111(b), Rest Areas.

D. The Department or its contractor may provide opportunities for:

1. Advertisers to buy or lease advertising space or media on authorized non-highway assets and facilities of the Department;
2. Advertisers to buy or lease advertising space or media for conducting limited commercial activities at rest areas as permitted under 23 U.S.C. 111; and
3. Sponsors to provide monetary sponsorship of any element of the Department's operation of highway or non-highway assets and facilities by providing highway-related services or products to the Department, or monetary contributions to the state highway fund as provided under A.R.S. § 28-7316.

R17-1-703. Request for Advertising or Sponsorship; Approval or Denial; Time-frames

A. An advertiser or sponsor seeking to participate in the Department's advertising and sponsorship program by leasing or buying advertising on non-highway assets of the Department, or providing monetary sponsorship of highway-related facilities and assets of the Department, may complete and submit electronically to the Department or its contractor an online request form provided by the Department at www.azdot.gov.

B. The Department shall, within 10 calendar days of receiving a request under subsection (A) or (C), provide written notice to the advertiser or sponsor acknowledging receipt of the request:

1. If the request is complete, the notice shall acknowledge receipt of a complete request and indicate the date the Department received the complete request; or
2. If the request is incomplete, the notice shall indicate the current date and include an itemized list of all additional information the advertiser or sponsor must provide to the Department before the request can be considered complete and subsequently processed.

C. An advertiser or sponsor with an incomplete request shall respond to the notice provided by the Department under subsection (B)(2) within 15 calendar days after the date indicated on the notice or the Department may deny the request for advertising or sponsorship.

D. The Department shall render a decision on the request within 20 calendar days after the date on the notice the Department provided to the advertiser or sponsor under subsection (B)(1) acknowledging receipt of a complete request.

E. For the purpose of A.R.S. § 41-1073, the Department establishes the following time-frames:
1. Administrative completeness review time-frame: 10 calendar days.
2. Substantive review time-frame: 20 calendar days.
3. Overall time-frame: 30 calendar days.

F. Advertisers and sponsors authorized by the Department or its contractor to participate in the Department's advertising and sponsorship program may lease or buy advertising on authorized assets or facilities of the Department, conduct limited commercial activities at rest areas, or provide monetary sponsorship of authorized facilities and assets of the Department if the advertiser or sponsor:
1. Is a provider of motor vehicle- or motorist-related goods or services, as provided under A.R.S. § 28-7316;
2. Is authorized to enter into a lease agreement with the Department or its contractor for:
   a. Advertising on, or sponsorship of, non-highway assets or facilities of the Department;
   b. Advertising on, or sponsorship of, rest area facilities as permitted under 23 U.S.C. 111; or
   c. Sponsorship of highway-related assets or facilities of the Department; and
3. Is otherwise eligible under this Article to participate in the Department's advertising and sponsorship program.

R17-1-704. Advertising or Sponsorship Approval; Agreement; Lease

A. An advertiser or sponsor seeking to participate in the Department's advertising and sponsorship program shall first negotiate and enter into a written advertising or sponsorship agreement with the Department or its contractor.

