

TITLE 9. HEALTH SERVICES**CHAPTER 21. DEPARTMENT OF HEALTH SERVICES
BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS**

Editor's Note: The Office of the Secretary of State publishes all Chapters on white paper (Supp. 01-3).

Editor's Note: Title 9, Chapter 21 was adopted and amended by the Department of Health Services under the provisions of Laws 1992, Ch. 301, § 61, which provided for an exemption from the rulemaking process as specified in the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6, § 41-1001 et seq.). Exemption from A.R.S. Title 41, Chapter 6 means that the Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department was not required to hold public hearings on these rules; and the Attorney General has not certified these rules. Because this Chapter contains rules which are exempt from the provisions of the Arizona Administrative Procedure Act, the Chapter is printed on blue paper.

Former Title 9, Chapter 21 renumbered to Title 18, Chapter 11.

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ARTICLE 1. GENERAL PROVISIONS**R9-21-101. Definitions**

- A.** In this Chapter, unless the context otherwise requires, the terms defined in A.R.S. § 36-501 shall have the same meaning as in A.R.S. § 36-501.
- B.** In this Chapter, unless the context otherwise requires:
1. “Abuse” means, with respect to a client, the infliction of, or allowing another person to inflict or cause, physical pain or injury, impairment of bodily function, disfigurement or serious emotional damage which may be evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior. Such abuse may be caused by acts or omissions of an individual having responsibility for the care, custody or control of a client receiving behavioral health services or community services under this Chapter. Abuse shall also include sexual misconduct, assault, molestation, incest, or prostitution of, or with, a client under the care of personnel of a mental health agency.
 2. “Agency director” means the person primarily responsible for the management of an outpatient or inpatient mental health agency, service provider, regional authority or the deputy director of the division, or their designees.
 3. “AHCCCSA” means the Arizona Health Care Cost Containment System Administration.
 4. “Applicant” means an individual who:
 - a. Submits to a regional authority an application for behavioral health services under this Chapter or on whose behalf an application has been submitted; or
 - b. Is referred to a regional authority for a determination of eligibility for behavioral health services according to this Chapter.
 5. “ASH” means the Arizona State Hospital.
 6. “Authorization” means written permission for a mental health agency to release or disclose a client’s record or information, containing:
 - a. The name of the mental health agency releasing or disclosing the client’s record or information;
 - b. The purpose of the release or disclosure;
 - c. The individual, mental health agency, or entity requesting or receiving the client’s record or information;
 - d. A description of the client’s record or information to be released or disclosed;
 - e. A statement:
 - i. Of permission for the mental health agency to release or disclose the client’s record or information; and
 - ii. That permission may be revoked at any time;
 - f. The date when or conditions under which the permission expires;
 - g. The date the document is signed; and
 - h. The signature of the client or, if applicable, the client’s guardian.
 7. “Behavioral health issue” means an individual’s condition related to a mental disorder, personality disorder, substance abuse, or a significant psychological or behavioral response to an identifiable stressor or stressors.
 8. “Behavioral health service” means the assessment, diagnosis, or treatment of an individual’s behavioral health issue.
 9. “Burden of proof” means the necessity or obligation of affirmatively proving the fact or facts in dispute.
 10. “Case manager” means the person responsible for locating, accessing and monitoring the provision of services to clients in conjunction with a clinical team.
 11. “Client” means an individual who is seriously mentally ill and is being evaluated or treated for a mental disorder by or through a regional authority.
 12. “Client record” means the written compilation of information that describes and documents the evaluation, diagnosis or treatment of a client.
 13. “Client who needs special assistance” means a client who has been:
 - a. Deemed by a qualified clinician, case manager, clinical team, or regional authority to need special assistance in participating in the ISP or ITP process, which may include, but is not limited to:
 - i. A client who requires 24-hour supervision;
 - ii. A client who is, in fact, incapable of making or communicating needs but is without a court-appointed fiduciary; or
 - iii. A client with physical disabilities or language difficulties impacting the client’s ability to make or communicate decisions or to prepare or participate in meetings; or
 - b. Otherwise deemed by a program director, the deputy director of the Division, or a hearing officer to need special assistance to effectively file a written grievance, to understand the grievance and investigation procedure, or to otherwise effectively participate in the grievance process under this Chapter.
 14. “Clinical team” refers to the interdisciplinary team of persons who are responsible for providing continuous treatment and support to a client and for locating, accessing and monitoring the provision of behavioral health services or community services. A clinical team consists of a psychiatrist, case manager, vocational specialist, psychiatric nurse, and other professionals or paraprofessionals, such as a psychologist, social worker, consumer case management aide, or rehabilitation specialist, as needed, based on the client’s needs. The team shall also include a team leader who is a certified behavioral health supervisor under Laws 1992, Ch. 310.
 15. “Community services” means services required to be provided under A.R.S. Title 36, Chapter 5, Article 10 such as clinical case management, outreach, housing and residential services, crisis intervention and resolution services, mobile crisis teams, day treatment, vocational training and opportunities, rehabilitation services, peer support, social support, recreation services, advocacy, family support services, outpatient counseling and treatment, transportation, and medication evaluation and maintenance.
 16. “Condition requiring investigation” means, within the context of the grievance and investigation procedure set forth in Article 4 of this Chapter, an incident or condition which appears to be dangerous, illegal, or inhumane, including a client death.
 17. “County Annex” means the Maricopa County Psychiatric Annex of the Maricopa Medical Center.
 18. “Court-ordered treatment” means treatment ordered by the court under A.R.S. Title 36, Chapter 5.
 19. “Court-ordered evaluation” means evaluation ordered by the court under A.R.S. Title 36, Chapter 5.
 20. “Crisis services” or “emergency services” means immediate and intensive, time-limited, crisis intervention and resolution services which are available on a 24-hour basis and may include information and referral, evaluation and counseling to stabilize the situation, triage to an inpatient setting, clinical crisis intervention services, mobile crisis services, emergency crisis shelter services, and follow-up

- counseling for clients who are experiencing a psychiatric emergency.
21. “Dangerous” as used in Article 4 of this Chapter means a condition that poses or posed a danger or the potential of danger to the health or safety of any client.
 22. “Department” means the Arizona Department of Health Services.
 23. “Designated representative” means a parent, guardian, relative, advocate, friend, or other person, designated by a client or guardian who, upon the request of the client or guardian, assists the client in protecting the client’s rights and voicing the client’s service needs
 24. “Discharge plan” means a hospital or community treatment and discharge plan prepared according to Article 3 of these rules.
 25. “Division” means the Division of Behavioral Health Services of the Department.
 26. “Drug used as a restraint” means a pharmacological restraint as used in A.R.S. § 36-513 that is not standard treatment for a client’s medical condition or behavioral health issue and is administered to:
 - a. Manage the client’s behavior in a way that reduces the safety risk to the client or others,
 - b. Temporarily restrict the client’s freedom of movement.
 27. “DSM” means the latest edition of the “Diagnostic and Statistical Manual of Mental Disorders,” edited by the American Psychiatric Association.
 28. “Emergency safety situation” means unanticipated client behavior that creates a substantial and imminent risk that the client may inflict injury, and has the ability to inflict injury, upon:
 - a. The client, as evidenced by threats or attempts to commit suicide or to inflict injury on the client; or
 - b. Another individual, as evidenced by threats or attempts to inflict injury on another individual or individuals, previous behavior that has caused injury to another individual or individuals, or behavior that places another individual or individuals in reasonable fear of sustaining injury.
 29. “Enrolled Children” means persons under the age of 18 who receive behavioral health services by or through a regional authority.
 30. “Exploitation” means the illegal or improper use of a client or a client’s resources for another’s profit or advantage.
 31. “Frivolous,” as used in this Chapter, means a grievance that is devoid of merit. Grievances are presumed not to be frivolous unless the program director has good reason to believe that the grievance:
 - a. Involves conduct that is not within the scope of this Chapter,
 - b. Is impossible on its face, or
 - c. Is substantially similar to conduct alleged in two previous grievances within the past year that have been determined to be unsubstantiated as provided in this Chapter.
 32. “Generic services” means services other than behavioral health services or community services for which clients may have a need and includes, but is not limited to, health, dental, vision care, housing arrangements, social organizations, recreational facilities, jobs, and educational institutions.
 33. “Grievance” means a complaint regarding an act, omission or condition, as provided in this Chapter.
 34. “Guardian” means an individual appointed by court order according to A.R.S. Title 14, Chapter 5, or similar proceedings in another state or jurisdiction where said guardianship has been properly domesticated under Arizona law.
 35. “Hearing officer” refers to an impartial person designated by the director to hear a dispute and render a written decision.
 36. “Human rights advocate” means the human rights advocates appointed by the director under R9-21-105.
 37. “Human rights committee” means the human rights committee established under R9-21-106 by the Department.
 38. “Illegal” means, within the context of the grievance and investigation procedure set forth in Article 4 of this Chapter, an incident or occurrence which is or was likely to constitute a violation of a state or federal statute, regulation, court decision or other law, including the provisions of these Articles.
 39. “Individual service plan” or “ISP” means the written plan for services to a client, prepared in accordance with Article 3 of this Chapter.
 40. “Inhumane” as used in Article 4 of this Chapter means an incident, condition or occurrence that is demeaning to a client, or which is inconsistent with the proper regard for the right of the client to humane treatment.
 41. “Inpatient facility” means the Arizona State Hospital, the County Annex, or any other inpatient treatment facility licensed or funded by or through the Department to provide behavioral health services, including psychiatric health facilities, licensed psychiatric hospitals, licensed psychiatric units in general hospitals, and licensed inpatient or behavioral health facilities in jails.
 42. “Inpatient treatment and discharge plan” or “ITDP” means the written plan for services to a client prepared and implemented by an inpatient facility in accordance with Article 3 of this Chapter.
 43. “Long-term view” means a planning statement that identifies, from the client’s perspective, what the client would like to be doing for work, education, and leisure and where the client would like to be living for up to a three-year period. The long-term view is based on the client’s unique interests, strengths, and personal desires. It includes predicted times for achievement.
 44. “Mechanical restraint” means any, device, article, or garment attached or adjacent to a client’s body that the client cannot easily remove and that restricts the client’s freedom of movement or normal access to the client’s body, but does not include a device, article, or garment:
 - a. Used for orthopedic or surgical reasons, or
 - b. Necessary to allow a client to heal from a medical condition or to participate in a treatment program for a medical condition.
 45. “Medical practitioner” means a:
 - a. Physician, licensed according to A.R.S. Title 32, Chapter 13 or 17;
 - b. Physician assistant, licensed according to A.R.S. Title 32, Chapter 25; or
 - c. Nurse practitioner, licensed according to A.R.S. Title 32, Chapter 15.
 46. “Meeting” means an encounter or assembly of individuals which may be conducted in person or by telephone or by video-conferencing.
 47. “Mental health agency” includes a regional authority, service provider, inpatient facility, or an agency licensed to conduct screening, evaluation and treatment under this Chapter.

48. “Nurse” means an individual licensed as a registered nurse or a practical nurse according to A.R.S. Title 32, Chapter 15.
49. “Party” or “parties” as used in Articles 3 and 4 of these rules means the person filing a grievance under this Chapter, the agency director who issued any final resolution or decision of such a grievance, the person whose conduct is complained of in the grievance, any client or applicant who is the subject of the request or grievance, the legal guardian of client or applicant, and, in selected cases, the appropriate human rights committee.
50. “Personal restraint” means the application of physical force without the use of any device, for the purpose of restricting the free movement of a client’s body, but for a behavioral health agency licensed as a level I RTC or a Level I sub-acute agency according to A.A.C. R9-20-102 does not include:
- Holding a client for no longer than five minutes, without undue force, in order to calm or comfort the client; or
 - Holding a client’s hand to escort the client from one area to another.
51. “PRN order” or “Pro re rata medication” means medication given as needed.
52. “Program director” means the person with the day-to-day responsibility for the operation of a programmatic component of a service provider, such as a specific residential, vocational, or case management program.
53. “Qualified clinician” means a behavioral health professional who is licensed or certified under A.R.S. Title 32, or a behavioral health technician who is supervised by a licensed or certified behavioral health professional.
54. “Region” means the geographical region designated by the Department in its contract with the regional authority.
55. “Regional authority” means the regional behavioral health authority under contract with the Department to organize and administer the delivery of behavioral health services or community services to clients and enrolled children within a defined geographic area.
56. “Restraint” means personal restraint, mechanical restraint, or drug used as a restraint.
57. “Seclusion” means restricting a client to a room or area through the use of locked doors or any other device or method which precludes a client from freely exiting the room or area or which a client reasonably believes precludes his unrestricted exit. In the case of an inpatient facility, confining a client to the facility, the grounds of the facility, or a ward of the facility does not constitute seclusion. In the case of a community residence, restricting a client to the residential site, according to specific provisions of an individual service plan or court order, does not constitute seclusion.
58. “Seriously mentally ill” means a person 18 years of age or older who is either seriously mentally ill or chronically mentally ill as those terms are defined in A.R.S. § 36-550.
59. “Service provider” means an agency, inpatient facility or other mental health provider funded by or through, under contract or subcontract with, licensed by, certified by, approved by, registered with, or supervised by, the Department, or receiving funds under Title XIX, to provide behavioral health services or community services.
60. “State Protection and Advocacy System” means the agency designated as the Protection and Advocacy System for individuals with mental illness, according to 42 U.S.C. 10801-51.
61. “Title XIX” means Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq.
62. “Treatment team” means the multidisciplinary team of persons who are responsible for providing continuous treatment and support to a client who is a current resident of an inpatient facility.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 7 A.A.R. 3469, effective July 17, 2001 (Supp. 01-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-102. Applicability

With regard to the provision of behavioral health services or community services to clients under A.R.S. Title 36 Chapter 5, this Chapter shall apply to the Department and to all mental health agencies funded by or through, under contract or subcontract with, licensed by, certified by, approved by, registered with, or supervised by the Department, or receiving funds under Title XIX, to provide behavioral health services or community services. This Chapter shall not apply to the Arizona Department of Corrections.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-103. Computation of Time

For any period of time prescribed or allowed by this Chapter, the time shall be calculated as follows:

- The period of time shall not include the day of the act, event or default from which the designated period of time begins to run;
- If the period of time is designated as calendar days, the period of time shall include each day after the day of the act, event or default from which the designated period of time begins to run;
- If the period of time is not designated as calendar days:
 - If the period of time prescribed or allowed is less than 11 days, the period of time shall not include intermediate Saturdays, Sundays and legal holidays;
 - If the period of time is 11 days or more, the period of time shall include intermediate Saturdays, Sundays and legal holidays;
 - If the last day of the period of time is not a Saturday, Sunday, or legal holiday, the period of time shall include the last day of the period of time; and
 - If the last day of the period of time is a Saturday, Sunday, or legal holiday, the period of time shall extend until the end of the next day that is not a Saturday, Sunday or legal holiday.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Section repealed; new Section R9-21-103 renumbered from R9-21-104 and

amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-104. Office of Human Rights; Human Rights Advocates

- A.** The director shall establish an Office of Human Rights for clients within the Department. The office shall have its own chief officer appointed by the director. The chief officer shall report directly to the director and shall be responsible for the management and control of the office, as well as the hiring, training, supervision, and coordination of all Department human rights advocates.
- B.** The chief officer shall appoint at least one human rights advocate for each 2,500 clients in each region. Each region shall have at least one human rights advocate. The chief officer shall appoint at least one human rights advocate for ASH. All clients shall have the right of access to a human rights advocate in order to understand, exercise, and protect their rights. The human rights advocate shall advocate on behalf of clients and shall assist clients in understanding and protecting their rights and obtaining needed services. The human rights advocate shall also assist clients in resolving appeals and grievances under Article 4 of this Chapter and shall coordinate and assist the human rights committees in performing their duties.
- C.** The human rights advocates shall be given access to all:
 1. Clients; and
 2. Client records from a service provider, regional authority, or the Department, except as prohibited by federal or state law.
- D.** Staff of inpatient facilities, regional authorities, and service providers shall cooperate with the advocate by providing relevant information, reports, investigations, and access to meetings, staff persons, and facilities except as prohibited by federal or state law and the client's right to privacy.
- E.** An agency director shall notify the Office of Human Rights and the applicable human rights committee of each client who needs special assistance.
- F.** The Office of Human Rights shall:
 1. Maintain a list that contains the names of each client who needs special assistance and, if applicable, the name and address of the residential program providing behavioral services to the client; and
 2. Provide each human rights committee with a list of all clients who need special assistance who reside in the respective jurisdiction of the human rights committee.
- G.** The Office of Human Rights shall promptly distribute to all appropriate human rights committees copies of all reports received according to this Chapter (e.g., reports regarding clients who need special assistance, allegations of mistreatment, denial of rights, restraint, and seclusion).

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-104 renumbered to R9-21-103; new Section R9-21-104 renumbered from R9-21-105 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-105. Human Rights Committees

- A.** According to A.R.S. §§ 41-3803 and 41-3804, the Department shall establish human rights committees to provide independent oversight to ensure that the rights of clients and enrolled children are protected. The Department shall establish at least one human rights committee for each region and the Arizona State Hospital. Upon the establishment of a human rights com-

mittee, if more than 2,500 clients reside within a region, the Department shall establish additional human rights committees until there is one human rights committee for each 2,500 clients in a region.

- B.** Each human rights committee shall be composed of at least seven and not more than 15 members. At least two members of the committee shall be clients or former clients, at least two members shall be relatives of clients, two members shall be parents of enrolled children and at least three members shall have expertise in one of the following areas: psychology, law, medicine, education, special education, social work, or behavioral health services.
- C.** The director shall appoint the initial members to each regional committee and the human rights committee for the Arizona State Hospital. The Director shall appoint members to fill vacancies on a human rights committee, subject to the approval of the committee.
- D.** Each committee shall meet at least four times each year. Within three months of its formation, each committee shall establish written guidelines governing the committee's operations. These guidelines shall be consistent with A.R.S. §§ 41-3803 and 41-3804. The adoption and amendment of the committee's guidelines shall be by a majority vote of the committee and shall be submitted to the Director for approval.
- E.** No employee of or individual under contract with the Department, regional authority, or service provider may be a voting member of a committee.
- F.** If a member of a human rights committee or the human rights committee determines that a member has a conflict of interest regarding an agenda item, the member shall refrain from:
 1. Participating in a discussion regarding the agenda item, and
 2. Voting on the agenda item.
- G.** Each committee shall, within its respective jurisdiction, provide independent oversight and review of:
 1. Allegations of illegal, dangerous, or inhumane treatment of clients and enrolled children;
 2. Reports filed with the committee under R9-21-203 and R9-21-204 concerning the use of seclusion, restraint, abuse, neglect, exploitation, mistreatment, accidents, or injuries;
 3. The provision of services to clients identified under R9-21-301 in need of special assistance
 4. Violations of rights of clients and enrolled children and conditions requiring investigation under Article 4 of this Chapter;
 5. Research in the field of mental health according to A.R.S. § 41-3804(E)(2); and
 6. Any other issue affecting the human rights of clients and enrolled children.
- H.** Within its jurisdiction, each human rights committee shall, for a client who needs special assistance, and may, for other clients and enrolled children:
 1. Make regular site visits to residential environments;
 2. Meet with the client, including a client who needs special assistance, in residential environments to determine satisfaction of the clients with the residential environments; and
 3. Inspect client records, including client records for clients who need special assistance, except as prohibited by federal or state law and a client's right to privacy.
- I.** A committee may request the services of a consultant or staff person to advise the committee on specific issues. The cost of the consultant or staff person shall be assumed by the Department or regional authority subject to the availability of funds specifically allocated for that purpose. A consultant or staff

person may, in the sole discretion of the committee, be a member of another committee or an employee of the Department, regional authority, or service provider. No committee consultant or staff person shall vote or otherwise direct the committee's decisions.

- J. Committee members and committee consultants and staff persons shall have access to client records according to A.R.S. §§ 36-509(13) and 41-3804(I). If a human rights committee's request for information or records is denied, the committee may request a review of the decision to deny the request according to A.R.S. § 41-3804(J). Nothing in this rule shall be construed to require the disclosure of records or information to the extent that such information is protected by A.R.S. § 36-445 et seq.
- K. On the first day of the months of January, April, July, and October of each year, each committee shall issue a quarterly report summarizing its activities for the prior quarter, including any written objections to the Director according to A.R.S. § 41-3804(F), and make any recommendations for changes it believes the Department or regional authorities should implement. In addition, the committee may, as it deems appropriate, issue reports on specific problems or violations of client's rights. The report of a regional committee shall be delivered to the regional authority and the Division.
- L. The Department shall provide training and support to human rights committees.
- M. A human rights committee may request:
 1. An investigation for a client according to Article 4 of this Chapter, or
 2. A regional authority or the Arizona State Hospital, as applicable, to conduct an investigation for an enrolled child.
- N. The regional authority or the Arizona State Hospital, as applicable, when requested by a human rights committee, shall conduct an investigation concerning:
 1. A client as provided in Article 4 of this Chapter, and
 2. An enrolled child.
- O. A human rights committee shall submit an annual report of the human rights committee's activities and recommendations to the Director at the end of each calendar year according to A.R.S. § 41-3804(G).

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-105 renumbered to R9-21-104; new Section R9-21-105 renumbered from R9-21-106 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-106. State Protection and Advocacy System

Staff of mental health agencies shall cooperate with the State Protection and Advocacy System in its investigations and advocacy for clients and shall provide the System access to clients, records and facilities to the extent permitted and required by federal law, 42 U.S.C.A. 10801-51. Nothing in this rule shall be construed to create an independent cause of action that does not already exist for the State Protection and Advocacy System either in state court or any administrative proceeding provided by these rules.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary

of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 7 A.A.R. 3469, effective July 17, 2001 (Supp. 01-3).

Former Section R9-21-106 renumbered to R9-21-105; new Section R9-21-106 renumbered from R9-21-107 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-107. Renumbered

Historical Note

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ARTICLE 2. RIGHTS OF PERSONS WITH SERIOUS MENTAL ILLNESS

R9-21-201. Civil and Other Legal Rights

- A. Clients shall have all rights accorded by applicable law, including but not limited to those prescribed in A.R.S. §§ 36-504 through 36-514 and in 9 A.A.C. 20. Any individual or agency providing behavioral health services or community services as defined in R9-21-101 shall not abridge these rights, including the following:
 1. Those civil rights set forth in A.R.S. § 36-506;
 2. The right to acquire and dispose of property, to execute instruments, to enter into contractual relationships, to hold professional or occupational or vehicle operator's licenses, unless the Client has been adjudicated incompetent or there has been a judicial order or finding that such client is unable to exercise the specific right or category of rights. In the case of a client adjudicated incompetent, these rights may be exercised by the client's guardian, in accordance with applicable law;
 3. The right to be free from unlawful discrimination by the Department or by any mental health agency on the basis of race, creed, religion, sex, sexual preference, age, physical or mental handicap or degree of handicap; provided, however, classifications based on age, sex, category or degree of handicap shall not be considered discriminatory, if based on written criteria of client selection developed by a mental health agency and approved by the Department as necessary to the safe operation of the mental health agency and in the best interests of the clients involved;
 4. The right to equal access to all existing behavioral health services, community services, and generic services provided by or through the state of Arizona;
 5. The right to religious freedom and practice, without compulsion and according to the preference of the client;
 6. The right to vote, unless under guardianship, including reasonable assistance when desired in registering and voting in a nonpartisan and noncoercive manner;
 7. The right to communicate including:
 - a. The right to have reasonable access to a telephone and reasonable opportunities to make and receive confidential calls and to have assistance when desired and necessary to implement this right;
 - b. The unrestricted right to send and receive uncensored and unopened mail, to be provided with stationery and postage in reasonable amounts, and to

assistance when desired and necessary to implement this right;

8. The right to be visited and visit with others, provided that reasonable restrictions may be placed on the time and place of the visit but only to protect the privacy of other clients or to avoid serious disruptions in the normal functioning of the mental health agency;
 9. The right to associate with anyone of the client's choosing, to form associations, and to discuss as a group, with those responsible for the program, matters of general interest to the client, provided that these do not result in serious disruptions in the normal functioning of the mental health agency. Clients shall receive cooperation from the mental health agency if they desire to publicize and hold meetings and clients shall be entitled to invite visitors to attend and participate in such meetings, provided that they do not result in serious disruptions in the normal functioning of the mental health agency;
 10. The right to privacy, including the right not to be fingerprinted and photographed without authorization, except as provided by A.R.S. § 36-507(2);
 11. The right to be informed, in appropriate language and terms, of client rights;
 12. The right to assert grievances with respect to infringement of these rights, including the right to have such grievances considered in a fair, timely, and impartial procedure, as set forth in Article 4 of these rules, and the right not to be retaliated against for filing a grievance.;
 13. The right of access to a human rights advocate in order to understand, exercise, and protect a client's rights;
 14. The right to be assisted by an attorney or designated representative of the client's own choice, including the right to meet in a private area at the program or facility with an attorney or designated representative. Nothing in this Section shall be construed to require the Department or any mental health agency to pay for the services of an attorney who consults with or represents a client;
 15. The right to exercise all other rights, entitlements, privileges, immunities provided by law, and specifically those rights of consumers of behavioral health services or community services set forth in A.R.S. §§ 36-504 through 514;
 16. The same civil rights as all other citizens of Arizona, including the right to marry and to obtain a divorce, to have a family, and to live in the community of their choice without constraints upon their independence, except those constraints to which all citizens are subject.
- B.** Nothing in this Article shall be interpreted to:
1. Give the power, right, or authority to any person or mental health agency to authorize sterilization, abortion, or psychosurgery with respect to any client, except as may otherwise be provided by law; or
 2. Restrict the right of physicians, nurses, and emergency medical technicians to render emergency care or treatment in accordance with A.R.S. § 36-512; or
 3. Construe this rule to confer constitutional or statutory rights not already present.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-202. Right to Support and Treatment

- A.** A client has the following rights with respect to the client's support and treatment:
1. The right to behavioral health services or community services:
 - a. Under conditions that support the client's personal liberty and restrict personal liberty only as provided by law or in this Chapter;
 - b. From a flexible service system that responds to the client's needs by increasing, decreasing and changing services as needs change;
 - c. Provided in a way that:
 - i. Preserves the client's human dignity;
 - ii. Respects the client's individuality, abilities, needs, and aspirations without regard to the client's psychiatric condition;
 - iii. Encourages the client's self-determination, freedom of choice, and participation in treatment to the client's fullest capacity;
 - iv. Ensures the client's freedom from the discomfort, distress and deprivation that arise from an unresponsive and inhumane environment;
 - v. Protects and promotes the client's privacy, including an opportunity whenever possible to be provided clearly defined private living, sleeping and personal care spaces; and
 - vi. Maximizes integration of the client into the client's community through housing and residential services which are located in residential neighborhoods, rely as much as possible on generic support services to provide training and assistance in ordinary community experiences, and utilize specialized mental health programs that are situated in or near generic community services;
 - vii. Offers the client humane and adequate support and treatment that is responsive to the client's needs, recognizes that the client's needs may vary, and is capable of adjusting to the client's changing needs; and
 - d. That provide the client with an opportunity to:
 - i. Receive services that are adequate, appropriate, consistent with the client's individual needs, and least restrictive of the client's freedom;
 - ii. Receive treatment and services that are culturally sensitive in structure, process and content;
 - iii. Receive services on a voluntary basis to the maximum extent possible and entirely if possible;
 - iv. Live in the client's own home;
 - v. Undergo normal experiences, even though the experiences may entail an element of risk, unless the client's safety or well-being or that of others is unreasonably jeopardized; and
 - vi. Engage in activities and styles of living, consistent with the client's interests, which encourage and maintain the integration of the client into the community.
 2. The right to ongoing participation in the planning of services as well as participation in the development and periodic revision of the individual service plan;
 3. The right to be provided with a reasonable explanation of all aspects of one's condition and treatment;
 4. The right to give informed consent to all behavioral health services and the right to refuse behavioral health services in accordance with A.R.S. §§ 36-512 and 36-

- 513, except as provided for in A.R.S. §§ 36-520 through 36-544 and 13-3994;
5. The right not to participate in experimental treatment without voluntary, written informed consent; the right to appropriate protection associated with such participation; and the right and opportunity to revoke such consent;
 6. The right to a humane treatment environment that affords protection from harm, appropriate privacy, and freedom from verbal or physical abuse;
 7. The right to enjoy basic goods and services without threat of denial or delay. For residential service providers, these basic goods and services include at least the following:
 - a. A nutritionally sound diet of wholesome and tasteful food available at appropriate times and in as normal a manner as possible;
 - b. Arrangements for or provision of an adequate allowance of neat, clean, appropriate, and seasonable clothing that is individually chosen and owned;
 - c. Assistance in securing prompt and adequate medical care, including family planning services, through community medical facilities;
 - d. Opportunities for social contact in the client's home, work or schooling environments;
 - e. Opportunities for daily activities, recreation and physical exercise;
 - f. The opportunity to keep and use personal possessions; and
 - g. Access to individual storage space for personal possessions;
 8. The right to be informed, in advance, of charges for services;
 9. The right to a continuum of care in a unified and cohesive system of community services that is well integrated, facilitates the movement of clients among programs, and ensures continuity of care;
 10. The right to a continuum of care that consists of, but is not limited to, clinical case management, outreach, housing and residential services, crisis intervention and resolution services, mobile crisis teams, vocational training and opportunities, day treatment, rehabilitation services, peer support, social support, recreation services, advocacy, family support services, outpatient counseling and treatment, transportation, and medication evaluation and maintenance;
 11. The right to a continuum of care with programs that offer different levels of intensity of services in order to meet the individual needs of each client;
 12. The right to appropriate mental health treatment, based on each client's individual and unique needs, and to those community services from which the client would reasonably benefit;
 13. The right to community services provided in the most normal and least restrictive setting, according to the least restrictive means appropriate to the client's needs;
 14. The right to clinical case management services and a case manager. The clinical team negotiates and oversees the provision of services and ensures the client's smooth transition with service providers and among agencies;
 15. The right to participate in treatment decisions and in the development and implementation of the client's ISP, and the right to participate in choosing the type and location of services, consistent with the ISP;
 16. The right to prompt consideration of discharge from an inpatient facility and the identification of the steps necessary to secure a client's discharge as part of an ISP;
 17. The rights prescribed in Articles 3 and 4 of this Chapter, including the right to:
 - a. A written individual service plan;
 - b. Assert grievances; and
 - c. Be represented by a qualified advocate or other designated representative of the client's choosing in the development of the ISP and the inpatient treatment and discharge plan and in the grievance process, in order to understand, exercise and protect the client's rights.
- B.** Subsection (A) shall not be construed to confer constitutional or statutory rights not already present.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-203. Protection from Abuse, Neglect, Exploitation, and Mistreatment

- A.** No mental health agency shall mistreat a client or permit the mistreatment of a client by staff subject to its direction. Mistreatment includes any intentional, reckless or negligent action or omission which exposes a client to a serious risk of physical or emotional harm. Mistreatment includes but is not limited to:
1. Abuse, neglect, or exploitation;
 2. Corporal punishment;
 3. Any other unreasonable use or degree of force or threat of force not necessary to protect the client or another person from bodily harm;
 4. Infliction of mental or verbal abuse, such as screaming, ridicule, or name calling;
 5. Incitement or encouragement of clients or others to mistreat a client;
 6. Transfer or the threat of transfer of a client for punitive reasons;
 7. Restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation;
 8. Any act in retaliation against a client for reporting any violation of the provisions of this Chapter to the Department; or
 9. Commercial exploitation.
- B.** The following special sanctions shall be available to the Department, in addition to those set forth in 9 A.A.C. 10, Article 10 of its rules, to protect the interests of the client involved as well as other current and former clients of the mental health agency.
1. Mistreatment of a client by staff or persons subject to the direction of a mental health agency may be grounds for suspension or revocation of the license of the mental health agency or the provision of Departmental financial assistance, and, with respect to employees of the Department, grounds for disciplinary action, which may include dismissal.
 2. Failure of an employee of the Department to report to the Department any instance of mistreatment within any mental health agency subject to this Chapter shall be grounds for disciplinary action, which may include dismissal.
 3. Failure of an agency director to report client deaths and allegations of sexual and physical abuse to the Department and to comply with the procedures described in Article 4 of this Chapter for the processing and investigation of grievances and reports shall be grounds for sus-

pension of the license of the mental health agency or the provision of Departmental financial assistance, and, with respect to a service provider directly operated by the Department, grounds for disciplinary action, which may include dismissal.

4. The agency director shall report all allegations of mistreatment and denial of rights to the Office of Human Rights and the regional authority for review and monitoring in accordance with R9-21-105.
- C. An agency director shall report all incidents of abuse, neglect, or exploitation to the appropriate authorities as required by A.R.S. § 46-454 and shall document all such reports in the mental health agency's records.
- D. Where an agency director has reasonable cause to believe that a felony relevant to the functioning of the program has been committed by staff persons subject to the agency's direction, a report shall be filed with the county attorney.
- E. The identity of persons making reports of abuse, neglect, exploitation, or mistreatment shall not be disclosed by the agency director or by the Department, except as necessary to investigate the subject matter of the report.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-204. Restraint and Seclusion

- A. A mental health agency shall only use restraint or seclusion to the extent permitted by and in compliance with this Chapter, 9 A.A.C. 20, and other applicable federal or state law.
- B. A mental health agency shall only use restraint or seclusion:
 1. To ensure the safety of the client or another individual in an emergency safety situation;
 2. After other available less restrictive methods to control the client's behavior have been tried and were unsuccessful;
 3. Until the emergency safety situation ceases and the client's safety and the safety of others can be ensured, even if the restraint or seclusion order has not expired; and
 4. In a manner that:
 - a. Prevents physical injury to the client,
 - b. Minimizes the client's physical discomfort and mental distress, and
 - c. Complies with the mental health agency's policies and procedures required in subsection (E) and with this Section.
- C. A mental health agency shall not use restraint or seclusion as a means of coercion, discipline, convenience, or retaliation.
- D. A service provider shall at all times have staff qualified according to 9 A.A.C. 20 on duty to provide:
 1. Restraint and seclusion according to this Section, and
 2. The behavioral health services the mental health agency is authorized to provide according to 9 A.A.C. 20.
- E. A mental health agency shall develop and implement written policies and procedures for the use of restraint and seclusion that are consistent with this Section and other applicable federal or state law and include:
 1. Methods of controlling behavior that may prevent the need for restraint or seclusion,
 2. Appropriate techniques for placing a client in each type of restraint or seclusion; used at the mental health agency, and
 3. Immediate release of a client during an emergency.
- F. A mental health agency shall develop and implement a training program on the policies and procedures in subsection (E).
- G. A mental health agency shall only use restraint or seclusion according to:
 1. A written order given:
 - a. By a physician providing treatment to a client; or
 - b. If a physician providing treatment to a client is not present on the premises or on-call:
 - i. If the agency is licensed as a level 1 psychiatric acute hospital according to R9-20-102, by a physician or a nurse practitioner; or
 - ii. If the agency is licensed as a level 1 subacute agency or a level 1 RTC according to R9-20-102, by a medical practitioner;
 2. An oral order given to a nurse by:
 - a. A physician providing treatment to a client, or
 - b. If a physician providing treatment to a client is not present on the premises or on-call:
 - i. If the agency is licensed as a level 1 psychiatric acute hospital according to R9-20-102, by a physician or a nurse practitioner; or
 - ii. If the agency is licensed as a level 1 sub-acute agency or a level 1 RTC according to R9-20-102, by a medical practitioner;
- H. If a restraint or seclusion is used according to subsection (G)(2), the individual giving the order shall, at the time of the oral order in consultation with the nurse, determine whether, based upon the client's current and past medical, physical and psychiatric condition, it is clinically necessary for:
 1. If the agency is licensed as a level 1 psychiatric acute hospital according to R9-20-102, a physician to examine the client as soon as possible and, if applicable, the physician shall examine the client as soon as possible; or
 2. If the agency is licensed as a level 1 sub-acute agency or a level 1 RTC according to R9-20-102, a medical practitioner to examine the client as soon as possible and, if applicable, the medical practitioner shall examine the client as soon as possible.
- I. An individual who gives an order for restraint or seclusion shall:
 1. Order the least restrictive restraint or seclusion that may resolve the client's behavior that is creating the emergency safety situation, based upon consultation with a staff member at the agency;
 2. Be available to the agency for consultation, at least by telephone, throughout the period of the restraint or seclusion;
 3. Include the following information on the order:
 - a. The name of the individual ordering the restraint or seclusion,
 - b. The date and time that the restraint or seclusion was ordered,
 - c. The restraint or seclusion ordered,
 - d. The criteria for release from restraint or seclusion without an additional order, and
 - e. The maximum duration for the restraint or seclusion
 4. If the order is for mechanical restraint or seclusion, limit the order to a period of time not to exceed three hours.
 5. If the order is for a drug used as a restraint, limit the:
 - a. The dosage to that necessary to achieve the desired effect, and