B. An advertising or sponsorship agreement made between the Department, or its contractor, and the advertiser or sponsor may be of any duration up to five years and shall:
1. Provide economic viability and a net benefit to the public, in the discretion of the Department;
2. Include provisions for maintenance and removal of physical elements of the advertising or sponsorship acknowledgment after the agreement expires or the advertiser or sponsor withdraws;
3. Identify any specific highway sites, corridors, or operations supported by any monetary contribution provided by a sponsor, if the sponsor is making a monetary contribution;
4. Be approved by the FHWA Division Administrator before it becomes effective, if the agreement involves the Interstate highway system;
5. Require that the authorized advertiser or sponsor comply with all state laws prohibiting discrimination based on race, religion, color, age, sex, national origin, and other applicable laws;
6. Include a termination clause, where applicable, based on:
   a. Safety concerns, as determined by the Department in its sole discretion;
   b. Interference with the free and safe flow of traffic, as determined by the Department in its sole discretion;
   c. Construction activities approved or initiated by the Department in the area, which may pose conflicts with advertising or sponsorship activities, including construction and maintenance projects, road widening, detour, diversion, rebuilding, rerouting, temporary or permanent closure because of weather or other damage, land-use changes, changes in applicable federal or state laws, or any similar reason for termination of the agreement;
   d. Payment default by the advertiser or sponsor;
   e. Noncompliance with contractual terms or provisions of the agreement; or
   f. A determination, made by the Department in its sole discretion, concluding that the agreement is not in the public interest;
7. Include only the types of advertisers and sponsors deemed acceptable under applicable state and federal laws;
8. Recommend that for assets and facilities on which federal-aid funds were not used, the advertising or sponsorship revenue or monetary contributions received as part of the agreement be used for highway purposes as permitted under state law;
9. Require that for assets and facilities on which federal-aid funds were used, the advertising or sponsorship revenue or monetary contributions received as part of the agreement be used only for highway purposes;
10. Require that for rest areas authorized for limited commercial activities under 23 U.S.C. 111, the advertising or sponsorship revenue or monetary contributions received as part of the agreement be used to cover the costs of acquiring, constructing, operating, and maintaining rest areas;
11. Require the advertiser or sponsor to certify that the advertiser or sponsor will comply with all applicable federal, state, and local laws, ordinances, rules, regulations, and contractual requirements of the Department's advertising and sponsorship program and maintain content- and viewpoint-neutral standards as provided under this Article; and
12. Require the advertiser or sponsor to acknowledge that it is the Department's intent to preserve the assets and facilities of the Department as a non-public forum, notwithstanding the placement in those locations of the advertising or sponsorship content referenced in the agreement.

C. The Department or its contractor shall provide a copy of any signed advertising or sponsorship agreement to the advertiser or sponsor if approved.

D. All advertising or sponsorship agreements under this Article are public records under A.R.S. Title 39, Chapter 1, Article 2, and A.R.S. Title 41, Chapter 1, Article 2.1. The Department or its contractor shall not agree with any advertiser or sponsor to keep confidential, or not to disclose upon receipt of a public record request, either the content of any written agreement under this Article, or the negotiations leading up to any agreement, nor the advertiser's proprietary or trade information disclosed to the Department or its contractor

in the course of negotiating or executing such written agreement, without regard to whether such information, including a logo, slogan, or other commercial message is claimed to be confidential, proprietary, trademarked, copyrighted, or otherwise registered by the advertiser, sponsor, or agent with rights reserved.

R17-1-705. Advertising or Sponsorship Acknowledgment; Content Approval

A. An advertiser or sponsor authorized by the Department or its contractor to participate in the Department's advertising and sponsorship program shall obtain Department approval of all advertising or sponsorship content, in accordance with the standards provided under this Article and any other applicable law, before the advertising or sponsorship content appears on any asset or facility the Department designates for advertising or sponsorship opportunities under this Article or any other advertising or sponsorship agreement.

B. An advertiser or sponsor shall deliver to the Department or its contractor for installation, advertising content, images, or copy that meets all of the Department's content standards and technical specifications provided under this Article for the appropriate creation and display of advertising or sponsorship acknowledgment.

C. For advertising on, or sponsorship of, authorized assets and facilities of the Department, the Department or its contractor shall:

1. Review all advertising or sponsorship acknowledgment content for compliance with the standards provided under this Article and any other applicable law; and
2. Ensure that advertising or sponsorship acknowledgment content does not interfere with the business activities of the Department and its customers.

D. For monetary sponsorship of an element of the Department's operation of any highway-related assets and facilities, the Department or its contractor shall additionally:

1. Ensure that the most current FHWA policy directives are followed when using signs to acknowledge the provision of highway-related services under both corporate and volunteer sponsorship programs;
2. Ensure that all signs are of reasonable size, as determined by the Department, and as specified in the provisions of the MUTCD and FHWA policy directives; and
3. Ensure that all sign message content is simple, brief, and minimizes driver distraction.

R17-1-706. Advertising or Sponsorship Acknowledgment; Prohibited Content

A. The Department shall deny a request for placement of advertising or sponsorship content if the content is not for a motor vehicle-, motorist-, or highway-related service, message, or product, unless otherwise authorized by law. The Department shall also deny a request for placement of advertising or sponsorship content if the content is likely to:

1. Conflict with other advertising or sponsored content for which the Department has an existing or pending agreement;
2. Conflict with the reasonable standards established by the Department under this Section;
3. Conflict with the time, place, manner, or duration of the Department's office or highway operations or security;
4. Create an unreasonable risk of injury to a person or risk of damage to property;
5. Interfere with the work of a Department employee or the business or mission of the Department; or
6. Result in non-compliance with other applicable statutes or rules.

B. The Department, in its sole discretion, may reject types of advertising or sponsorship content that the Department deems unacceptable for its advertising and sponsorship program. Content deemed unacceptable by the Department for its advertising and sponsorship program shall include any advertising or sponsorship content that:

1. Contains obscene, pornographic, indecent or explicit messages, or contains an offensive level of sexual overtone, innuendo, or double entendre, as determined by the Department in accordance with community standards in the vicinity of where the content would be displayed;
2. Contains profanity or vulgar language;
3. Creates non-compliance with federal and state nondiscrimination laws, regulations, and policies;
4. Denigrates a person, organization, or group based on gender, sexual orientation, religion, race, ethnic or political affiliations, or national origin;
5. Includes the name of a person, organization, or group that has historically advocated the denigration of other persons or groups based on gender, sexual orientation, religion, race, ethnic or political affiliations, or national origin;
6. Includes or concerns political or election campaign messaging, imagery, or symbolism;
7. Promotes, identifies, highlights, criticizes or endorses a political candidate, political party or movement, or any ballot measure circulated, submitted, or scheduled for consideration by the electorate of any jurisdiction, past, present, or future;
8. Promotes, identifies, highlights, suggests, or expresses an opinion for or against contraceptive products or services, or any services related to abortion, euthanasia, or counseling with regard to any of these products, services, procedures, or issues;
9. Promotes, identifies, highlights, suggests, or expresses an opinion for or against the use of alcohol, tobacco, marijuana or firearms;
10. Promotes, identifies, highlights, or suggests the use of a drug or other substance in violation of either federal or state law or regulations; or
11. Promotes, identifies, highlights, or suggests the use of products or services with sexual overtones such as massage parlors, escort services, or establishments for show or sale of X-rated, adult-only, or pornographic movies, products or services, or for establishments primarily featuring nude or semi-nude images or performances.

R17-1-707. Denial of a Request for Advertising or Sponsorship; Administrative Hearing; Time-frames

A. An advertiser or sponsor whose request for placement of advertising or sponsorship content is denied by the Department may request an administrative hearing in connection with the denial, or any other action taken by the Department in connection with the rules prescribed in this Article, as provided under A.R.S. Title 41, Chapter 6, Article 6, and Article 5 of this Chapter, as applicable.

B. If the Department denies a request for placement of advertising or sponsorship content, the Department or its contractor shall send written notification of the denial to the advertiser or sponsor within five calendar days of denying a request for placement of advertising or sponsorship content. Written notification of the denial shall state:

1. The Department's reason for the denial, citing all applicable supporting statutes or rules;
2. The advertiser's or sponsor's right to request a hearing under A.R.S. § 41-1065 to contest the Department's decision; and
3. The time-frame for requesting a hearing with the Department's Executive Hearing Office as prescribed under A.R.S. § 41-1065 and Article 5 of this Chapter.