- b. Drug ordered to a drug other than a time-released drug designed to be effective for more than three hours; and
 - 6. If the individual ordering the use of restraint or seclusion is not a physician providing treatment to the client:
 - a. After ordering the restraint or seclusion, consult with the physician providing treatment as soon as possible, and
 - b. Inform the physician providing treatment of the client's behavior that created the emergency safety situation and required the client to be restrained or placed in seclusion.
- J. PRN orders shall not be used for any form of restraint or seclusion.
- K. If an individual has not examined the client according to subsection (H), the following individual shall conduct a face-to-face assessment of a client's physical and psychological well-being within one hour after the initiation of restraint or seclusion:
 - 1. For a behavioral health agency licensed according to R9-20-102 as a level 1 psychiatric acute hospital, a physician or nurse practitioner who is either on-site or on-call at the time the mental health agency initiates the restraint or seclusion; or
 - 2. For a behavioral health agency licensed according to R9-20-102 as a level 1 RTC or a level 1 sub-acute agency a medical practitioner or a registered nurse with at least one year of full time behavioral health work experience, who is either on-site or on-call at the time the mental health agency initiates the restraint or seclusion.
- L. A face-to-face assessment of a client according to subsection (K) shall include a determination of:
 - 1. The client's physical and psychological status,
 - 2. The client's behavior,
 - 3. The appropriateness of the restraint or seclusion used,
 - 4. Whether the emergency safety situation has passed, and
 - 5. Any complication resulting from the restraint or seclusion used.
- M. For each restraint or seclusion of a client, a mental health agency shall include in the client's record the order and any renewal order for the restraint or seclusion, and shall document in the client's record:
 - 1. The nature of the restraint or seclusion;
 - 2. The reason for the restraint or seclusion, including the facts and behaviors justifying it;
 - 3. The types of less restrictive alternatives that were attempted and the reasons for the failure of the less restrictive alternatives;
 - 4. The name of each individual authorizing the use of restraint or seclusion and each individual restraining or secluding a client or monitoring a client who is in restraint or seclusion;
 - 5. The evaluation and assessment of the need for seclusion or restraint conducted by the individual who ordered the restraint or seclusion;
 - 6. The determination and the reasons for the determination made according to subsection (H) above;
 - 7. The specific and measurable criteria for client release from mechanical restraint or seclusion with documentation to support that the client was notified of the release criteria and the client's response;
 - 8. The date and times the restraint or seclusion actually began and ended;
 - 9. The time and results of the face-to-face assessment required in subsection (L);
- 10. For the monitoring of a client in restraint or seclusion required by subsection (P):
 - a. The time of the monitoring,
 - b. The name of the staff member who conducted the monitoring, and
 - c. The observations made by the staff member during the monitoring; and
- 11. The outcome of the restraint or seclusion.
- N. If, at any time during a seclusion or restraint, a medical practitioner or registered nurse determines that the emergency which justified the seclusion or restraint has subsided, or if the required documentation reflects that the criteria for release have been met, the client shall be released and the order terminated. The client shall be released no later than the end of the period of time ordered for the restraint or seclusion, unless a order for restraint or seclusion is renewed according to subsection (Q).
- O. For any client in restraint, the individual ordering the restraint shall determine whether one-to-one supervision is clinically necessary and shall document the determination and the reasons for the determination in the client's record.
- P. A mental health agency shall monitor a client in restraint or seclusion as follows:
 - 1. The client shall be personally examined at least every 15 minutes for the purpose of ensuring the client's general comfort and safety and determining the client's need for food, fluid, bathing, and access to the toilet. Personal examinations shall be conducted by staff members with documented training in the appropriate use of restraint and seclusion and who are working under the supervision of a licensed physician, nurse practitioner or registered nurse.
 - 2. A registered nurse shall personally examine the client every hour to assess the status of the client's mental and physical condition and to ensure the client's continued well-being.
 - 3. If the client has any medical condition that may be adversely affected by the restraint or seclusion, the client shall be monitored every five minutes, until the medical condition resolves, if applicable.
 - 4. If other clients have access to a client being restrained or secluded or, if the individual ordering the restraint or seclusion determines that one-to-one supervision is clinically necessary according to subsection (O), a staff member shall continuously supervise the client on a one-to-one basis.
 - 5. If a mental health agency maintains a client in a mechanical restraint, a staff member shall loosen the mechanical restraints every 15 minutes.
 - 6. Nutritious meals shall not be withheld from a client who is restrained or secluded, if mealtimes fall during the period of restraint. Staff shall supervise all meals provided to the client while in restraint or seclusion.
 - 7. At least once every two hours, a client who is restrained or secluded shall be given the opportunity to use a toilet.
- Q. An order for restraint or seclusion may be renewed as follows:
 - 1. For the first renewal order, the order shall meet the requirements of subsection (G)(1) or (G)(2); and
 - 2. For a renewal order subsequent to the first renewal order:
 - a. The individual in (G)(1) or (G)(2) shall personally examine the client before giving the renewal order, and
 - b. The order shall not permit the continuation of the restraint or seclusion for more than 12 consecutive hours unless the requirements of subsection (P) are met.

- R. No restraint or seclusion shall continue for more than 12 consecutive hours without the review and approval by the medical director or designee of the mental health agency in consultation with the client and relevant staff to discuss and evaluate the needs of the client. The review and approval, if any, and the reasons justifying any continued restraint or seclusion shall be documented in the client's record.
- S. If a client requires the repeated or continuous use of restraint or seclusion during a 24-hour period, a review process shall be initiated immediately and shall include the client and all relevant staff persons and clinical consultants who are available to evaluate the need for an alternative treatment setting and the needs of the client. The review and its findings and recommendations shall be documented in the client's record.
- T. Whenever a client is subjected to extended or repeated orders for restraint or seclusion during a 30-day period, the medical director shall require a special meeting of the client's clinical team according to R9-21-314 to determine whether other treatment interventions would be useful and whether modifications of the ISP or ITDP are required.
- U. As part of a mental health agency's quality assurance program, an audit will be conducted and a report filed with the agency's medical director within 24 hours, or the first working day, for every episode of the use of restraint or seclusion to ensure that the agency's use of seclusion or restraint is in full compliance with the rules set forth in this Article.
- V. Not later than the tenth day of every month, the program director shall prepare and file with the Division and the Office of Human Rights a written report describing the use of any form of restraint or seclusion during the preceding month in the mental health agency or by any employees of the agency. In the case of an inpatient facility, the report shall also be filed with any patient or human rights committee for that facility.
- W. The Department's human rights committee, the Office of Human Rights, and any applicable regional human rights committee shall review such reports to determine if there has been any inappropriate or unlawful use of restraint or seclusion and to determine if restraint or seclusion may be used in a more effective or appropriate fashion.
- X. If any human rights committee or the Office of Human Rights determines that restraint or seclusion has been used in violation of any applicable law or rule, the committee or Office may take whatever action is appropriate, including investigating the matter itself or referring the matter to the Division for remedial action.

Historical Note

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R9-21-205. Labor

- A. No client shall be required to perform labor which involves the essential operation and maintenance of the service provider or the regular care, treatment or supervision of other clients, provided however, that:
 1. Only a residential service provider may require clients to perform activities related to maintaining their bedrooms, other personal areas, and their clothing and personal possessions in a neat and clean manner.
 2. Clients may perform labor in accordance with a planned and supervised program of vocational and rehabilitation

training as set forth in an ISP or ITDP developed according to Article 3 of this Chapter.

- B. Any client may voluntarily perform any labor available.
- C. The requirements of federal and state laws relating to wages, hours of work, workers' compensation and other labor standards shall be met with respect to all labor.

Historical Note

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R9-21-206. Competency and Consent

- A. A client shall not be deemed incompetent to manage the client's affairs, to contract, to hold professional, occupational or vehicle operator's licenses, to make wills, to vote or to exercise any other civil or legal right solely by reason of admission to a mental health agency.
- B. An applicant or client is presumed to be legally competent to conduct the client's personal and financial affairs, unless otherwise determined by a court in a guardianship or conservatorship proceeding.
- C. Only an applicant or client who is competent may provide informed consent, authorization, or permission as required in this Chapter. A mental health agency shall use the following criteria to determine if an applicant or client is competent and the appropriateness of establishing or removing a guardianship, temporary guardianship, conservatorship, or guardianship ad litem for the client:
 1. An applicant or client shall be determined to be in need of guardianship or conservatorship only if the applicant's or client's ability to make important decisions concerning the applicant or client or the applicant's or client's property is so limited that the absence of a person with legal authority to make such decisions for the applicant or client creates a serious risk to the applicant's or client's health, welfare or safety.
 2. Although the capability of the applicant or client to make important decisions is the central factor in determining the need for guardianship, the capabilities of the applicant's or client's family, the applicant's or client's living circumstances, the probability that available treatment will improve the applicant's or client's ability to make decisions on the applicant's or client's behalf, and the availability and utility of nonjudicial alternatives to guardianships such as trusts, representative payees, citizen advocacy programs, or community support services should also be considered.
 3. If the applicant or client has been determined to be incapable of making important decisions with regard to the applicant's or client's personal or financial affairs, and if nonjudicial, less restrictive alternatives such as trusts, representative payees, cosignatory bank accounts, and citizen advocates are inadequate to protect the applicant or client from a substantial and unreasonable risk to the applicant's or client's health, safety, welfare, or property, the applicant's or client's nearest living relatives shall be notified with an accompanying recommendation that a guardian or conservator be appointed.
 4. If the applicant or client is capable of making important decisions concerning the applicant's or client's health, welfare, and property, either independently or through other less restrictive alternatives such as trusts, representative payees, cosignatory bank accounts, and citizen

advocates, the applicant's or client's nearest living relative shall be notified with an accompanying recommendation that any existing guardian or conservator be removed.

5. If the client has been determined to require or no longer require assistance in the management of financial or personal affairs, and the nearest living relative cannot be found or is incapable of or not interested in caring for the client's interest, the mental health agency shall assist in the recruitment or removal of a trustee, representative payee, advocate, conservator, or guardian. Nothing in this Section shall be construed to require the Department or any regional authority or service provider to pay for the recruitment, appointment or removal of a trustee, representative payee, advocate, conservator, or guardian.
 6. The assessment or periodic review shall identify the specific area or areas of the client's functioning that forms the basis of the recommendation for the appointment or removal of a guardian or conservator, such as an inability to respond appropriately to health problems or consent to medical care, or an inability to manage savings or routine expenses.
- D.** Mental health agencies shall devise and implement procedures to ensure that suspected improprieties of a guardian, conservator, trustee, representative payee, or other fiduciary are reported to the court or other appropriate authorities.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-206.01. Informed Consent

- A.** Except in an emergency according to A.R.S. §§ 36-512 or 36-513 or R9-21-204, or a court order according to A.R.S. Title 36, Chapter 5, Articles 4 and 5, a mental health agency shall obtain written informed consent in at least the following circumstances:
1. Before providing a client a treatment with known risks or side effects, including:
 - a. Psychotropic medication,
 - b. Electro-convulsive therapy, or
 - c. Telemedicine;
 2. Before having a client participate in research activities approved under Department rules or policy; and
 3. Before admitting a client to any medical detoxification, inpatient facility, or residential program operated by a mental health agency.
- B.** The informed consent in subsection (A) shall be voluntary and shall be obtained from:
1. If the client is determined to be competent according to R9-21-206, the client; or
 2. If a court of competent jurisdiction has adjudicated the client incompetent, the client's guardian.
- C.** If informed consent is required according to subsection (A), a medical practitioner or a registered nurse with at least one year of behavioral health experience shall, before obtaining the informed consent, provide a client or, if applicable, the client's guardian with the following information:
1. The client's diagnosis;
 2. The nature of and procedures involved with the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency;
3. The intended outcome of the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency;
 4. The risks, including any side effects, of the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency;
 5. The risks of not proceeding with the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency;
 6. The alternatives to the proposed treatment, the client's participation in a research activity, or the client's admission to a program operated by a mental health agency, particularly alternatives offering less risk or other adverse effects;
 7. That any informed consent given may be withheld or revoked orally or in writing at any time, with no punitive action taken against the client;
 8. The potential consequences of revoking the informed consent; and
 9. A description of any clinical indications that might require suspension or termination of the proposed treatment, research activity, or program operated by a mental health agency.
- D.** A client or, if applicable, the client's guardian who gives informed consent for a treatment, participation in a research activity, or admission in a program operated by a mental health agency, shall give the informed consent by:
1. Signing and dating an acknowledgment that the client or, if applicable, the client's guardian has received the information in subsection (C) and gives informed consent to the proposed treatment, participation in a research activity, or admission of the client to the program operated by a mental health agency; or
 2. If the informed consent is for use of psychotropic medication or telemedicine and the client or, if applicable the client's guardian, refuses to sign an acknowledgement according to subsection (D)(1), giving verbal informed consent.
- E.** If a client or, if applicable, a client's guardian gives verbal informed consent according to subsection (D)(2), a medical practitioner shall document in the client's record that:
1. The information in subsection (C) was given to the client or, if applicable, the client's guardian;
 2. The client or, if applicable, the client's guardian refused to sign an acknowledgement according to subsection (D)(1); and
 3. The client or, if applicable, the client's guardian gives informed consent to the use of the psychotropic medication or telemedicine.
- F.** A client or, if applicable, the client's guardian may revoke informed consent at any time orally or by submitting a written statement revoking the informed consent.
- G.** If informed consent is revoked according to subsection (F):
1. The treatment, the client's participation in a research activity, or the applicant's or client's admission to a program operated by a mental health agency shall be immediately discontinued, or
 2. If abrupt discontinuation of a treatment poses an imminent risk to a client, the treatment shall be phased out to avoid any harmful effects.
- H.** If a client or, if applicable, the client's guardian needs assistance with revoking informed consent according to subsection

(F), the client or, if applicable, the client's guardian shall receive the assistance.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-207. Medication

- A.** Medication shall only be administered with the informed consent of the client or Title 36 guardian. Information relating to common risks and side effects of the medication, the procedures to be taken to minimize such risks, and a description of any clinical indications that might require suspension or termination of the drug therapy shall be available to the client, guardian, if any, and the staff in every mental health agency. Such information shall be available to family members in accordance with A.R.S. §§ 36-504, 36-509, and 36-517.01.
- B.** All clients have a right to be free from unnecessary or excessive medication.
- C.** Medication shall not be used as punishment, for the convenience of the staff, or as a substitute for other behavioral health services and shall be given in the least amount medically necessary with particular emphasis placed on minimizing side effects which otherwise would interfere with aspects of treatment.
- D.** Medication administered by a mental health agency shall be prescribed by a licensed physician, certified physician assistant, or a licensed nurse practitioner.
1. Psychotropic medication shall be prescribed by:
 - a. A psychiatrist who is a licensed physician; or
 - b. A licensed nurse practitioner, certified physician assistant, or physician trained or experienced in the use of psychotropic medication, who has seen the client and is familiar with the client's medical history or, in an emergency, is at least familiar with the client's medical history.
 2. Each client receiving psychotropic medication shall be seen monthly or as indicated in the client's ISP by a licensed nurse practitioner, certified physician's assistant or physician prescribing the medication, who shall note in the client's record:
 - a. The appropriateness of the current dosage,
 - b. All medication being taken by the client and the appropriateness of the mixture of medications,
 - c. Any signs of tardive dyskinesia or other side effects,
 - d. The reason for the use of the medication, and
 - e. The effectiveness of the medication.
 3. When a client on psychotropic medication receives a yearly physical examination, the results of the examination shall be reviewed by the physician prescribing the medication. The physician shall note any adverse effects of the continued use of the prescribed psychotropic medication in the client's record.
 4. Whenever a prescription for medication is written or changed, a notation of the medication, dosage, frequency of administration, and the reason why the medication was ordered or changed shall be entered in the client's record.
- E.** Self-administration of medication by clients shall be permitted unless otherwise restricted by the responsible physician or licensed nurse practitioner. Such clients shall be trained in self-administration of medication and, if necessary, shall be monitored by trained staff.
- F.** Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation and security.
- G.** PRN orders for medication shall not be given for a drug used as a restraint.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-208. Property and Possessions

- A.** No mental health agency shall interfere with a client's right to acquire, retain and dispose of personal property, including the right to maintain an individual bank account, except where:
1. The client is under guardianship, conservatorship, or has a representative payee;
 2. Otherwise ordered by court; or
 3. A particular object, other than money or personal funds, poses an imminent threat of serious physical harm to the client or others. Any restriction on the client's control of property deemed to pose an imminent threat of serious physical harm shall be recorded in the client's record together with the reasons the particular object poses an imminent threat of serious physical harm to the client or others.
- B.** If a mental health agency, which offers assistance to its clients in managing their funds, takes possession or control of a client's funds at the request of the client, guardian, or by court order, the mental health agency shall issue a receipt to the client or guardian for each transaction involving such funds. If deposited funds in excess of \$250 are held by the mental health agency, where the likelihood of the client's stay will exceed 30 days, an individual bank account or an amalgamated client trust account shall be maintained for the benefit of the client. All interest shall become the property of the client or the fair allocation of the interest in the case of an amalgamated client trust account. The mental health agency shall provide a bond to cover client funds held.
1. Unless a guardian, conservator, or representative payee has been appointed, the client shall have an unrestricted right to manage and spend deposited funds.
 2. The mental health agency shall obtain prior written permission from the client, the guardian or conservator for any arrangement involving shared or delegated management responsibilities. The permission shall set forth the terms and conditions of the arrangement.
 3. Where the mental health agency has shared or delegated management responsibilities, the mental health agency shall meet the following requirements:
 - a. Client funds shall not be applied to goods or services which the mental health agency is obligated by law or funded by contract to provide, except as permitted by the client fee schedule authorized by the Department;
 - b. The mental health agency and its staff shall have no direct or indirect ownership or survivorship interest in the funds;
 - c. Such arrangements shall be accompanied by a training program, documented in the ISP, to eliminate the need for such assistance;
 - d. Staff shall not participate in arrangements for shared or delegated management of the client's funds except as representatives of the mental health agency;
 - e. Any arrangements made to transfer a client from one mental health agency to another shall include provisions for transferring shared or delegated manage-

- ment responsibilities to the receiving mental health agency;
- f. The client shall be informed of all proposed expenditures and any expression of preference within reason shall be honored; and
 - g. Expenditures shall be made only for purposes which directly benefit the client in accordance with the client's interests and desires.
4. A record shall be kept of every transaction involving deposited funds, including the date and amount received or disbursed, and the name of the person to or from whom the funds are received or disbursed. The client, guardian, conservator, mental health agency or regional human rights advocate or other representative may demand an accounting at any reasonable time, including at the time of the client's transfer, discharge or death.
 5. Any funds so deposited shall be treated for the purpose of collecting charges for care the same as any other property held by or on behalf of the client. The client or guardian shall be informed of any possible charges before the onset of services.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-209. Records

- A. Records of a client who is currently receiving or has received services from a mental health agency are private and shall be disclosed only to those individuals authorized according to federal and state law.
- B. Inspection by the client, the client's guardian, attorney, paralegal working under the supervision of an attorney, or any other designated representative shall be permitted as follows:
 1. Except as prohibited by federal and state law, the client and, if applicable, the client's guardian shall be permitted to inspect and copy the client's record as soon as possible after a request, and no later than 10 working days after a request. If any portion of the client record is withheld under federal or state law, the mental health agency shall provide written notice to the client or, if applicable, the client's guardian including:
 - a. The reason the mental health agency is withholding a portion of the client's record,
 - b. An explanation of the client's right to a review of the decision to withhold a portion of the client's record, and
 - c. An explanation of the client's right to file a grievance according to Article 4 of this Chapter.
 2. An attorney, paralegal working under the supervision of an attorney, or other designated representative of the client shall be permitted to inspect and copy the record, if such attorney or representative furnishes written authorization from the client or guardian.
 3. When necessary for the understanding of the client or guardian and, if the client or the client's guardian provides authorization, when necessary for the understanding of an attorney, paralegal working under the supervision of an attorney, or designated representative, staff of the mental health agency possessing the records shall read or interpret the record for the client, guardian, attorney, paralegal working under the supervision of an attorney, or designated representative.
- C. Inspection by specially authorized persons or entities shall be permitted as follows unless otherwise prohibited by federal or state law:
 1. Records of a client may be available to those individuals and agencies listed in A.R.S. § 36-509.
 2. Records of a client shall be open to inspection upon proper judicial order, whether or not such order is made in connection with pending judicial proceedings.
 3. Records of a client shall be made available to a physician who requests such records in the treatment of a medical emergency, provided that the client is given notice of such access as soon as possible.
 4. Records of a client shall be made available to Division staff authorized by the Department to monitor the quality of services being provided by the mental health agency to the client.
 5. Records of a client shall be made available to guardians and family members actively participating in the client's care, treatment or supervision as provided by A.R.S. §§ 36-504, 36-509(A)(8) and (B). Except when inspection of a client's record is required under a proper judicial order or by a physician in a medical emergency, a client, guardian or family member may challenge the decision to allow or deny inspection of the record by filing a request for administrative and judicial review in accordance with the provisions of A.R.S. § 36-517.01 or other applicable federal or state law. Once a request is filed, no further disclosure of records shall be made until the review has been completed.
- D. Unless otherwise permitted by federal or state law, records shall be open to inspection by other third parties only upon the authorization of the client or guardian. Before authorization is given, the client or guardian shall be offered an opportunity to examine the information to be disclosed and be provided with the name of the recipient and uses to be made of the information.
- E. The fee for copying records obtained under this rule shall be no more than the actual expense of reproducing the record or the requested parts and may be limited further by A.R.S. § 12-2295.
- F. A client or guardian shall be informed of a court order or subpoena commanding production of a client's record as soon as possible and in any event prior to the date for production and of the client's or guardian's right to request the court to quash or modify the order or subpoena.
- G. The records maintained by the mental health agency shall contain accurate, complete, timely, pertinent, and relevant information.
 1. If a client or guardian believes that the record contains inaccurate or misleading information, the client or guardian may prepare, with assistance if requested, a statement of disagreement which shall be entered in the record.
 2. If a client or guardian objects to the collection of the information in the record, the client or guardian may file a grievance according to Article 4 of this Chapter.
- H. A list shall be kept of every person or organization who inspects the client's records, other than the client's clinical team, the uses to be made of that information, and the person authorizing access. A list of such access shall be placed in the client's record and shall be made available to the client or other designated representative.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under

an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-210. Policies and Procedures of Service Providers

- A.** A mental health agency may establish policies and procedures for the provision of behavioral health services or community services that are consistent with Articles 1 through 5 of these rules and with all other requirements of Arizona law. No policy or procedure may restrict any right protected by these rules.
- B.** The mental health agency shall inform all prospective clients of its policies and procedures prior to the client or, if applicable, the client's guardian giving informed consent to the client's admission to the program according to R9-21-206.01(A)(3).
- C.** If a client acts in a manner that is seriously in disregard of a reasonable policy, the agency director shall make all reasonable efforts to respond to the situation, including making reasonable accommodation to the program's policy if the client's failure to conform to a reasonable policy is due to the client's disability.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-211. Notice of Rights

- A.** Every mental health agency shall provide written notice of the civil and legal rights of its clients by posting a copy of ADHS Form MH-211, "Notice of Client's Rights," set forth in Exhibit A, in one or more areas of the agency so that it is readily visible to clients and visitors.
- B.** In addition to posting as required by subsection (A), a copy of ADHS Form MH-211, set forth in Exhibit B, shall be given to each client, or guardian if any, at the time of admission to the agency for evaluation or treatment. The person receiving the notice shall be required to acknowledge in writing receipt of the notice and the acknowledgment shall be retained in the client's record.
- C.** Every mental health agency shall provide written notice of the terms of A.R.S. § 36-506 to each client upon discharge by giving the client a copy of ADHS Form MH-209, "Discrimination Prohibited".
- D.** All notices required by this rule shall be provided and posted in both English and Spanish.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4).