C. If an advertiser or sponsor requests a hearing, the Department shall hold the hearing according to the procedures provided under A.R.S. Title 41, Chapter 6, Article 6, this Article, and 17 A.A.C. 1, Article 5, as applicable. The Department shall:
1. Schedule a hearing within 30 calendar days after receiving a written request for a hearing from an advertiser or sponsor;
2. Provide to the advertiser or sponsor who requested a hearing, a notice of the scheduled date and time of the hearing at least 20 calendar days before the date set for the hearing, as prescribed under A.R.S. § 41-1061;
3. Ensure that the presiding officer makes a written determination of the presiding officer's decision or order, including findings of fact and conclusions of law, within 10 calendar days after concluding the hearing; and
4. Mail a copy of the written determination to the advertiser or sponsor who requested the hearing.

D. The scope of the hearing shall be limited to a determination of whether the Department possessed grounds to take the action indicated in the notice of action provided by the Department in connection with the rules prescribed in this Article.

R17-1-708. Program Administration; Pricing and Lease Procedures; Priority; Renewal

A. For administration of the Department's advertising and sponsorship program, the Department or its contractor may use:
1. Rate schedules that are established and periodically adjusted by the Department; or
2. Competitive pricing established by one or more offers from potential or current advertisers or sponsors.

B. The Department or its contractor may use competitive pricing or rate schedules to determine the ranking order of potential or current advertisers or sponsors who may be awarded advertising and sponsorship opportunities at specific locations authorized by the Department for such activities.

C. In determining competitive pricing and rate schedules, the Department may consider the amount of space available for advertising and sponsorship activities, and one or more of the following additional factors:
1. The average annual daily traffic at, or adjacent to, the location of the Department's available asset or facility;
2. The population mix and relative distribution between all other advertisers or sponsors that meet all of the Department's advertising and sponsorship program requirements;
3. The ranking order determined by the Department or its contractor based on existing rate schedules or competitive pricing proposed or offered by potential or current advertisers or sponsors for each Department authorized location; or
4. The competitive market conditions, as well as economic, regulatory, logistical, and other related factors as determined by the Department or its contractor.

D. If any of the factors provided under subsection (C) are used in determining competitive pricing or rate schedules, the Department or its contractor shall make the information relevant to these factors available to advertisers and sponsors on the Department's or its contractor's website.

E. If a clear ranking order of preference for awarding a specific location cannot be determined using the factors provided under subsection (C), the Department or its contractor shall prioritize the remaining requests for advertising or sponsorship opportunities based on the following additional factors, in order:
1. The advertiser or sponsor having the closest business location to the Department facility or asset location requested;
2. The advertiser or sponsor providing the most business days and hours of service to the public; and
3. The advertiser or sponsor first requesting authorization to place advertising or sponsorship content on the Department authorized facility or asset at that location.

F. If a potential advertiser or sponsor requests placement of advertising or sponsorship content on a specific Department facility or asset where there are no available placements, a competitive bidding process may be used to determine which potential advertiser will participate, assuming the Department determines in its sole discretion that the location may be made available for advertising or sponsorship.

G. The Department or its contractor may choose not to renew an existing advertising or sponsorship agreement, or an advertising or sponsorship agreement expiring within the next 60 calendar days, if another eligible advertiser or sponsor with a higher priority ranking requests placement of advertising or sponsorship content at that same location.

H. The Department or its contractor may collect all applicable taxes due from an advertiser or sponsor under the advertising or sponsorship agreement.

I. An advertiser or sponsor may request reimbursement of any pre-paid lease payments if, for a reason solely caused by the Department or its contractor, the Department or its contractor does not install the advertiser's or sponsor's content or copy within 90 calendar days after receiving the pre-paid lease payments.

J. The Department or its contractor shall refund any pre-paid lease payments to an advertiser or sponsor within 30 calendar days after the advertiser or sponsor requests reimbursement under subsection (I).

K. The Department may require an advertiser or sponsor who requests reimbursement of pre-paid lease payments to provide additional information if required by the State of Arizona for processing a refund.

R17-1-709. Acknowledgment Signs and Plaques; Design and Placement

A. The Department may acknowledge sponsors with acknowledgment signs or plaques. Acknowledgment signs and plaques shall meet all of the general principles and specific design and placement criteria prescribed in the MUTCD, Part 2, Signs, as supplemented by the most recent edition of the FHWA Standard Highway Signs and Markings Book:
1. An acknowledgment sign is installed only as an independent sign assembly unless the acknowledgment sign is part of the Department's Adopt-a-Highway Volunteer Program; and
2. An acknowledgment plaque is installed only in the same sign assembly below a primary sign that provides the road user specific information on accessing the service being sponsored. A plaque legend is displayed on a separate substrate from that of the sign below which it is mounted.

B. Acknowledgment signs and plaques shall:
1. Be appropriately sized for the legibility needs of a bikeway or path user when located on a bikeway or shared-use path;
2. Be placed near the site being sponsored, consistent with the purpose and principles of traffic control devices in the MUTCD, Part 1, General and Part 2, Signs;
3. Be placed approximately one mile away from other acknowledgment signs or plaques associated with the same element of the Department's highway operation, such as Adopt-a-Highway, when facing the same direction, as consistent with the purpose and principles of traffic control devices in the MUTCD, Part 1, General and Part 2, Signs;
4. Display no directional information or indicators;
5. Display no telephone numbers, internet addresses, or other legends prohibited by the MUTCD for the purpose of contacting the sponsor or to obtain information on the sponsorship program, such as how to become a sponsor at an available site, unless such information is part of the sponsor's official name; and
6. Remain in place only for the duration of the sponsorship agreement.

C. The Department or its contractor shall not place acknowledgment signs or plaques at key decision points where a driver's attention is more appropriately focused on traffic control devices, roadway geometry, or traffic conditions.

R17-1-710. Criteria for Highway-related Acknowledgment Signs and Plaques

A. For highway-related sponsorship opportunities, the Department or its contractor shall:
1. Ensure that acknowledgment signs and plaques take only the form of static, non-changeable, non-electronic legends to maintain the recognition value of official devices used for traffic control;
2. Ensure that messages on acknowledgment signs and plaques are not interspersed, combined, or alternated with other official traffic control messages, either in the same display space, by adjacency in the same assembly, or by adjacency of multiple assemblies whose longitudinal separation does not meet the placement criteria contained in the MUTCD, including when placed on opposite sides of the roadway facing the same direction of travel, except as provided for acknowledgment plaques under R17-1-711(B);
3. Ensure that the focus remains on the service provided rather than on the sponsor, and that the sponsor logo area on an acknowledgment sign or plaque is a horizontally oriented rectangle, consistent with the provisions on business logos in the MUTCD, Chapter 2J, Specific Service Signs. The width of the rectangle shall be at least approximately 1.67 times its height, the total area of which shall not exceed the maximum referenced or specified in this Article or the MUTCD. The word legend describing the activity, such as "SPONSORED BY," shall be composed of upper-case lettering of the FHWA standard alphabets at least three inches high on conventional roads and at least four inches high on expressways and freeways;
4. Ensure that any slogan displayed on an acknowledgment sign is a brief jurisdiction-wide slogan or that of a program name, such as "ADOPT-A-HIGHWAY." Slogans for companion, supplementary, or other programs unrelated to the service being sponsored shall not be displayed on any acknowledgment sign or plaque, in accordance with the MUTCD, Section 2H.08, Acknowledgment Signs.
5. Ensure that if a graphic business logo is used to represent a sponsor, instead of a word legend using the FHWA Standard Alphabets, the logo is the principal trademarked official logo that represents the business name of the sponsor. Secondary logos or representations, even if trademarked, copyrighted, or otherwise protected, are classified as promotional advertising and are not allowed as provided under the MUTCD, Section 1A.01, Purpose of Traffic Control Devices;
6. Ensure compliance with the following design guidelines if a graphic business logo is used to represent a sponsor:
   a. Logos shall be as simple as possible and provide good readability during both daylight and nighttime hours;
   b. Logos may consist of a symbol, trademark, or a legend message identifying the name or abbreviation of a specific business;
   c. Logos shall not contain a telephone or fax number, street name, e-mail or web address, or a direction indicator as part of the business logo unless such information is part of the sponsor's official name;
   d. Logos shall not resemble an official traffic control device; and
   e. Symbols or trademarks used alone for acknowledgment shall be simple and dignified and reproduced in the colors and general shape consistent with customary use, and any integral legend shall be in proportionate size.
7. Obtain an encroachment permit if applicable under 17 A.A.C. 3, Article 5, before installing, maintaining, or removing sponsorship content or copy from a highway-related facility or asset of the Department located along a state highway; and
8. Determine the best placement of sponsorship content or copy and cooperate with the sponsor to provide all appropriate information to the public as outlined in both the contract and the sponsorship agreement, while remaining in full compliance with any encroachment permit requirements, if the contractor requests an encroachment permit under 17 A.A.C. 3, Article 5.