Exhibit A. Notice of Legal Rights for Persons with Serious Mental Illness

If you have a serious or chronic mental illness, you have legal rights under federal and state law. Some of these rights include:

- The right to appropriate mental health services based on your individual needs;
- The right to participate in all phases of your mental health treatment, including individual service plan (ISP) meetings;
- The right to a discharge plan upon discharge from a hospital;

- The right to consent to or refuse treatment (except in an emergency or by court order);
- The right to treatment in the least restrictive setting;
- The right to freedom from unnecessary seclusion or restraint;
- The right not to be physically, sexually, or verbally abused;
- The right to privacy (mail, visits, telephone conversations);
- The right to file an appeal or grievance when you disagree with the services you receive or your rights are violated;
- The right to choose a designated representative(s) to assist you in ISP meetings and in filing grievances;
- The right to a case manager to work with you in obtaining the services you need;
- The right to a written ISP that sets forth the services you will receive;
- The right to associate with others;
- The right to confidentiality of your psychiatric records;
- The right to obtain copies of your own psychiatric records (unless it would not be in your best interests to have them);
- The right to appeal a court-ordered involuntary commitment and to consult with an attorney and to request judicial review of court-ordered commitment every 60 days;
- The right not to be discriminated against in employment or housing.

If you would like information about your rights, you may request a copy of the "Your Rights in Arizona as an Individual with Serious Mental Illness" brochure or you may also call the Arizona Department of Health Services, Office of Human Rights at 1-800-421-2124.

ADHS/BHS Form MH-211 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 21, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3).

Exhibit B. Notice of Legal Rights for Persons with Serious Mental Illness

NOTICE

Discrimination Prohibited

Pursuant to A.R.S. § 36-506 and R9-21-101(B)

- A.** Persons undergoing evaluation or treatment pursuant to this Chapter shall not be denied any civil right, including, but not limited to, the right to dispose of property, sue and be sued, enter into contractual relationships and vote. Court-ordered treatment or evaluation pursuant to this Chapter is not a determination of legal incompetency, except to the extent provided in A.R.S. § 36-512.
- B.** A person who is or has been evaluated or treated in an agency for a mental disorder shall not be discriminated against in any manner, including but not limited to:
1. Seeking employment.
 2. Resuming or continuing professional practice or previous occupation.
 3. Obtaining or retaining housing.
 4. Obtaining or retaining licenses or permits, including but not limited to, motor vehicle licenses, motor vehicle oper-

ator's and chauffeur's licenses and professional or occupational licenses.

- C. "Discrimination" for purposes of this Section means any denial of civil rights on the grounds of hospitalization or outpatient care and treatment unrelated to a person's present capacity to meet the standards applicable to all persons. Applications for positions, licenses and housing shall contain no requests for information which encourage such discrimination.
- D. Upon discharge from any treatment or evaluation agency, the patient shall be given written notice of the provisions of this Section.

AVISO

Discriminacion Prohibida

Conforme a A.R.S. § 36-506 y R9-21-101(B)

- A. A las personas que estan bajo evaluacion o tratamiento conforme a este capitulo, no se les negara ningun derecho civil, incluyendo pero no limitado a, el derecho a disponer de propiedad, a demandar y ser demandado, a tomar parte en relaciones contractuales y a votar. El tratamiento o evaluacion ordenado por la corte conforme a este capitulo no es una determinacion de incompetencia legal, excepto hasta el punto proveido en la seccion 36-512.
- B. No se haran discriminaciones de ninguna clase, en contra de una persona que ha sido o esta siendo evaluada o tratada en una agencia debido a un desorden mental, incluyendo pero no limitado a:
1. Buscar trabajo.
 2. Reasumir o continuar una practica profesional u ocupacion previa.
 3. Obtener o retener vivienda.
 4. Obtener o retener licencias o permisos, incluyendo pero no limitado a, licencias para vehiculo de motor, licencias de operador de vehiculo de motor y de chofer, y licencias ocupacionales o profesionales.
- C. "Discriminacion" para propositos de esta seccion quiere decir cualquier denegacion de derechos civiles por motives de hospitalizacion o tratamiento externo no relacionado a la capacidad actual de la persona para cumplir con las normas aplicables a toda persona. Las solicitudes para posiciones, licencias y vivienda no contendran peticion de informacion que pueda fomentar tal discriminacion.
- D. Al ser dado de alta de cualquier agencia de tratamiento o evaluacion, se dara al paciente notificacion por escrito sobre las provisiones de esta seccion.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4).

ARTICLE 3. INDIVIDUAL SERVICE PLANNING FOR BEHAVIORAL HEALTH SERVICES FOR PERSONS WITH SERIOUS MENTAL ILLNESS

R9-21-301. General Provisions

- A. Responsibilities of the regional authority, clinical team, and case manager.
1. The regional authority is responsible for providing, purchasing, or arranging for all services identified in individual service plans.
 - a. The regional authority shall perform all intake and case management for its region. The regional authority may contract with a mental health agency to perform intake or case management but only with the written approval of the Department, which may be given in its sole discretion.

- b. Other services may be provided directly by programs operated by the Department or by the regional authority through contracts with service providers that are licensed or approved by the Department, or through arrangements with other agencies or generic providers.
2. The regional authority and the clinical team shall work diligently to ensure equal access to generic services for its clients in order to integrate the client into the mainstream of society.
3. The initial clinical team shall work to meet the individual's needs from the date of application or referral for services until such time as eligibility is established and an Individual Service Plan (ISP) is developed.
4. The assigned clinical team shall be primarily responsible for providing continuous treatment, outreach and support to a client, for identifying appropriate behavioral health services or community services, and for developing, implementing and monitoring individual service plans for clients.
5. The case manager, in conjunction with the clinical team, shall:
 - a. Locate services identified in the ISP;
 - b. Confirm the selection of service providers and include the names of such providers in the ISP;
 - c. Obtain a written client service agreement from each provider;
 - d. Be responsible for ensuring that services are actually delivered in accordance with the ISP; and
 - e. Monitor the delivery of services rendered to clients. Monitoring shall consider, at a minimum, the consistency of the services with the goals and objectives of the ISP.
6. The case manager shall also be responsible to:
 - a. Initiate and maintain close contact with clients and service providers;
 - b. Provide support and assistance to a client, with the client's permission and consistent with the client's individual needs;
 - c. Ensure that each service provider participates in the development of the ISP for each client of the service provider;
 - d. Ensure that each inpatient facility, according to R9-21-312, develops an Inpatient Treatment and Discharge Plan (ITDP) that is integrated in and consistent with the ISP;
 - e. Assess progress toward, and identify impediments to, the achievement of the client's goals and objectives identified in the ISP;
 - f. Promote client involvement in the development, review, and implementation of the ISP;
 - g. Attempt to resolve problems and disagreements with respect to any component of the ISP;
 - h. Assist in resolving emergencies concerning the implementation of the ISP;
 - i. Attend all periodic reviews of the ISP and ITDP meetings;
 - j. Assist in the exploration of less restrictive alternatives to hospitalization or involuntary commitment; and
 - k. Otherwise coordinate services provided to the client.
7. If a case manager is assigned to a client who, at any time, is admitted to an inpatient facility, the case manager shall ensure the development, modification or revision of a client's ISP and the integration of the ITDP according to this Article.

- a. The inpatient facility clinician responsible for coordinating the ITDP shall immediately notify the client's case manager of the time of the admission and ensure that all treatment and discharge planning includes the case manager.
 - b. The case manager shall be provided notice of all treatment and discharge meetings, shall participate as a full member of the inpatient facility treatment team in such meetings, shall receive periodic and other reports concerning the client's treatment, and shall be responsible for identifying and securing appropriate community services to facilitate the client's discharge.
 - c. If no case manager has been assigned, the inpatient facility clinician primarily responsible for the client's inpatient care shall, within three days of admission, make a referral to the appropriate regional authority for the appointment of a case manager.
 - d. Delays in the assignment of a case manager or in the development or modification of an ISP or ITDP shall not be construed to prevent the clinically appropriate discharge of a client from an inpatient facility.
 - e. Inpatient facilities shall establish a mechanism for the credentialing of case managers and other members of the clinical team in order that they may participate in ITDP meetings.
- B. Client participation in service planning.**
1. It is the responsibility of the regional authority and its service providers to engage in service planning, including the provision of assessments, case management, ISPs, ITDPs, and service referrals, according to the provisions of these rules for the benefit of clients requesting, receiving or referred for behavioral health services or community services. Clients and the clients' guardians may refuse to participate in or to receive any service planning. In the event of such refusal, service planning shall not be provided unless:
 - a. There is an emergency in which a qualified clinician determines that immediate intervention is necessary to prevent serious harm to the client or others; or
 - b. The client is subject to court-ordered evaluation or treatment.
 2. A client's refusal to accept a particular service, including case management services, or a particular mode or course of treatment, shall not be grounds for refusing a client's access to other services that the client accepts.
 3. A physical examination shall not be conducted over a client's refusal unless the examination is consented to by the client's guardian, or the examination is otherwise required by court order.
 4. A decision to provide services, including assessment, service planning, and case management services, to a client who is refusing such services, or a decision not to provide such services to such an individual, may be appealed according to the provisions of R9-21-401. This subsection does not limit the rights of a client to accept, reject, or appeal particular results of the service planning process as identified in other applicable provisions of these rules.
- C. Clients with special needs.**
1. Whenever, according to an assessment or in the development or review of any plan prepared under this Article, it is determined that a client is a client who needs special assistance or a client who needs counsel or advice in making treatment decisions or in enforcing the client's rights, the case manager shall:
 - a. Notify the regional authority, the Office of Human Rights, and the appropriate human rights committee of the client's need so that the client can be provided special assistance from the human rights advocate or special review by the human rights committee; and
 - b. If the client does not have a guardian, identify a friend, relative, or other person who is willing to serve as a designated representative of the client.
 2. The clinical team shall make arrangements to have qualified interpreters or other reasonable accommodations, including qualified interpreters for the deaf, present at any assessment, meeting, service delivery, notice, review, or grievance for clients who cannot converse adequately in spoken English.
 3. Clients who are incarcerated in jails shall receive ISPs in accordance with R9-21-307. If legitimate security requirements of any jail in which a client is incarcerated require a reasonable modification of a specific procedure set forth in this rule, the clinical team may modify the method for preparing the ISP only to the extent necessary to accommodate the legitimate security concerns.
 - a. No modification may unreasonably restrict the client's right to participate in the ISP process;
 - b. No modification may alter the standards for developing an ISP, the client's right to obtain services identified in the ISP, as provided in this Article, or the client's right to appeal any aspect of treatment planning according to R9-21-401, including the decision to modify the process for security reasons.
- D. Notices to the individual.**
1. Any individual or mental health agency required to give notice to an individual of any documents, including eligibility determinations, assessment reports, ISPs, and ITDPs according to this rule shall do so by:
 - a. Providing a copy of the document to the individual;
 - b. Providing copies to any designated representative and guardian;
 - c. Personally explaining to the individual and designated representative and/or guardian any right to accept, reject, or appeal the contents of the document and the procedures for doing so under this Article.
 2. Individuals requesting or receiving behavioral health services or community services shall be informed:
 - a. Of the right to request an assessment;
 - b. Of the right to have a designated representative assist the client at any stage of the service planning process;
 - c. Of the right to participate in the development of any plan prepared under this Article, including the right to attend all planning meetings;
 - d. Of the right to appeal any portion of any assessment, plan, or modification to an assessment or plan, according to R9-21-401;
 - e. Of the authority of the Department to require necessary and relevant information about the individual's needs, income, and resources;
 - f. Of the availability of assistance from the regional authority in obtaining information necessary to determine the need for behavioral health services or community services;
 - g. Of the authority of the Department or mental health agency to charge for services and assessments; and

- h. That if the individual declines the services of a case manager or an ISP, the individual has the right to apply for services at a subsequent time;
- i. That if the individual declines any particular service or treatment modality, it will not jeopardize other accepted services.

E. Extensions of time.

1. The time to initiate or complete eligibility determinations, assessments, ISPs, and other actions according to this Chapter may be extended if:
 - a. There is substantial difficulty in scheduling a meeting at which all necessary participants can attend;
 - b. The client fails to keep an appointment for assessment, evaluation, or any other necessary meeting;
 - c. The client is capable of but temporarily refuses to cooperate in the preparation of the plan or completion of an assessment or evaluation;
 - d. The client or the client's guardian and/or designated representative requests an extension of time or
 - e. Additional documentation has been requested but has not yet been received.
2. An extension under this rule shall not exceed the number of days incurred by the delay and in no event may exceed 20 days, unless the whereabouts of the client are unknown.
3. For an SMI eligibility determination, an extension of time shall only apply if an applicant agrees to the extension.

F. Meeting attendance through telecommunications link. Attendance by any person at any meeting that is required or recommended according to this Article may be accomplished through a telecommunications link that is contemporaneous with the meeting.**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-302. Identification, Application, and Referral for Services of Persons with Serious Mental Illness

- A.** Each regional authority shall develop and implement outreach programs that identify individuals within the authority's geographic area, including persons who reside in jails, homeless shelters, or other settings, who are seriously mentally ill.
 1. Inpatient facilities shall identify individuals in their respective facilities who are seriously mentally ill.
 2. An individual identified under this subsection shall be referred in writing to the appropriate regional authority for a determination of eligibility as provided in this Article.
- B.** An individual desiring behavioral health services or community services under this Article may apply to the appropriate regional authority for a determination of eligibility. Application may be made by the individual or on the individual's behalf by the person's guardian, designated representative, or other appropriate individuals such as a family member or staff of a mental health agency. Individuals may apply for behavioral health services or community services regardless of whether they reside in the community, an inpatient facility, a county jail, a homeless shelter, or any other location within the state of Arizona.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-303. Eligibility Determination and Initial Assessment

- A.** Upon receipt of a request or referral for a determination of whether an individual is eligible for services under this Chapter, a regional authority shall schedule an appointment for an initial meeting with the applicant by a qualified clinician, to occur no later than seven days after the regional authority receives the request or referral.
- B.** During the initial meeting with an applicant by a qualified clinician, the qualified clinician shall:
 1. Obtain consent to an assessment of the applicant from the applicant or, if applicable, the applicant's guardian;
 2. Provide to the applicant and, if applicable, the applicant's guardian, the information required in R9-21-301(D)(2), a client rights brochure, and the notice required by R9-21-401(B);
 3. Determine whether the applicant is competent, according to R9-21-206;
 4. If, during the initial meeting with an applicant by a qualified clinician, the qualified clinician is unable to obtain sufficient information to determine whether the applicant is eligible for services under this Chapter:
 - a. Obtain authorization from the applicant or, if applicable, the applicant's guardian, for release of information, if applicable;
 - b. Request the additional information the qualified clinician needs in order to make a determination of whether the applicant is eligible for services under this Chapter; and
 5. Initiate an assessment according to R9-21-305.
- C.** The qualified clinician in subsection (B) shall obtain information necessary to make an eligibility determination, including:
 1. Identifying data and residence, including a social security number if available;
 2. The reasons for the request or referral for services;
 3. The individual's psychiatric diagnosis;
 4. The individual's present level of functioning, based upon the criteria set forth in the definition of "seriously mentally ill" in R9-21-101;
 5. The individual's history of mental health treatment;
 6. The individual's abilities, needs, and preferences for services; and
 7. A preliminary determination as to the individual's need for special assistance as defined by R9-21-101(B)(13).
- D.** If at any time during the course of the eligibility process the qualified clinician determines that the individual has a current case manager, a current assessment, or an ISP, the clinician shall notify the client's case manager and terminate the eligibility process.
- E.** To be eligible for behavioral health services or community services according to this Chapter the individual must be:
 1. A resident of the state of Arizona, and
 2. Seriously mentally ill as defined in R9-21-101.
- F.** The qualified clinician in subsection (B) shall determine whether an applicant is eligible for services under this Chapter and provide written notice of the SMI eligibility determination to the applicant or, if applicable, the applicant's guardian according to the following time-frames:
 1. If the qualified clinician obtains sufficient information during the initial meeting with the applicant to determine

whether the applicant is eligible for services under this Chapter, within three days of the initial meeting with the applicant by the qualified clinician;