B. For highway-related sponsorship opportunities, the Department or its contractor shall not:
1. Install acknowledgment signs or plaques overhead due to maximum overall size limitations and related safety considerations. Only roadside, post-mounted installations of acknowledgment signs and plaques are allowed;
2. Allow promotional advertising on any traffic control device or its supports, as provided under the MUTCD, Section 1A.01, Purpose of Traffic Control Devices;
3. Allow acknowledgment signs and plaques to contain an alternative business name that appears to have the sole or primary purpose of circumventing the MUTCD provisions. Such content or copy is considered promotional advertising rather than acknowledgment of a sponsor providing a highway-related service; and
4. Allow sponsorship acknowledgment signs or plaques that include displays that mimic, or in the Department's sole discretion, attempt to mimic, imitate, or resemble advertising. The determination of whether a sign mimics or constitutes advertising lies solely with the Department, applying in good faith the relevant standards set forth by the FHWA.

R17-1-711. Highway-related Sponsorship Restrictions and Allowances; Existing Leases or Agreements

A. For sponsorship of rest areas, the Department or its contractor:
1. May install one acknowledgment sign for each direction of travel on the highway mainline;
2. May place additional acknowledgment signs within a rest area, provided that the sign legends are not visible to the highway mainline traffic and do not pose safety risks to rest area users;
3. Shall not append acknowledgment signs to any other sign, sign assembly, or other traffic control device; and
4. Shall not place acknowledgment signs within 500 feet of other traffic control devices located on the highway mainline.

B. For sponsorship of travel service programs that are not site specific, such as 511 traveler information, radio-weather, radio-traffic, and emergency service patrol, the Department or its contractor may mount an acknowledgment plaque below a general service sign for that program in the same sign assembly. The acknowledgment plaque shall:
1. Be a horizontally oriented rectangle, with the horizontal dimension longer than the vertical dimension;
2. Be of a size not to exceed approximately one-third of the area of the general service sign below which it is mounted or 24 square feet, whichever is less;
3. Be of a size not to exceed approximately one-third of the area of the largest size prescribed in the MUTCD for the specific standard sign below which the acknowledgment plaque is mounted, even if the standard sign was enlarged under the MUTCD, Sections 2A.11, Dimensions and 2I.01, Sizes of General Service Signs, or was designated in the MUTCD as being oversized for its application; and
4. Be of a size that is equivalent to the unmodified national standard for the sign, as provided in the MUTCD, even if the size of the standard sign is modified based on the Arizona supplement to the MUTCD, or other equivalent, and would result in a sign size larger than that of the standard sign prescribed in the MUTCD.

C. For sponsorship by way of providing highway-related services, products, or monetary contributions that result in a naming sponsorship granted by the Department, where the sponsor is allowed naming rights to an officially mapped, named or numbered highway, the Department or its contractor:
1. May use only acknowledgment signs to place an unofficial overlay or secondary designation in the name of the sponsor on the official highway name or number through proclamation, contract, agreement, or other means for acknowledgment within the highway right-of-way; and
2. Shall not display on an acknowledgment sign a legend that states, either explicitly or by implication, that the highway is named for the sponsor.

D. For the purpose of protecting life or property, the Department may install on any highway or non-highway asset or facility under its jurisdiction a changeable message sign, traffic control device, or other official sign provided by a sponsor. The name of the sponsor who made placement of the item possible may be affixed to the official sign or device in a conspicuous location visible from the main traveled roadway, unless specifically prohibited by federal law, including on the sign base, apron, supports, or other structural member. No more than one sponsor's name may appear on any one official sign or device at any given time.

E. The Department or its contractor shall solely determine the placement of any new advertising or sponsorship content as new opportunities arise, whether a previously leased location is vacated, a waiting list exists, another advertiser or sponsor seeks to lease or sponsor a specific asset or facility, or a new location is identified and made available for advertising or sponsorship opportunities.

F. The provisions of this Article apply to new and modified acknowledgment sign installations in support of national uniformity and consistency. Acknowledgment signs installed prior to the effective date of this Section are subject only to the terms and conditions provided in any existing lease or other agreement already in effect between the Department and an advertiser or sponsor. Replacement of an existing acknowledgment sign for compliance with this Article is not required unless the currently installed acknowledgment sign is no longer serviceable or the advertiser or sponsor requests a modification of the sponsor name or logo that is consistent with this Article.

R17-1-712. Program Eligibility and Compliance

A. An advertiser or sponsor participating in the Department's advertising and sponsorship program shall ensure compliance with A.R.S. § 28-7316 and all criteria established under this Article.

B. The Department or its contractor may choose not to enter into, or renew, an advertising or sponsorship agreement if the eligibility criteria provided under this Article is not met.

C. An advertiser or sponsor is ineligible to place advertising or sponsorship content on any asset or facility of the Department if:
1. Thirty calendar days have elapsed since the Department or its contractor issued a notice of default to the advertiser or sponsor and the default remains uncured, or
2. The advertiser or sponsor has defaulted on an advertising or sponsorship agreement made with the Department or its contractor.

R17-1-713. Advertising or Sponsorship Agreement or Lease Termination

A. If an advertiser or sponsor becomes ineligible to participate in the Department's advertising and sponsorship program, the Department or its contractor shall remove any existing content or copy from the Department asset or facility after notifying the ineligible advertiser or sponsor as provided in the advertising or sponsorship agreement.

B. An advertiser or sponsor who becomes ineligible to participate in the Department's advertising and sponsorship program may be held responsible for the costs involved with removal or reinstallation of advertising or sponsorship acknowledgment signs in accordance with the terms and conditions provided in the advertiser's or sponsor's written lease or other agreement with the Department or its contractor.

R17-1-714. Removal of Advertising or Sponsorship Content; Program Termination

A. If the Department temporarily requires removal of an acknowledgment sign or advertising or sponsorship content or copy from any Department facility or asset for construction activities in the area that may pose conflicts with the sponsorship, as provided under R17-1-704(B) (i.e. sign needs to be removed due to a road widening project), the Department or its contractor, in its sole discretion, may:

1. Relocate the acknowledgment sign or advertising or sponsorship content or copy to a comparable site for the duration of the advertising or sponsorship agreement, if requested by the advertiser or sponsor and the acknowledgment sign or advertising or sponsorship content or copy is for a program that is not site-specific; or
2. Re-erect the acknowledgment sign or advertising or sponsorship content or copy at its original location once the construction activities are completed, if possible, and revise the original advertising or sponsorship agreement to remain in place until the minimum lease obligations are fulfilled.

B. If the Department's advertising and sponsorship program is terminated, the Department or its contractor shall:

1. Notify an advertiser or sponsor by mail, or a mutually agreed upon electronic communication method, of the program termination and the location where an advertiser or sponsor may claim its materials, if any;
2. Remove all advertising or sponsorship content or copy from any Department facilities or assets; and
3. Refund unused lease payments to each advertiser or sponsor on a prorated basis.