2. If the qualified clinician does not obtain sufficient information during the initial meeting with the applicant to determine whether the applicant is eligible for services under this Chapter, at the earliest of:
 - a. Within three days of obtaining sufficient information to determine whether the applicant is eligible for services under this Chapter, or
 - b. The time provided according to R9-21-301(E).
- G.** At the time a qualified clinician provides an applicant with written notice of an SMI eligibility determination according to subsection (F), the qualified clinician shall:
1. Provide written notice to the applicant:
 - a. That the applicant has the right to appeal the SMI eligibility determination according to R9-21-401, including the right to an administrative hearing according to A.R.S. § 41-1092.03; and
 - b. That, if the applicant is not eligible for services according to this Chapter, the applicant may reapply at any time; and
 2. If the applicant is eligible for services under this Chapter:
 - a. Serve as the client's case manager or arrange for the provision of case management services for the client; and
 - b. Initiate with the client the development of a clinical team that may include:
 - i. Behavioral health professionals,
 - ii. Professionals other than behavioral health professionals,
 - iii. Behavioral health technicians,
 - iv. Family members,
 - v. Paraprofessionals, and
 - vi. Any individual whom the qualified clinician and the client deem appropriate and necessary to ensure that the assessment is comprehensive and meets the needs of the client.
- H.** Nothing in this rule shall be construed to require the qualified clinician to make the determination of whether the applicant is eligible for services under the Arizona Health Care Cost Containment System Administration (AHCCCSA) according to A.R.S. Title 36, Chapter 29.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-304. Interim and Emergency Services

- A.** At an applicant's first visit with a qualified clinician and after a determination of eligibility the qualified clinician shall:
1. Determine whether the applicant or client needs interim services prior to the development and acceptance of the ISP;
 2. If the applicant or client needs interim services, identify the interim services that are consistent with the applicant's or client's preferences and needs and the findings in the assessment;
 3. Arrange for the provision of the interim services identified by the qualified clinician; and

4. Document in the client's record the interim services that shall be provided to the applicant or client.

- B.** If a qualified clinician determines that an emergency exists necessitating immediate intervention, emergency or crisis services shall be provided immediately.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-305. Assessments

- A.** The following individuals may participate in and contribute to the assessment of a client:
1. The client;
 2. The qualified clinician in R9-21-303(B);
 3. The client's case manager;
 4. Each individual on the client's clinical team, including:
 - a. Behavioral health professionals,
 - b. Professionals other than behavioral health professionals,
 - c. Behavioral health technicians,
 - d. Family members,
 - e. Paraprofessionals, and
 - f. Any individual whom the qualified clinician and the client deem appropriate and necessary to ensure that the assessment is comprehensive and meets the needs of the client.
- B.** The individuals contributing to the assessment of a client shall not consider the availability of services, but shall consider the client's circumstances and evaluate all available information including:
1. The information obtained during the initial meeting with the client by a qualified clinician according to R9-21-303(B);
 2. Written information such as the client's clinical history, records, tests, and other evaluations;
 3. Information from family, friends, and other individuals.
- C.** An assessment shall include:
1. An evaluation of the client's:
 - a. Presenting concerns;
 - b. Behavioral health treatment;
 - c. Medical conditions and treatment;
 - d. Sexual behavior and, if applicable, sexual abuse;
 - e. Substance abuse, if applicable;
 - f. Living environment;
 - g. Educational and vocational training;
 - h. Employment;
 - i. Interpersonal, social, and cultural skills;
 - j. Developmental history;
 - k. Criminal justice history;
 - l. Public and private resources;
 - m. Legal status and apparent capacity;
 - n. Need for special assistance; and
 - o. Language and communication capabilities;
 2. A risk assessment of the client;
 3. A mental status examination of the client;
 4. A summary, impressions, and observations;
 5. Recommendations for next steps;
 6. Diagnostic impressions of the qualified clinician; and
 7. Other information determined to be relevant.
- D.** Within 45 days of a request or referral for an SMI eligibility determination, a qualified clinician shall prepare an assess-

ment report based on the information obtained according to R9-21-303 and this Section, including:

1. The development of a long-term view by the client with assistance from the clinical team that establishes a method of integration for living, employment and social conditions that the client wishes to achieve over the next three years;
 2. A summary of the information gathered during the eligibility and assessment processes;
 3. An identification of the client's legal status, resources, and assessed strengths and actual needs, regardless of the availability of services to meet that need, in each area of assessment identified in subsection (C) above;
 4. An analysis of the major findings of the mental health assessment, including a description of the nature and severity of any illness and a diagnosis in terms set forth in the DSM;
 5. The client's preferences regarding services to be provided;
 6. A description of any additional interim services which are required and plans for the referral of the client to additional interim services or the continuation of interim services already provided;
 7. An identification of further evaluations which the clinical team deem necessary to determine the services appropriate to the client's needs;
 8. An identification of information that could not be obtained due to the client's circumstances or unavailability; and
 9. A functional assessment of the client's current status in terms of independent living, employment (or retirement), and social integration and analysis of the support or skills, if any, necessary to achieve the client's long-term view.
- E.** The qualified clinician shall arrange for any further evaluations recommended by the clinical team. If the client needs assessment in an area beyond the ability or expertise of the clinical team, such assessment shall be conducted by professionals with appropriate credentials, with the client's consent. The need for further evaluations shall not unreasonably delay the preparation of the ISP.
- F.** If a qualified clinician determines that the client is a client who needs special assistance, the case manager shall:
1. Notify the regional authority, the Office of Human Rights, and the appropriate human rights committees of the client's need so that the client can be provided special assistance from the human rights advocate or special review by the human rights committee; and
 2. If the client does not have a guardian, identify a friend, relative or other person who is willing to serve as a designated representative of the client.
- G.** Upon completion of the assessment report, copies shall be sent to the client, the designated representative, if any, the guardian, and all service providers who have been identified by the case manager or regional authority to serve the client.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-306. Identification of Potential Service Providers

- A.** As soon as needs of the client for particular services are identified through the eligibility determination, assessment, or further evaluation processes, the clinical team in conjunction with the client shall begin considering and choosing potential service providers to participate in the development of the client's ISP.
1. Within five days of the completion of the assessment report, the clinical team and the client shall complete the identification of service providers most appropriate to meet the client's needs.
 2. The case manager shall promptly contact the identified providers to determine their ability to serve the client.
 3. Within 10 days of the completion of the assessment report, the case manager shall request identified providers able to serve the client to participate in the development of the client's Individual Service Plan. All identified providers shall be provided notice of the time and place of the ISP meeting.
- B.** The clinical team, in conjunction with the client, shall determine which provider(s) are the most appropriate to serve the client. The determination of appropriateness shall consider:
1. The client's preferences for the type, intensity, and location of services;
 2. The capacity and experience of the provider in meeting the client's assessed needs;
 3. The proximity of the provider to the client's family and home community;
 4. The availability and quality of services offered by the provider; and
 5. Other factors deemed relevant by the case manager and clinical team.
- C.** The clinical team shall provide sufficient information to the identified service providers to allow them to understand the client's long-term view, strengths, needs, and required services and to take an active role in the ISP meeting.
- D.** All mental health agencies currently providing services to the client shall bring to the ISP meeting a written description of the nature, type, and frequency of services provided or to be provided by the agency.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-307. The Individual Service Plan

- A.** General provisions.
1. An individual service plan (ISP) shall be developed by the clinical team and each client.
 2. The ISP shall include the most appropriate and least restrictive services, consistent with the client's needs and preferences, as identified in the assessment conducted according to R9-21-305, and without regard to the availability of services or resources.
 3. The ISP shall identify those services which maximize the client's strengths, independence, and integration into the community.
 4. Generic services available to the general public should be utilized, to the maximum extent possible, when adequate to meet the client's needs and if access can be arranged by the case manager or client.

5. If all needed services are not available, a plan for alternative services shall detail those services which are, to the maximum extent possible, adequate, appropriate, consistent with the client's needs, and least restrictive of the client's freedom.
 6. The clinical team shall solicit and actively encourage the participation of the client and guardian.
 7. The clinical team shall inform the client of the right to have a designated representative throughout the ISP process and to invite family members or other persons who could contribute to the development of the ISP. The case manager shall seek to obtain a representative for clients who need special assistance or otherwise have limited capacity to articulate their own preferences and to protect their own interests in the ISP process and shall advise the relevant human rights committee that the client has been determined to need special assistance.
 8. The ISP shall contain goals and objectives which are measurable and which facilitate meaningful evaluation of the progress toward attaining those goals and objectives.
 9. The ISP shall incorporate a specific description of the client objectives, services, and interventions for each mental health agency which will provide services to the client. Each existing service provider will bring to the ISP meeting a detailed written description of the objectives and services currently in effect for the client.
 10. For residents of an inpatient facility, the facility's treatment and discharge plan shall be developed according to R9-21-312 and shall be incorporated in the ISP.
 11. Prior to the planned discharge of a new client from an inpatient facility, the clinical team shall develop an ISP which describes the community services, including alternative housing and residential supports, that will be provided when the client leaves the facility.
 12. The ISP shall be written in language which can be easily understood by a lay person.
 13. In developing the ISP, the case manager shall facilitate resolution of differences among service providers and, if resolution is not achieved, shall refer the matter to the regional authority, which shall resolve the matter in accordance with Department policy.
- B.** The individual service plan meeting.
1. Within 20 days of the completion of the assessment report, the case manager shall convene an ISP meeting at a convenient time and place for the client, guardian, clinical team, and potential service providers.
 2. The case manager shall arrange for the client's transportation, if needed, to the ISP meeting.
 3. The case manager shall notify in writing the following persons of the time, date and location of the ISP meeting at least 10 days prior:
 - a. The client, any designated representative and guardian, including an invitation to submit relevant information in writing if their attendance is impossible;
 - b. Clinicians involved in the assessment or further evaluation;
 - c. All current and potential service providers;
 - d. All members of the client's clinical team;
 - e. Family members, with the client's permission;
 - f. Other persons familiar with the client whose presence at the meeting is requested by the client;
 - g. Any other person whose participation is not objected to by the client and who, in the judgment of the case manager, will contribute to the ISP.
 4. The case manager shall chair the ISP meeting which shall include a discussion of:
 - a. The client's supports or skills necessary to achieve the client's long-term view in each of the areas listed in R9-21-305(B);
 - b. The findings and conclusions obtained during the assessment, further evaluations, including a list of further evaluations to be completed, and any interim services provided;
 - c. Any existing ITDP according to R9-21-312;
 - d. The client's preferences regarding services;
 - e. Recommended long-term or alternative services;
 - f. Current or proposed service providers, including the need to have service providers with staff who have language and communications skills other than English if necessary to communicate with the client;
 - g. Recommended dates for commencement of each service or date each service commenced;
 - h. The methods and persons to ensure that services are provided as set forth in the ISP, adequately coordinated, and regularly monitored for effectiveness;
 - i. The procedure for completion and implementation of the ISP process, including the procedures for accepting, rejecting, or appealing the ISP; and
 - j. The procedure for clients or service providers to request changes in the ISP.
- C.** The individual service plan shall include:
1. A description of the client's long-term view and the client's preferences, strengths, and needs in all relevant areas listed in R9-21-305(C), including present functioning level and medical condition, with documentation of any chronic medical condition which requires regular monitoring or intervention.
 2. A description of the most appropriate and least restrictive services consistent with the client's needs and without reference to existing resources.
 3. A statement of whether the client requires service providers with staff who are competent in any language other than English in order to communicate with the client.
 4. Target dates for commencement of each service or date each service commenced and their anticipated duration.
 5. Long range goals for each service which will assist the client in attaining the most self-fulfilling, age-appropriate, and independent style of living possible for the client, consistent with the client's preference, stated in terms which allow objective measurement of progress and which the client, to the maximum extent possible, both understands and adopts.
 6. Short-term objectives that lead to attainment of overall goals stated in terms which allow objective measurement of progress and which the client, to the maximum extent possible, both understands and accepts.
 7. Expected dates of completion for each objective;
 8. Persons and service providers responsible for each objective.
 9. Identification of each generic or service provider responsible for providing the specific service required to meet each of the client's needs, including the name and address and telephone number of the provider and the location where the service will be provided.
 10. A detailed description of the client objectives and services for each mental health agency which will provide services to the client.
 11. Identification of any need for alternative housing or residential setting, including the support and monitoring to be provided after any change in housing or residential setting as provided in R9-21-310(D).

12. Based upon assessments and other available information, a determination of:
 - a. The client's capacity to:
 - i. Make competent decisions on matters such as medical and mental health treatment, finances, and releasing confidential information;
 - ii. Participate in the development of the ISP; and
 - iii. Independently exercise the client's rights under this Chapter.
 - b. The client's need for guardianship or other protective services or assistance.
 - c. The client's need for special assistance.
 13. A list of the assessments which were not completed due to the client's current mental or physical condition or due to the clinical team's inability to access records together with a statement of the causes and plans to obtain these assessments.
 14. A description of the methods and persons responsible for ensuring that services are:
 - a. Provided as set forth in the ISP;
 - b. Adequately coordinated; and
 - c. Regularly monitored for effectiveness.
 15. A statement of the right of the client, designated representative, or guardian to accept or reject the ISP, request other services, or appeal the ISP or any aspect of the ISP.
 16. A statement that the client's acceptance of the ISP constitutes consent to the services enumerated in the ISP.
- D. Preparation and distribution of the individual service plan.**
1. Within seven days of the ISP meeting, but no later than 90 days from the date of a referral or request for an SMI eligibility determination, the case manager shall prepare and distribute the ISP as provided herein.
 2. The case manager or other clinical team member shall personally deliver to and review the ISP with the client.
 3. The ISP shall be mailed or otherwise distributed to the following persons:
 - a. The client's designated representative and/or guardian;
 - b. The members of the clinical team; and
 - c. All existing or potential service providers.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-308. Acceptance or Rejection of the Individual Service Plan

- A.** Within seven days of the distribution of the ISP, the case manager shall contact the client concerning acceptance or rejection of all or any portion of the ISP, or request for other services, if there has not been acceptance, rejection or a request prior to that date.
- B.** If the client or guardian does not object to the ISP within 30 days of receipt of the plan, the client shall be deemed to have accepted the ISP.
- C.** If the client or guardian rejects some or all of the services identified in the ISP, or requests other services, the case manager shall provide written notice to the client or guardian of the right to immediately appeal the ISP according to R9-21-401 or to meet with the clinical team within seven days of the rejection to discuss the plan and suggest modifications. The case

manager shall arrange the meeting at a convenient time and place for the client, any designated representative and/or guardian, and the clinical team.

- D.** If the client's proposed modifications are adopted by the clinical team, the case manager shall arrange for approval of the modifications by all service providers.
- E.** If the matter is not resolved to the client's or guardian's satisfaction, the case manager shall again inform the client or guardian of the right to appeal the ISP.
- F.** A client or guardian who rejects the ISP may accept some or all of the identified services pending the outcome of the meeting with the clinical team or an appeal.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-309. Selection of Service Providers

- A.** Within seven days of the distribution of the ISP to the service providers identified in the ISP, the case manager, after consultation with the clinical team and the provider, shall determine whether each of these providers are capable of serving the client.
 1. A service provider shall not refuse to serve a client except for good cause related to the inability of the service provider to safely and professionally meet the client's needs as identified in the ISP, or except for Department contractual limitations.
 2. If a service provider believes it is incapable of meeting the client's needs or of implementing the ISP, the provider shall inform the case manager in writing within five days of receipt of the ISP. A service provider shall specify the reasons for its conclusion.
- B.** If the clinical team determines that a housing, residential or vocational service provider identified in the ISP is not capable of serving the client, the case manager shall, with the approval of the clinical team, identify another provider who is qualified to provide the services identified in the client's ISP, introduce the client to the new service provider, and modify the ISP as needed.
- C.** If the clinical team determines that an identified provider, other than a housing, residential or vocational service provider, is not capable of serving a client, the case manager shall, with the approval of the clinical team, identify another provider that is qualified to provide the services identified in the client's ISP. The case manager shall promptly distribute the ISP to the alternative service provider.
- D.** All selected service providers shall sign the ISP and implement the identified services.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-310. Implementation of the Individual Service Plan

- A.** Upon acceptance of the ISP by the client or as defined in a court order, services shall be initiated in accordance with the timetable identified in the ISP.

- B. If all or a portion of the ISP is rejected by the client or guardian, the plan shall not be implemented and services shall not be provided unless the client or guardian consents to specific services.
- C. For each client who is identified as needing alternative housing, a new residential setting, or a residential support service, the case manager shall inform the client of the need for an alternative living arrangement and shall use the case manager's best efforts to obtain appropriate housing or residential supports. These efforts may include showing the client the house or apartment in which the client could reside, introducing the client to other residents of the residential setting, as appropriate, and permitting the client to live in the alternative setting on a trial basis. All clients shall be informed that they may elect to move at any time in the future subject to the terms of any lease, mortgage, contract, or other legal agreement between the client and the housing provider.
- D. For at least the first two months after a client moves to a new residential setting, the case manager shall coordinate and monitor support services, as identified in the client's ISP, in order to foster the maintenance of the client's key relationships with others, to provide necessary orientation, and to ensure a smooth and successful transition into the new setting.
- E. All contracts with service providers shall include:
 1. A provision that the service provider shall abide by the rules contained in this Chapter and shall not alter, terminate, or otherwise interrupt services required under the ISP except parts of the ISP that have been modified according to R9-21-314;
 2. A provision that the service provider shall cooperate with the Department in collecting data necessary to determine if the Department is meeting its obligations under this Chapter and A.R.S. Title 36, Chapter 5, Article 10; and
 3. A provision that the service provider agrees to maintain current client records that document progress toward achievement of ISP goals and objectives and that meet applicable requirements of law, contract, and professional standards.
- C. The plan for alternative services shall identify those available mental health and generic services which are, to the maximum extent possible, adequate, appropriate, consistent with the client's needs and least restrictive of the client's freedom.
- D. The plan for alternative services shall contain a list of appropriate but unavailable services and the projected date for the initiation of each service.
- E. If the clinical team determines that a recommended service is unavailable or does not exist, it shall forward a description of that service to the director of the regional authority. The director shall:
 1. Use best efforts to locate the needed service through existing services or reallocated resources;
 2. Forward a description of the unmet service need to the deputy director of the Division, if the appropriate service cannot be located or developed through existing services or reallocated resources; and
 3. maintain a list of unmet service needs.
- F. The Division shall use information concerning unmet service needs to provide the appropriate service through existing services or reallocated resources or, if necessary, to plan for the development of the needed services.
- G. Nothing in this rule shall effect or modify any provision of Arizona law with respect to a client's right to appropriate services.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-312. Inpatient Treatment and Discharge Plan

- A. General provisions.
 1. Every client of an inpatient facility shall have an Inpatient Treatment and Discharge Plan (ITDP).
 2. An ITDP shall be developed by the inpatient facility's treatment team, the case manager and other members of the clinical team, as appropriate.
 3. The ITDP shall include the most appropriate and least restrictive services available at the inpatient facility, as well as a plan for the client's discharge to the community.
 4. The ITDP shall identify those treatment interventions and services which maximize the client's strengths, independence, and integration into the community.
 5. The ITDP shall be developed with the fullest possible participation of the client and any designated representative and/or guardian.
 6. The ITDP shall contain goals and objectives which are measurable and which facilitate meaningful evaluation of the progress toward attaining those goals and objectives.
 7. The ITDP shall be written in language which can be easily understood by a lay person.
 8. Delays in the assignment of a case manager or in the development or modification of an ISP or ITDP shall not be construed to prevent the appropriate discharge of a client from an inpatient facility.
- B. The individual treatment and discharge plan meeting.
 1. The case manager shall encourage the client to have a designated representative assist the client at the meeting and to have other persons, including family members, attend the meeting. The case manager shall ensure that

Historical Note

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R9-21-311. Alternative Services

- A. If the services identified in the ISP are not currently available, the clinical team shall develop an alternative plan for alternative services, based upon the client's strengths, needs, and preferences as set forth in the assessment conducted according to R9-21-305. The plan for alternative services shall be developed after the preparation of the ISP.
- B. The plan for alternative services shall be developed according to the same procedures for the preparation of an ISP and may be developed at the same meeting with the ISP if the clinical team is aware that appropriate services are not currently available. If at an ISP meeting the clinical team does not know whether the appropriate services are available, the clinical team shall use diligent efforts to locate the identified services. If appropriate services are determined to be unavailable, the ISP meeting shall be reconvened to develop an ISP for alternative services.

- the human rights advocate is notified of the time and date of the ITDP for clients who need special assistance.
2. The following persons shall be invited to attend the ITDP meeting:
 - a. The client;
 - b. Any designated representative and/or guardian;
 - c. Family members, with the client's permission;
 - d. Members of the client's inpatient facility treatment team;
 - e. The case manager and other members of the clinical team, as appropriate;
 - f. Other persons familiar with the client whose presence at the meeting is requested by the client; and
 - g. Any other person whose participation is not objected to by the client and who will, in the judgment of the case manager, contribute to the ITDP meeting.
 3. The ITDP meeting shall include a discussion of:
 - a. A review of the ISP's long-term view;
 - b. If necessary, a new functional assessment of the supports or skills necessary to achieve the client's long-term view;
 - c. The client's needs in terms of assessed strengths and needs;
 - d. The client's preferences regarding services;
 - e. Existing services if any;
 - f. The procedure for completion and implementation of the ITDP process, including the procedures for accepting, rejecting, or appealing the ITDP;
 - g. The procedure for clients or the inpatient facility to request changes in the ITDP; and
 - h. The methods to ensure that services are provided as set forth in the ITDP and regularly monitored for effectiveness.
- C. Inpatient treatment and discharge plan.**
1. The facility treatment team, the case manager, and other representatives of the clinical team, as appropriate, shall develop a preliminary ITDP within three days, and a full ITDP within seven days thereafter, of the client's admission. Where a client's anticipated stay is less than seven days, an acute inpatient facility shall develop a preliminary ITDP within one day and a full ITDP within three days of a client's admission.
 2. The ITDP shall be consistent with the goals, objectives, and services set forth in the client's ISP and shall be incorporated into the ISP.
 3. The ITDP shall include:
 - a. The client's preferences, strengths, and needs;
 - b. A description of appropriate services to meet the client's needs;
 - c. For non-acute facilities, long-range goals which will assist the client in attaining the most self-fulfilling, age-appropriate, and independent style of living possible, stated in terms which allow objective measurement of progress and which the client, to the maximum extent possible, both understands and accepts;
 - d. Short-term objectives that lead to attainment of overall goals stated in terms which allow objective measurement of progress and which the client, to the maximum extent possible, both understands and accepts;
 - e. Expected dates of completion for each objective;
 - f. Persons responsible for each objective;
 - g. The person responsible for ensuring that services are actually provided and are regularly monitored; and
 - h. The right of the client or guardian to accept or reject the ITDP, request other services, or appeal the ITDP or any aspect of the ITDP.
- D. Preparation and distribution of the ITDP.**
1. Within three days of the ITDP meeting, the treatment team coordinator shall prepare and distribute the ITDP.
 2. The ITDP shall be personally presented and explained to the client by the case manager.
 3. The ITDP shall be mailed or otherwise distributed to the following persons:
 - a. The client's designated representative and guardian, if any;
 - b. The case manager and members of the clinical team; and
 - c. The members of the inpatient facility's treatment team.
- E. Acceptance or rejection of the ITDP.**
1. Within two days of the date when the ITDP was distributed, the client shall be contacted by the case manager concerning acceptance or rejection of the ITDP, if there has not been acceptance or rejection prior to that date.
 2. If the client or guardian does not object to the ITDP within 10 days of the date when the ITDP was distributed, the client shall be deemed to have accepted the ITDP.
 3. If the client or guardian rejects some or all of the treatment interventions or services identified in the ITDP or requests other services, the case manager shall provide written notice to the client of the right to meet with the treatment team coordinator within five days of the rejection to discuss the plan and to suggest modifications, or to immediately appeal the plan according to R9-21-401.
 4. If modifications are agreed to by the treatment team coordinator and the client or guardian, the treatment team coordinator shall arrange for approval of the modifications by all members of the inpatient facility's treatment team, the case manager, and members of the clinical team, as appropriate.
 5. If the matter is not resolved to the client's or guardian's satisfaction, the case manager shall again inform the client and guardian of the right to appeal according to R9-21-401. The client or guardian may appeal findings or recommendations in the ITDP within 30 days of receipt of the plan.
 6. A client or guardian who rejects the ITDP may accept some or all of the identified treatment interventions or services pending the outcome of the meeting with the treatment team coordinator or an appeal.
- F. The updated ITDP.** The facility treatment team, the case manager, and other representatives of the clinical team, as appropriate, shall review the ITDP as frequently as necessary, but at least once within the first 30 days of completing the plan, every 60 days thereafter during the first year, and every 90 days thereafter during any subsequent years that the client remains a resident of the facility.
- G. Incorporation into the individual service plan.**
1. If the clinical team determines that the ITDP is appropriate to meet the client's needs, least restrictive of the client's freedom, and consistent with the ISP, it shall approve the ITDP by incorporating it into the ISP. If the clinical team disapproves the ITDP, it shall convene an ISP meeting, which includes the inpatient facility treatment team, to prepare a revised ITDP.
 2. The clinical team, with the assistance of the inpatient facility's treatment team, shall be responsible for implementing the plan for the client's discharge.

3. The case manager will provide notice to those providers identified in the client's ISP three days prior to the client's actual discharge, except that the failure to provide such notice shall not delay discharge.
4. The case manager shall meet with the client within five days of the client's discharge to ensure that the ISP is being implemented.
5. The case manager shall review the ISP with the clinical team within 30 days of the discharge to determine whether any modifications are appropriate, consistent with the standards and requirements set forth in R9-21-314.

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R9-21-313. Periodic Review of Individual Service Plans

A. General provisions.

1. Where an ISP includes residential, vocational, or other primary service providers that do not currently serve the client, the first ISP review shall be held within 30 days from the date on which all such providers have initiated services to client. Each service provider shall bring to the review a detailed description of the objectives and services currently in effect for the client.
2. Where the ISP includes only primary service providers that currently serve the client, the first ISP review shall be held within six months of the date the ISP is accepted by the client or the date on which any appeal is concluded.
3. Thereafter, ISP reviews shall be conducted at least every six months and more frequently as needed. The ISP review shall be chaired by the case manager.
4. The purpose of the ISP review is to ensure that services continue to be, to the maximum extent possible, appropriate to the client's needs and least restrictive of the client's freedom.
5. The review shall be conducted with the fullest possible participation of the client and any designated representative and/or guardian.

B. The ISP review.

1. At least 10 days prior to the ISP review meeting, the case manager shall invite, in writing, the following persons to attend the meeting:
 - a. The client and any designated representative and/or guardian;
 - b. Family members, with the permission of the client;
 - c. Members of the client's clinical team;
 - d. Representatives of each of the client's service providers;
 - e. Any other person familiar with the client whose participation is requested by the client; and
 - f. Any other person whose participation is not refused by the client and who, in the judgment of the case manager, will contribute to the ISP review.
2. The ISP review shall, to the extent possible given the circumstances of the client and the availability of information, consider:
 - a. Whether there has been any change in the clinical, social, training, medical, vocational, educational and personal needs of the client;

- b. Whether the client needs any further assessment or evaluations;
- c. Whether the services being provided to the client continue to be appropriate to meet the client's needs, least restrictive of the client's freedom, consistent with the client's preferences, and as integrated as possible in the client's home community;
- d. Whether there has been progress towards attainment of the long-term view, and each of the goals and objectives stated in the ISP;
- e. Whether to reaffirm, modify or delete each goal and objective, together with the reasons for these actions;
- f. Whether there has been any change in the legal status of the client, in the necessity or advisability of having a guardian or conservator appointed or removed, or in the client's need for special assistance;
- g. Whether any change in the client's circumstances should result in a modification of the client's priority of need for services not currently provided; and
- h. Whether there has been any change in the availability of services formerly determined to be needed but not then available.

3. The client, any designated representative and/or guardian, and clinical team will review each service provider's detailed description of current objectives and services to determine whether it is consistent with client's needs, least restrictive of the client's freedom, and designed to maximize the client's independence and integration into the community.
 - a. If the detailed description is approved and accepted by the client, any designated representative and/or guardian, and the clinical team, it shall be incorporated into the updated ISP.
 - b. If the description of services is rejected, it shall be revised with the assistance of the service provider and, as revised, incorporated into the updated ISP.

C. The updated ISP.

1. Within seven days of the ISP review meeting, the case manager shall prepare an updated ISP which includes all of the elements set forth in R9-21-307(C).
2. The case manager shall personally meet with the client or guardian to explain the updated ISP. The updated ISP shall be mailed or otherwise distributed to the other participants of the review meeting.
3. The updated ISP is subject to the client acceptance, rejection, and requests for other service provisions of R9-21-308 and the appeal provisions of R9-21-401.
4. The updated ISP shall be implemented consistent with the provisions of R9-21-310.

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R9-21-314. Modification or Termination of Plans

- #### A. Requests for modifications or termination of an ISP or any portion of an ISP may be initiated at the ISP review or at any other time by:
1. The client;

2. Any designated representative and/or guardian;
 3. A service provider; or
 4. Any member of the clinical team.
- B.** A request for modification or termination of an ISP shall be directed to the case manager.
- C.** The case manager shall give the client, the client's guardian and designated representative, appropriate service providers, and the client's clinical team written notice of any request for modification or termination of the ISP.
- D.** An ISP may be modified in order to more appropriately meet the client's needs, goals, and objectives. An ISP shall be modified where:
1. The client withdraws consent to the ISP or any portion of the ISP;
 2. The client consents to services recommended as more suitable but previously refused by the client;
 3. The needs of the client have changed due to progress or lack of progress in meeting the client's goals and objectives;
 4. The proposed change will permit the client to receive services which are more consistent with the client's needs, less restrictive of the client's freedom, more integrated in the community, or more likely to maximize the client's ability to live independently;
 5. The client wants to change the long-term view and the focus of the ISP or no longer needs a service or services; or
 6. The client is no longer eligible for services according to R9-21-303.
- E.** The clinical team shall:
1. Be notified by a service provider of any proposed termination or modification of services in the ISP as soon as possible and always prior to its implementation;
 2. Promptly inform the client and any designated representative and/or guardian of the requested modification and seek the client's consent to implement such modification or termination; and
 3. Within 20 days of any request for modification or termination of an ISP, approve the request only if the request meets the requirements of subsection (D).
 4. Provide written notice of the right to appeal to the client and any designated representative and guardian in accordance with R9-21-401(B) whenever service to the client is to be terminated, suspended or reduced.
- F.** The case manager shall:
1. Incorporate the approved modification in the current ISP or prepare a revised ISP, as appropriate.
 2. Within five days of any approval by the clinical team, distribute the modified or revised ISP to the client, any designated representative and/or guardian, the members of the clinical team, and all service providers.
 3. Meet with the client or guardian to explain the modification or revision and the client's right to appeal according to R9-21-401.
- G.** If the client or any designated representative and/or guardian does not reject or appeal the termination or modification within 30 days of the date the modified ISP is distributed, the client shall be deemed to have accepted the termination or modification.
- H.** The client for whom a modification or termination is proposed or any designated representative and/or guardian may appeal a modification or termination according to R9-21-401.
- I.** If the clinical team denies the client's or guardian's request to modify or terminate an ISP, the client or the designated representative and/or guardian may appeal the denial according to R9-21-401.
- J.** No modification or termination of an ISP shall be made without the acceptance of the client or any designated representative and/or guardian, unless a qualified clinician determines that the modification or termination is required to avoid a serious or immediate threat to the health or safety of the client or others.
1. Except in an emergency, no requested termination of a client from a particular service or provider may be considered unless the standards and procedures set forth in R9-21-210 and the provisions of this rule are satisfied.
 2. The client may not be transferred from one program or location to another while an appeal is pending.
- K.** If a qualified clinician determines that the client is no longer eligible for services according to R9-21-303, the qualified clinician shall make a determination of non-eligibility, move to terminate services under the ISP and this rule, and notify in writing the client of the non-eligibility determination and of the right to appeal such determination, in accordance with R9-21-401. When appropriate, referral and provision for further treatment shall be made by the case manager or clinical team.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-315. Renumbered

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ARTICLE 4. APPEALS, GRIEVANCES, AND REQUESTS FOR INVESTIGATION FOR PERSONS WITH SERIOUS MENTAL ILLNESS

R9-21-401. Appeals

- A.** A client or an applicant may file an appeal concerning decisions regarding eligibility for behavioral health services, including Title XIX services, fees and waivers; assessments and further evaluations; service and treatment plans and planning decisions; and the implementation of those decisions. Appeals regarding a determination of categorical ineligibility for Title XIX shall be directed to the agency that made the determination.
1. Disagreements among employees of the Department, the regional authority, clinical teams, and service providers concerning services, placement, or other issues are to be resolved using Departmental guidelines, rather than this Article.
 2. The case manager shall attempt to resolve disagreements prior to utilizing this appeal procedure; however, the client's right to file an appeal shall not be interfered with by any mental health agency or the Department.
 3. The Office of Human Rights shall assist clients in resolving appeals according to R9-21-104.

4. If a client or, if applicable, an individual on behalf of the client, files an appeal of a modification to or termination of a behavioral health service according to this Section, the client's service shall continue while the appeal is pending unless:
 - a. A qualified clinician determines that the modification or termination is necessary to avoid a serious or immediate threat to the health or safety of the client or another individual; or
 - b. The client or, if applicable, the client's guardian agrees in writing to the modification or termination.
- B.** Applicants and clients shall be informed of their right to appeal at the time an application for services is made, when an eligibility determination is made, when a decision regarding fees or the waiver of fees is made, upon receipt of the assessment report, during the ISP, ITDP, and review meetings, at the time an ISP, ITDP, and any modification to the ISP or ITDP is distributed, when any service is suspended or terminated, and at any other time provided by this Chapter. The notice shall be in writing in English and Spanish and shall include:
 1. The client's right to appeal and to an administrative hearing according to A.R.S. § 41-1092.03;
 2. The method by which an appeal and an administrative hearing may be obtained;
 3. That the client may represent himself or use legal counsel or other appropriate representative;
 4. The services available to assist the client from the Office of Human Rights, Human Rights Committees, State Protection and Advocacy System, and other peer support and advocacy services;
 5. What action the mental health agency or Department intends to take;
 6. The reasons for the intended action;
 7. The specific rules or laws that support such action; and
 8. An explanation of the circumstances under which services will continue if an appeal or an administrative hearing is requested.
- C.** The right to appeal in this Section does not include the right to appeal a court order entered according to A.R.S. Title 36, Chapter 5, Articles 4 and 5. The following issues may be appealed:
 1. Decisions regarding the individual's eligibility for behavioral health services;
 2. The sufficiency or appropriateness of the assessment or any further evaluation;
 3. The long-term view, service goals, objectives, or timelines stated in the ISP or ITDP;
 4. The recommended services identified in the assessment report, ISP, or ITDP;
 5. The actual services to be provided, as described in the ISP, plan for interim services, or ITDP;
 6. The access to or prompt provision of services provided under Title XIX;
 7. The findings of the clinical team with regard to the client's competency, capacity to make decisions, need for guardianship or other protective services, or need for special assistance;
 8. A denial of a request for a review of, the outcome of a review of, a modification to or failure to modify, or a termination of an ISP, ITDP, or portion of an ISP or ITDP;
 9. The application of the procedures and timetables as set forth in this Chapter for developing the ISP or ITDP;
 10. The implementation of the ISP or ITDP;
 11. The decision to provide service planning, including the provision of assessment or case management services, to a client who is refusing such services, or a decision not to provide such services to such a client; or
12. Decisions regarding a client's fee assessment or the denial of a request for a waiver of fees;
13. Denial of payment for a client; and
14. Failure of the regional authority or the Division to act within the time frames for appeal established in this Chapter.
- D.** Initiation of the appeal.
 1. An appeal may be initiated by the client or by any of the following persons on behalf of a client or applicant requesting behavioral health services or community services:
 - a. The client's or applicant's guardian,
 - b. The client's or applicant's designated representative, or
 - c. A service provider of the client, if the client or, if applicable, the client's guardian gives permission to the service provider;
 2. An appeal is initiated by notifying the director of the regional authority or the director's designee orally or in writing of the decision, report, plan or action being appealed, including a brief statement of the reasons for the appeal and the current address and telephone number, if available, of the applicant or client and designated representative.
 3. An appeal shall be initiated within 60 days of the decision, report, plan, or action being appealed. However, the director of the regional authority or the director's designee shall accept a late appeal for good cause. If the regional authority director or the director's designee refuses to accept a late appeal, the director or director's designee shall notify the individual or client in writing, with a statement of reasons for the decision. Within 10 days of the notification, the client or applicant may request review of that decision by the deputy director of the division, who shall act within 15 days of receipt of the request for review. The decision of the deputy director shall be final.
 4. Within five days of receipt of an appeal, the director of the regional authority shall inform the client in writing in English and Spanish that the appeal has been received and of the procedures that shall be followed during the appeal.
- E.** Informal conference with the regional authority.
 1. Within seven days of receipt of the notice of appeal, the director of the regional authority or the director's designee shall hold an informal conference with the client, any designated representative and/or guardian, the case manager and representatives of the clinical team, and a representative of the service provider, if appropriate.
 - a. The regional authority director or the director's designee shall schedule the conference at a convenient time and place and shall inform all participants in writing of the time, date, and location two days before the conference.
 - b. Individuals may participate in the conference by telephone.
 2. The director of the regional authority or the director's designee shall chair the informal conference and shall seek to mediate and resolve the issues in dispute. To the extent that resolution satisfactory to the client or guardian is not achieved, the regional authority director or director's designee shall clarify issues for further appeal and shall determine the agreement, if any, of the participants as to the material facts of the case.

3. Except to the extent that statements of the participants are reduced to an agreed statement of facts, all statements made during the informal conference shall be considered as offers in compromise and shall be inadmissible in any subsequent hearing or court proceedings under this rule.
 4. If the informal conference with the director of the regional authority or the director's designee does not resolve the issues in dispute to the satisfaction of the client or if applicable, the client's guardian, and the issues in dispute are not related to the client's eligibility for behavioral health services, the client or, if applicable, the client's guardian shall be informed that the matter shall be further appealed to the Division, and of the procedure for requesting a waiver of the informal conference with the Division.
 5. If a client or, if applicable, the client's guardian waives the right to an informal conference with the Division according to subsection (E)(4) or, if the informal conference with the director of the regional authority or the director's designee does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are related to the client's eligibility for behavioral health services, the regional authority shall, at the informal conference:
 - a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
 - b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the regional authority to request an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
 - c. For a client who needs special assistance, send a copy of the notice in subsection (5)(a) to the appropriate human rights committee.
 6. If, at the informal conference, a client or, if applicable, the client's guardian requests that the regional authority file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the regional authority shall file the request within three days of the informal conference.
 7. If resolution satisfactory to the client or guardian is achieved, the director of the regional authority or the director's designee shall issue a dated written notice to all parties which shall include a statement of the nature of the appeal, the issues involved, the resolution achieved and the date by which the resolution will be implemented.
- F. Informal conference with the Division.**
1. Within three days of the conclusion of an informal conference with the regional authority according to subsection (E)(4), the director of the regional authority or the director's designee shall notify the deputy director of the Division and shall immediately forward the client's notice of appeal, all documents relevant to the resolution of the appeal and any agreed statements of fact.
 2. Within 15 days of the notification from the regional authority director or the director's designee, the deputy director of the Division shall hold an informal conference with the client, any designated representative and/or guardian, the case manager, and representatives of the clinical team, the service provider, if appropriate, for the purpose of mediating and resolving the issues being appealed.
 - a. The deputy director of the Division shall schedule the conference at a convenient time and place and shall inform the participants in writing of the time, date, and location five days prior to the conference.
 - b. Individuals may participate in the conference by telephone.
 - c. If a client is unrepresented at the conference but needs assistance, or if for any other reason the deputy director of the Division determines the appointment of a representative to be in the client's best interest, the deputy director may designate a human rights advocate or other person to assist the client in the appeal.
- G. The fair hearing.**
1. To the extent that resolution satisfactory to the client or guardian is not achieved, the deputy director shall clarify issues for further appeal and shall determine the agreement, if any, of the participants as to the material facts of the case.
 2. If resolution satisfactory to the client or guardian is achieved, the deputy director shall issue a dated written notice to all parties which shall include a statement of the nature of the appeal, the issues involved, the resolution achieved, and the date by which the resolution will be implemented.
 3. Except to the extent that statements of the participants are reduced to an agreed statement of facts, all statements made during the informal conference shall be considered as offers in compromise and shall be inadmissible in any subsequent hearing or court proceedings under this rule.
 4. If all issues in dispute are not resolved to the satisfaction of the client or guardian at the informal conference with the Division, the Division shall, at the informal conference:
 - a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
 - b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the Division to file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
 - c. For all clients including clients who needs special assistance, send a copy of the notice in subsection (6)(a) to the Office of Human Rights and the appropriate human rights committee.
 5. If, at the informal conference, a client or, if applicable, the client's guardian requests that the Division file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the Division shall file the request within three days of the informal conference according to subsection (G).

- 41-1061 et seq. (the Administrative Procedure Act), and those portions of R9-1-101 through R9-1-126 which are not inconsistent with this Article. The client or any designated representative and/or guardian may request that the hearing be scheduled in a shorter or longer time. The Department shall make reasonable efforts to accommodate such request.
4. During the pendency of the appeal, the client, any designated representative and/or guardian, the clinical team, and representatives of any service providers may agree to implement any part of the ISP or ITDP or other matter under appeal without prejudice to the appeal.
 5. The hearing shall be conducted by an impartial hearing officer appointed by the Department. The hearing officer may not be an employee of the Department, a regional authority or of a service provider under contract or sub-contract with the Department. The Department may contract with a qualified individual to serve as a hearing officer under this rule.
 6. The client or applicant shall have the right to be represented at the hearing by a person chosen by the client or applicant at the client's or applicant's own expense, in accordance with Rule 31(a)(3), Rules of the Supreme Court.
 7. The client, any designated representative and/or guardian, and the opposing party shall have the right to present any evidence relevant to the issues under appeal and to call and examine witnesses. The Division shall have the right to appear to present legal argument.
 8. The client and any designated representative and/or guardian shall have the right to examine and copy at a reasonable time prior to the hearing all records held by the Department, regional authority, or service provider pertaining to the client and the issues under appeal, including all records upon which the ISP or ITDP decisions were based.
 9. Any portion of the hearing may be closed to the public if the client requests or if the hearing officer determines that it is necessary to prevent the unwarranted invasion of a client's privacy or that public disclosure would pose a substantial risk of harm to a client.
 10. Within five days of the conclusion of the hearing, the hearing officer shall prepare and send a written, proposed decision to the director of the Department, together with the appeal record. The proposed decision shall be based exclusively on the evidence introduced at the hearing, shall designate these issues which relate to Title XIX services, and shall include findings of fact, conclusions, and a recommendation for appropriate action.
 11. Within 15 days of the conclusion of the hearing, the director shall render a final written decision, based upon the findings, conclusions, and recommendations of the hearing officer.
 - a. The decision shall include a concise statement of the facts found, a summary of the evidence relied upon, the decision and the reasons for so deciding and a notice of the right to seek rehearing under R9-1-120 and judicial review under A.R.S. § 36-113.
 - b. The decision shall also include a notice to the parties of their right to appeal to AHCCCSA for review of decisions related to Title XIX services.
 - c. The decision shall be mailed by certified mail to the parties to the hearing, their designated representatives, and the Division.
 - d. The Department shall arrange to have the director's decision explained to the client, together with the right to seek rehearing, judicial review, or appeal to AHCCCSA, in a manner that is understandable to the client or the client's designated representative.
- H. Expedited appeal.**
1. At the time an appeal is initiated, the applicant, client, or mental health agency may request orally or in writing an expedited appeal on issues related to crisis or emergency services or for good cause. Any appeal from a decision denying admission to or continued stay at an inpatient psychiatric facility due to lack of medical necessity shall be accompanied by all medical information necessary to resolution of the appeal and shall be expedited.
 2. An expedited appeal shall be conducted in accordance with the provisions of this Section, except as provided for in this subsection.
 3. Within one day of receipt of an expedited appeal, the director of the regional authority shall inform the client in writing in English and Spanish that the appeal has been received.
 4. The director of the regional authority shall accept an expedited appeal on issues related to crisis or emergency services. The regional authority director shall also accept an expedited appeal for good cause. If the regional authority director refuses to expedite the appeal based on a determination that good cause does not exist, the director shall notify the applicant or client in writing within one day of the initiation of the appeal, with a statement of reasons for the decision, and shall proceed with the appeal in accordance with the provisions of this Section. Within three days of the notification of refusal to expedite the appeal for good cause, the client or applicant may request review of the decision by the deputy director of the Division, who shall act within one day. The decision of the deputy director shall be final.
 5. If the regional authority director accepts the appeal for expedited consideration, the director shall hold the informal conference according to R9-21-401(E) within two days of the initiation of the appeal. The regional director shall schedule the conference at a convenient time and place and shall inform all participants of the time, date and location prior to the conference.
 6. If the informal conference with the director of the regional authority or the director's designee does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are not related to the client's eligibility for behavioral health services, the client or, if applicable, the client's guardian shall be informed that the matter shall be further appealed to the Division, and of the procedure for requesting waiver of the informal conference with the Division.
 7. If a client or, if applicable, the client's guardian waives the right to an informal conference with the Division or, if the informal conference with the director of the regional authority or the director's designee does not resolve the issues in dispute to the satisfaction of the client or, if applicable, the client's guardian, and the issues in dispute are related to the client's eligibility for behavioral health services, the regional authority shall, at the informal conference:
 - a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
 - b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the regional authority to request

- an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
- c. Send a copy of the notice in subsection (H)(7)(a) to the Office of Human Rights and the appropriate human rights committee.
 8. If, at the informal conference, a client or, if applicable, the client's guardian requests that the regional authority file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the Division shall file the request within one day of the informal conference.
 9. Within one day of the conclusion of an informal conference with the regional authority, the director of the regional authority shall notify the deputy director of the Division if the informal conference failed to resolve the appeal and shall immediately forward the client's notice of appeal and any agreed statements of fact unless the client or, if applicable, the client's guardian waived the client's right to an informal conference with the Division or the issues in dispute are related to the client's eligibility for behavioral health services.
 10. Within two days of the notification from the regional authority director, the deputy director of the Division shall hold the informal conference pursuant to subsection (F).
 11. If all issues in dispute are not resolved to the satisfaction of the client or if applicable, the client's guardian at the informal conference with the Division, the Division shall, at the informal conference:
 - a. Provide written notice to the client or, if applicable, the client's guardian according to A.R.S. § 41-1092.03, and
 - b. Ask the client or, if applicable, the client's guardian whether the client or, if applicable, the client's guardian would like the Division to file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client.
 - c. For a client who needs special assistance, send a copy of the notice in subsection (H)(11)(a) to the Office of Human Rights and the appropriate human rights committee.
 12. If, at the informal conference, a client or, if applicable, the client's guardian requests that the Division file a request for an administrative hearing according to A.R.S. § 41-1092.03 on behalf of the client, the Division shall file the request within one day of the informal conference.
 13. Within one day of the informal conference with the Division, if the conference failed to resolve the appeal, or within two days of the date the conference was waived, the deputy director shall notify the director to schedule a fair hearing.
 14. Within one day of notification, the director shall send a written notice of fair hearing in accordance with subsection (G)(2).
 15. Within five days of such notice, the Department shall hold a fair hearing on the appeal in accordance with (G)(3).
 16. Within one day of the conclusion of the hearing, the hearing officer shall prepare and send a written, proposed decision to the director of the Department in accordance with (G)(10).
 17. Within two days of the conclusion of the hearing, the director shall render a final written decision in accordance with (G)(11). The decision of the director is the final decision of the Department on all issues and there shall be no right to a rehearing before the director.
- I. Appeal of Title XIX services.**
 1. Within 15 days of the decision of the director, the client may appeal the decisions relating to Title XIX services to AHCCCSA by filing a written notice of appeal with the Department. The client may request a de novo hearing or a record review with oral argument before AHCCCSA.
 2. An appeal to AHCCCSA does not preclude a client or individual from also seeking rehearing and judicial review subsection (J), if appropriate.
 - J. Rehearing or review of decision.** A client or applicant aggrieved by the director's decision on issues not related to Title XIX services must file for rehearing within 30 days of service of the decision. The decision of the director on rehearing is the final decision of the Department on all decisions not related to Title XIX services.
 - K. Standard and burden of proof.**
 1. The standard of proof on all issues shall be by a preponderance of the evidence.
 2. The burden of proof on the issue of the need for or appropriateness of behavioral health services or community services shall be on the person appealing.
 3. The burden of proof on the issue of the sufficiency of the assessment and further evaluation, and the need for guardianship, conservatorship, or special assistance shall be on the agency which made the decision.
 4. The burden of proof on issues relating to services or placements shall be on the party advocating the more restrictive alternative.
 - L. Implementation of final decision.** Within five days after a satisfactory resolution is achieved at an informal conference or after the expiration of an appeal period when no appeal is taken, or after the exhaustion of all appeals and subject to the final decision thereon, the director shall implement the final decision and shall notify the client, any designated representative and/or guardian, and Division of such action.
 - M. Appeal log.**
 1. The Department shall maintain a public log of all appeals filed under this rule. The director of the regional authority shall forward to the Department all information necessary for the accurate and timely maintenance of the public log.
 2. The public log shall not include personally identifiable information but shall be a public record, available for inspection and copying by any person.
 3. With respect to each entry, the Department's public logs shall contain:
 - a. A unique docket number assigned by the Department;
 - b. A substantive but concise description of the appeal including whether the appeal related to the provision of Title XIX services;
 - c. The date of the filing of appeal;
 - d. The date of the initial decision appealed from;
 - e. The date, nature and outcome of all subsequent decisions, appeals, or other relevant events; and
 - f. A substantive but concise description of the final decision and the action taken by the agency director and deputy director of the Division and the date the action was taken.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-401 renumbered to R9-21-402; new Section R9-

21-401 renumbered from R9-21-315 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-402. General

- A.** It is the policy of the Division to conduct investigations and bring matters to a resolution in four circumstances: first, in the event of a death of a client; second, whenever there is alleged to have occurred a rights violation; third, whenever there is alleged to exist a condition requiring investigation because it is dangerous, illegal or inhumane; and fourth, in any other case where an investigation would be in the public interest, as determined by the director of the Department or the deputy director of the Division. The purpose of R9-21-402 through R9-21-410 is to implement that policy. All investigations according to R9-21-402 through R9-21-410 shall be carried out in a prompt and equitable manner and with due regard for the dignity and rights of all persons involved. R9-21-402 through R9-21-410 do not obviate the need for systematically reporting, where appropriate, accidents and injuries involving clients.
- B.** This grievance and investigation procedure applies to any allegation that a rights violation or a condition requiring investigation, as defined in R9-21-101, has occurred or currently exists.
1. A grievance may be filed by a client, guardian, human rights advocate, human rights committee, State Protection and Advocacy System, designated representative, or any other concerned person when a violation of the client's rights or of the rights of several clients has occurred.
 2. A request for an investigation may be filed by any person whenever a condition requiring investigation occurs or has occurred.
 3. Allegations about the need for or appropriateness of behavioral health services or community services should generally should be addressed according to the Individual Service Planning Sections R9-21-301 through R9-21-314 and according to R9-21-401, as applicable.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-402 renumbered to R9-21-403; new Section R9-21-402 renumbered from R9-21-401 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-403. Initiating a Grievance or Investigation

- A.** Any individual may file a grievance regarding an abridgement by a mental health agency of one or more of a client's rights in Article 2 of this Chapter.
- B.** Any individual may request an investigation regarding a condition requiring investigation.
- C.** An employee of or individual under contract with one of the following shall file a grievance if the employee has reason to believe that a mental health agency has abridged one or more of a client's rights in Article 2 of this Chapter or that a condition requiring investigation exists, and shall receive disciplinary action for failure to comply with this subsection:
1. A service provider,
 2. A regional authority,
 3. An inpatient facility, or
 4. The Division.
- D.** The director of a service provider or the director of a regional authority shall file a grievance if:
1. The director receives a non-frivolous allegation that:

- a. A mental health agency has abridged one or more of a client's rights in Article 2 of this Chapter, or
 - b. A condition requiring investigation exists; or
2. The director has reason to believe that there exists or has occurred a condition requiring investigation in a mental health agency or program.
- E.** The director or deputy director of the Department shall request an investigation if:
1. The director or deputy director determines that it would be in the best interests of a client, the Department, or the public; or
 2. The director or deputy director receives a non-frivolous allegation or has reason to believe that:
 - a. A mental health agency has abridged one or more of a client's rights in Article 2 of this Chapter, or
 - b. A condition requiring investigation exists.
- F.** To file a grievance, an individual shall communicate the grievance orally or submit the grievance in writing to the director of or any employee of a mental health agency, who shall, forward the grievance to the appropriate person as identified in R9-21-404. If asked to do so by a client, an employee shall assist the client in making an oral or written grievance or shall direct the client to the available supervisory or managerial staff who shall assist the client in making an oral or written grievance.
- G.** Any grievance or request for investigation shall be accurately and completely reduced to writing on a Department-provided grievance or request for investigation form by:
1. The individual filing the grievance or request for investigation, or
 2. The mental health agency to whom the grievance or request for investigation is made.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-403 renumbered to R9-21-404; new Section R9-21-403 renumbered from R9-21-402 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-404. Persons Responsible for Resolving Grievances and Requests for Investigation

- A.** Allegations involving rights violations:
1. Of other than physical abuse, sexual abuse, or sexual misconduct that occurred in a mental health agency, or as a result of an action of a person employed by a mental health agency, shall be addressed to and initially decided by:
 - a. The director of the appropriate regional authority, if applicable; or
 - b. If the mental health agency is operated exclusively by a governmental entity, the director of the agency; or
 2. Of physical abuse, sexual abuse, or sexual misconduct that occurred in a mental health agency, or as a result of an action of a person employed by a mental health agency, shall be addressed to and decided by the deputy director of the Division.
- B.** Allegations involving conditions requiring investigation:
1. Of other than a client death, which occurred in a mental health agency, or as a result of a person employed by a mental health agency, shall be addressed to and initially decided by:
 - a. The director of the appropriate regional authority, if applicable; or

- b. If the mental health agency is operated exclusively by a governmental entity, the director of the agency; or
 - 2. Of a client death, which occurred in a mental health agency, or as a result of an action of a person employed by a mental health agency, shall be addressed to and decided by the deputy director of the Division.
- C.** Within five days of receipt by a mental health agency of a grievance or request for investigation:
- 1. The director of the mental health agency shall inform the person filing the grievance or request, in writing, that the grievance or request has been received;
 - 2. If the mental health agency is operated exclusively by a governmental entity, the director of the mental health agency shall provide a copy of the grievance to the appropriate regional authority; and
 - 3. If the client is in need of special assistance, the agency director or deputy director shall immediately send a copy of the grievance or request to the Office of Human Rights and the human rights committee with jurisdiction over the agency.
- Historical Note**
- Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-404 renumbered to R9-21-405; new Section R9-21-404 renumbered from R9-21-403 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).
- R9-21-405. Preliminary Disposition**
- A.** The agency director or any other official before whom a grievance or request for investigation has been initiated shall immediately take whatever action may be reasonable to protect the health, safety and security of any client, witness, individual filing the grievance or request for investigation, or individual on whose behalf the grievance or request for investigation is filed.
- B.** Summary disposition.
- 1. The agency director or deputy director of the Division may summarily dispose of any grievance or a request for an investigation where the alleged rights violation or condition occurred more than one year immediately prior to the date on which the grievance or request is made.
 - 2. An agency director or deputy director of the Division who receives a grievance or request which is primarily directed to the level or type of mental health treatment provided to a client, which can be fairly and efficiently addressed within the procedures set forth in Article 3 and in R9-21-401, and which do not directly or indirectly involve any rights set forth in A.R.S. Title 36 or Article 2, may refer the grievance for resolution through the Individual Service Plan process or the appeal process in R9-21-401.
- C.** Disposition without investigation.
- 1. Within seven days of receipt of a grievance or request for an investigation, an agency director or deputy director of the Division may promptly resolve a grievance or request without conducting a full investigation, where the matter:
 - a. Involves no dispute as to the facts;
 - b. Is patently frivolous; or
 - c. Is resolved fairly and efficiently within seven days without a formal investigation.
 - 2. Within seven days of receipt of the grievance or request described in subsection (C)(1), the agency director or deputy director of the Division shall prepare a written, dated decision.
 - a. The decision shall explain the essential facts, why the agency director or deputy director believes that the matter is appropriately resolved without the appointment of an investigator, and the resolution of the matter.
 - b. The agency director or deputy director of the Division shall send copies of the decision to the parties, together with a notice of appeal rights according to A.R.S. § 41-1092.03, and to anyone else having a direct interest in the matter.
 - 3. After the expiration of the appeal period without appeal by any party, or after the exhaustion of all appeals and subject to the final decision on the appeal, the agency director or deputy director shall promptly take appropriate action and prepare and add to the case record a written, dated report of the action taken to resolve the grievance or request.
- D.** Matters requiring investigation.
- 1. If the matter complained of cannot be resolved without a formal investigation according to the criteria set forth in subsection (C)(1), within seven days of receipt of the grievance or request the agency director or deputy director shall prepare a written, dated appointment of an impartial investigator who, in the judgment of the agency director or deputy director, is capable of proceeding with the investigation in an objective manner but who shall not be:
 - a. Any of the persons directly involved in the rights violation or condition requiring investigation; or
 - b. A staff person who works in the same administrative unit as, except a person with direct line authority over, any person alleged to have been involved in the rights violation or condition requiring investigation.
 - 2. Immediately upon the appointment of an investigator, the agency director or deputy director shall notify the person filing the grievance or request for investigation in writing of the appointment. The notice shall contain the name of the investigator, the procedure by which the investigation will be conducted and the method by which the person may obtain assistance or representation.
- E.** If a client is a client who needs special assistance, the agency director or deputy director shall immediately send a copy of the grievance or request to the Office of Human Rights and the human rights committee with jurisdiction over the agency and shall send a copy of all decisions required by this Chapter made by the agency director or the deputy director regarding the grievance or request to the Office of Human Rights and the human rights committee with jurisdiction over the agency.
- Historical Note**
- Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-405 renumbered to R9-21-406; new Section R9-21-405 renumbered from R9-21-404 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-406. Conduct of Investigation

- A.** Within 10 days of the appointment, the investigator shall hold a private, face-to-face conference with the person who filed the grievance or request for investigation to learn the relevant facts that form the grounds for the grievance or request, unless the grievance or request has been initiated by the agency director or deputy director of the Division according to R9-21-403(E).
1. In scheduling such conference, and again at the conference, if the client appears without a designated representative, the investigator shall advise the client that:
 - a. The client may be represented by a designated representative of the client's own choice. The investigator shall also advise the client of the availability of assistance from the State Protection and Advocacy System, the Office of Human Rights, and the relevant human rights committee.
 - b. The client may make an audio tape of the conference and all future conferences, meetings or hearings to which the client may be a party during the investigation, provided that the client notify all other parties not later than the beginning of the meeting or hearing that the client intends to do so.
 - c. In any case where the person initiating the grievance or request, or the person(s) who is alleged to have been responsible for the rights violation or condition, is a client and is in need of special assistance and is unrepresented, the investigator shall give the Office of Human Rights notice of the need for representation.
 2. Where the grievance has been initiated by the agency director or deputy director of the Division, the investigator shall promptly determine which persons have relevant information concerning the occurrence of the alleged rights violation or condition requiring investigation and proceed to interview such individuals.
- B.** Within 15 days of the appointment, but only after the conference with the person initiating the grievance or request for investigation, the investigator shall hold a private, face-to-face conference with the person(s) complained of or thought to be responsible for the rights violation or condition requiring investigation to discuss the matter and, in scheduling the conference with such person(s) or with any other witness, the investigator shall advise the person(s) or any other witness that:
1. The individual may make an audio tape recording of the conference and all future conferences, meetings or hearings during the course of the investigation, provided that the individual must notify all other parties to such meetings or hearings not later than the beginning of the meeting or hearing if the individual intends to so record.
 2. An employee of an inpatient facility, service provider, regional authority or the Division has an obligation to cooperate in the investigation.
 3. Failure of an employee to cooperate may result in appropriate disciplinary action.
- C.** The investigator shall gather whatever further information may seem relevant and appropriate, including interviewing additional witnesses, requesting and reviewing documents, and examining other evidence or locations.
- D.** Within 10 days of completing all interviews with the parties but not later than 30 days from the date of the appointment, the investigator shall prepare a written, dated report briefly describing the investigation and containing findings of fact, conclusions, and recommendations
- E.** Within five days of receiving the investigator's report, the agency director or deputy director of the Division shall review the report and the case record and prepare a written, dated decision which shall either:
1. Accept the investigator's report in whole or in part, at least with respect to the facts as found, and state a summary of findings and conclusions and the intended action of the agency director or deputy director of the Division; and send:
 - a. A copy of the decision to:
 - i. The investigator;
 - ii. The individual who filed the grievance or request for investigation;
 - iii. The individual who is the subject of the grievance or request for investigation, if applicable;
 - iv. The Office of Human Rights; and
 - v. The appropriate human rights committee; and
 - b. A notice to the individual who filed the grievance or request for investigation and, if applicable, the client who is the subject of the grievance or request for investigation or, if applicable, the client's guardian, of:
 - i. If the decision is from an agency director, the client's right to appeal to the Division according to R9-21-406 and to an administrative hearing according to A.R.S. § 41-1092.03; and
 - ii. If the decision is from the deputy director of the Division, the client's right to an administrative hearing according to A.R.S. § 41-1092.03; or
 2. Reject the report for insufficiency of facts and return the matter for further investigation. In such event, the investigator shall complete the further investigation and deliver a revised report to the agency director or deputy director of the Division or designee within 10 days. Upon receipt of the report, the agency director or deputy director shall proceed as provided in subsection (E)(1).
- F.** Actions that an agency director or the deputy director of the Division may take according to subsection (E)(1) include:
1. Identifying training or supervision for or disciplinary action against an individual responsible for a rights violation or condition requiring investigation identified during the course of investigating a grievance or request for investigation.
 2. Developing or modifying a mental health agency's policies and procedures;
 3. Notifying the regulatory entity that licensed or certified an individual according to A.R.S. Title 32, Chapter 33 of the findings from the investigation; or
 4. Imposing sanctions, including monetary penalties, according to terms of a contract, if applicable.
- G.** After the expiration of the appeal period set forth in R9-21-407, or after the exhaustion of all appeals and subject to the final decision on the appeal, the agency director or deputy director of the Division shall promptly take the action set forth in the decision and add to the case record a written, dated report of the action taken. A copy of the report shall be sent to the Office of Human Rights and the human rights committee if the client is in need of special assistance.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-406 renumbered to

R9-21-407; new Section R9-21-406 renumbered from R9-21-405 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-407. Administrative Appeal

- A.** Any grievant or the client who is the subject of the grievance who is dissatisfied with the final decision of the agency director may, within 30 days of receipt of the decision, file a notice of appeal with the deputy director of the Division. The appealing party shall send copies of the notice to the other parties and their representatives and to the agency director, who shall forward the full case record to the deputy director of the Division.
- B.** The deputy director of the Division shall review the notice of appeal and the case record, and may discuss the matter with any of the persons involved or convene an informal conference. Within 15 days of the filing of the appeal, the deputy director of the Division shall prepare a written, dated decision which shall either:
1. Accept the investigator's report, in whole or in part, at least with respect to the facts as found, and affirm, modify or reject the decision of the agency director with a statement of reasons; or
 2. Reject the investigator's report for insufficiency of facts and return the matter with instructions to the agency director for further investigation and decision. In such event, the further investigation shall be completed and a revised report and decision shall be delivered to the deputy director of the Division within 10 days. Upon receipt of the report and decision, the deputy director of the Division shall render a final decision, consistent with the procedures set forth in subsection (B)(1).
 3. A designated representative shall be afforded the opportunity to be present at any meeting or conference convened by the deputy director of the Division to which the represented party is invited.
 4. The deputy director of the Division shall send copies of the decision to:
 - a. The parties, together with a notice of appeal rights according to A.R.S. § 41-1092.03;
 - b. The agency director; and
 - c. The Office of Human Rights and the applicable human rights committee for all clients, including clients who are in need of special assistance.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-407 renumbered to R9-21-408; new Section R9-21-407 renumbered from R9-21-406 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-408. Further Appeal to Administrative Hearing

- A.** Any grievant or the client who is the subject of the grievance who is dissatisfied with the decision of the deputy director of the Division may request a fair hearing before an administrative hearing officer.
1. Within 30 days of the date of the decision, the appealing party shall file with director of the Department a notice requesting a fair hearing.
 2. Upon receipt of the notice, the director shall send a copy to the parties, to the deputy director of the Division, and to the Office of Human Rights and the human rights committee for clients who are in need of special assistance.

3. Within five days of the receipt of the notice of further appeal, the director of the Department shall appoint an impartial hearing officer. The hearing officer may not be an employee of the Department, a regional authority, or of a service provider under contract or subcontract with the Department. However, the Department may contract with a qualified individual to serve as the hearing officer under this rule. The director shall send copies of the appointment to the hearing officer together with the case record and to the parties including the Division.
 4. Within five days of the appointment, the hearing officer shall inform the parties, the Office of Human Rights, and the human rights committee if the client is in need of special assistance, of the time and place of the hearing. The hearing shall be scheduled not less than 20 nor more than 30 days from the receipt of the request for fair hearing at a location convenient to all parties.
- B.** The hearing shall be conducted consistent with A.R.S. §§ 36-111 and 36-112 and 41-1061 et seq. (the Administrative Procedure Act), and those portions of R9-1-101 through R9-1-126 which are consistent with this Article.
1. The client shall have the right to be represented at the hearing by an individual chosen by the client at the client's own expense, in accordance with Rule 31(a)(3), Rules of the Supreme Court.
 - a. If the client has not designated a representative to assist the client at the hearing and is in need of special assistance, the human rights committee, through one of its members or the human rights advocate unless refused by the client, shall make all reasonable efforts to represent the client.
 - b. If the client is unrepresented and the deputy director of the Division determines the appointment of a representative to be in the client's best interest, the deputy director shall designate a representative to assist the client in the appeal.
 2. The client or other appealing party shall have the right to present any evidence relevant to the issues under appeal and shall have the right to call and examine witnesses.
 3. The client or other party appealing on behalf of the client shall have the right to examine all records held by the Department pertaining to the client.
 4. Any portion of the hearing may be closed to the public if the client requests or if the hearing officer determines that it is necessary to prevent an unwarranted invasion of the client's privacy or that public disclosure would pose a substantial risk of harm to the client.
 5. The standard of proof on all issues shall be a preponderance of the evidence.
 6. The burden of proof on all issues shall be on the appealing party.
 7. Within 10 days of the conclusion of the hearing, the hearing officer shall prepare, date, sign, and send a written recommended decision to director of the Department, together with the case record. The recommended decision shall include findings of fact, which shall be binding on the Department for administrative purposes, and conclusions and recommendations for action as appropriate.
- C.** Within 20 days of the conclusion of the hearing, the director of the Department shall render a final written decision, based upon the recommendation of the hearing officer.
1. The decision shall include a concise statement of the facts found, a summary of the evidence relied upon, the decision and the reasons for so deciding, and a notice of the client's right to petition the director of the Department for

a rehearing under R9-1-113 and to seek judicial review under A.R.S. § 36-113.

2. The decision shall be mailed promptly to the client, the other parties, and their designated representatives.
3. The Division shall arrange to have the decision explained to the client, together with the right to seek rehearing and judicial review.
4. Except to the extent that the decision is subject to an order for rehearing, the decision of the director is the final decision of the Department on all issues.

- D.** Within 30 days of the date of service of the decision of the director, the client or party appealing on behalf of the client may petition the director for a rehearing or review pursuant to R9-1-120.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Section repealed; new Section R9-21-408 renumbered from R9-21-407 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-409. Notice and Records

- A.** Notice to clients. All clients shall be informed of their right to file a grievance or request for investigation under these rules.
1. Notice of this grievance and investigation process shall be included in the information posted or otherwise provided to every current and new client and employee. Special efforts shall be made to inform current and new residents of mental health facilities of this process and of the right to file a grievance or request for investigation;
 2. A copy of a brief memorandum explaining these rules shall be given to every current and new resident of an inpatient facility;
 3. Such memorandum and blank copies of the forms for filing a grievance, request for investigation, and appeal shall be posted in a prominent place in plain sight on every unit of an inpatient facility or in a program operated by a service provider; and
 4. Such memoranda, forms and copies of these rules shall be available at each inpatient facility, regional authority and service provider upon request by any person at any time.
- B.** Notice and oversight by the Office of Human Rights and human rights committees.
1. Upon receipt of any grievance or request for investigation involving a client, including a client who is in need of special assistance, the agency director or deputy director of the Division shall immediately forward a copy of such grievance or request to the Office of Human Rights and the appropriate regional human rights committee.
 2. Upon receipt of such a grievance from the agency director or the deputy director of the Division, at the request of a client, or on its own initiative, the Office of Human Rights and/or the appropriate human rights committee shall assist a client in filing a grievance or request, if necessary. The Office and/or committee shall use its best efforts to see that such client is represented by an attorney, human rights advocate, committee member, or other person to protect the individual's interests and present information on the client's behalf. The Office and/or committee shall maintain a list of attorneys and other representatives, including the state protection and advocacy system, available to assist clients.
 3. Whenever the human rights committee has reason to believe that a rights violation involving abuse or a dan-

gerous condition requiring investigation, including a client death, has occurred or currently exists, or that any rights violation or condition requiring investigation occurred or exists which involves a client who is in need of special assistance, it may, upon written notice to the official before whom the matter is pending, become a party to the grievance or request. As a party it shall receive copies of all reports, plans, appeals, notices and other significant documents relevant to the resolution of the grievance or request and be able to appeal any finding or decision.

4. The Office of Human Rights shall assist clients in resolving grievances according to R9-21-104.

C. Notification of other persons.

1. Whenever any rule, regulation, statute, or other law requires notification of a law enforcement officer, public official, medical examiner, or other person that an incident involving the death, abuse, neglect, or threat to a client has occurred, or that there exists a dangerous condition or event, such notice shall be given as required by law.
2. An agency director shall immediately notify the deputy director of the Division when:
 - a. A client brings criminal charges against an employee;
 - b. An employee brings criminal charges against a client;
 - c. An employee or client is indicted or convicted because of any action required to be investigated by this Article; or
 - d. A client of an inpatient facility, mental health agency, or service provider dies. The agency director shall report such death according to the Department's policy on the reporting and investigation of deaths.
 - e. A client of an inpatient facility, agency, or service provider allegedly is physically or sexually abused.
3. The investigation by the Department provided for by this Article is independent of any investigation conducted by police, the county attorney, or other authority.

D. Case records.

1. A file, known as the case record, shall be kept for each grievance or request for investigation which is received by the Division including ASH, regional authority or service provider under contract or subcontract with the Department. The record shall include the grievance or request, the docket number assigned by the Department, the names of all persons interviewed and the dates of those interviews, either a taped or written summary of those interviews, a summary of documents reviewed, copies of memoranda generated by the investigation, the investigator's report, the agency director's decision, and all documents relating to any appeal.
2. The investigator shall maintain possession of the case record until the investigation report is submitted. Thereafter, the agency director shall maintain control over the case record, except when the matter is on appeal. During any appeal, the record will be in the custody of the official hearing or deciding the appeal.

E. Public logs.

1. The Department shall maintain a public log of all deaths and non-frivolous grievances or requests for investigation for all inpatient facilities, agencies, and service providers which it operates, funds, or supervises. The agency director of each facility or mental health agency shall forward

- to the Department all information necessary for the accurate and timely maintenance of the public log.
2. The public log shall not include personal identities but shall be a public record, available for inspection and copying by any person.
 3. With respect to each grievance or request for investigation, the Department's public log shall contain:
 - a. A docket number, consisting of a symbol for the agency, the last two digits of the year and a serial number assigned by the Department;
 - b. A substantive but concise description of the grievance or request for investigation;
 - c. The date of the filing of grievance;
 - d. The date of the initial decision or appointment of investigator;
 - e. The date of the filing of the investigator's final report;
 - f. A substantive but concise description of the investigator's final report;
 - g. The dates of all subsequent decisions, appeals, or other relevant events; and
 - h. A substantive but concise description of the final decision and the action taken by the agency director or deputy director of the Division.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-410. Miscellaneous

- A. Disqualification of official. The agency director, deputy director of the Division, investigator, or any other official with authority to act on a grievance or request for investigation shall disqualify themselves from acting, if such official cannot act on the matter impartially and objectively, in fact or in appearance. In the event of such disqualification, the official shall forthwith prepare and forward a written, dated memorandum explaining the reasons for the decision to the deputy director of the Division or designee or director of the Department or designee, as appropriate, who shall, within 10 days of receipt of the memorandum, take such steps as are necessary to resolve the grievance in an impartial, objective manner.
- B. Request for extension of time.
 1. The investigator or any other official of a mental health agency acting according to this Article may secure an extension of any time limit provided in this Article with the permission of the director of the regional authority.
 2. The investigator or any other official of an inpatient facility acting according to this Article may secure an extension of any time limit provided in this Article with the permission of the deputy director of the Division.
 3. The investigator or any other official of the office of the deputy director of the Division acting according to this Article may secure an extension of any time limit provided in this Article with the permission of the director of the Department.
 4. An extension of time may only be granted upon a showing of necessity and a showing that the delay will not pose a threat to the safety or security of the client.
 5. A request for extension shall be in writing, with copies to all parties. The request shall explain why an extension is

6. Such request shall be submitted to and acted upon by the director of the regional authority, deputy director of the Division, or director of the Department, as appropriate, prior to the expiration of the original time limit. Failure of the relevant official to act within the time allowed shall constitute a denial of the request for an extension.
- C. Procedural irregularities.
 1. Any party may protest the failure or refusal of any official with responsibility to take action in accord with the procedural requirements of this Article, including the time limits, by filing with the deputy director of the Division a written protest. A protest concerning the failure or refusal to take action by the deputy director of the Division or designee should be filed with the director of the Department.
 2. Within 10 days of the filing of such a protest, the official with whom it is filed shall take appropriate action to ensure that if there is or was a violation of a procedure or timeline, it is promptly corrected, including, if appropriate, disciplinary action against the official responsible for the violation or by removal of an investigator or hearing officer and the appointment of a substitute.
 - D. Deputy director's or director's investigation.
 1. The deputy director of the Division or director of the Department may at any time order that a special investigator review and report directly to the director or deputy director as to the facts of a grievance or condition requiring investigation, including a death or other matter.
 2. The special investigator, deputy director and director shall comply with the time limits and other procedures for an investigation set forth in this Article.
 3. Any final decision issued by the deputy director of the Division or the director of the Department based on such an investigation under this rule is appealable as provided in R9-21-408.
 4. Nothing in this Article shall prevent the Department or the Division from conducting an investigation independent of these rules.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

ARTICLE 5. COURT-ORDERED EVALUATION AND TREATMENT

R9-21-501. Court-ordered Evaluation

- A. An application for court-ordered evaluation shall, according to A.R.S. § 36-521, be made on Department form MH-100, Titled "Application for Involuntary Evaluation," set forth in Exhibit A.
- B. Any mental health agency or service provider that receives an application for court-ordered evaluation shall immediately refer the applicant for pre-petition screening and petitioning for court-ordered evaluation, provided for in A.R.S. Title 36, Chapter 5, Article 4, to:
 1. A regional authority; or
 2. If a county has not contracted with a regional authority for pre-petition screening and petitioning for court-ordered evaluation, the county.

NAME, ADDRESS AND TELEPHONE NUMBER OF:

- 1) Guardian
- 2) Spouse
- 3) Next of Kin
- 4) Significant Other Persons

DATE

SIGNATURE OF APPLICANT

Printed or Typed Name of Applicant _____

Relationship to Proposed Patient _____

Applicant's Address _____

Applicant's Telephone _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19 _____

Notary Public

My Commission Expires:

ADHS/BHS Form MH-100 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit A repealed, new Exhibit A adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-502 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

EXHIBIT B
PETITION FOR COURT-ORDERED EVALUATION

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF _____

In the Matter of)
) MH
)
) PETITION FOR COURT-
) ORDERED EVALUATION
) (Pursuant to A.R.S. § 36-523)
)
re: Mental Health Services)
_____)

STATE OF ARIZONA)
)
COUNTY OF)

Petitioner, _____
(Medical Director)

being first duly sworn/affirmed, alleges that:

- 1. There is now in this County a person whose name and address are as follows:
(Name) (Address)
2. The person may presently be found at:
3. There is reasonable cause to believe that the person has a mental disorder and is as a result:
A danger to self; A danger to others;
Gravely disabled; Persistently or acutely disabled and is:
4. The person is unwilling to undergo voluntary evaluation, as evidenced by the following facts:
5. The person is unable to undergo voluntary evaluation, as demonstrated by the following reasons:
6. The person is believed to be in need of supervision, care, and treatment because of the following facts:
7. The conclusion that the person has a mental disorder is based on the following facts:
8. The conclusion that the person is dangerous or disabled is based on the following facts:
9. The conclusion that all available alternatives have been investigated and deemed inappropriate is based on the following facts:
10. Applicant information:
Name of Applicant:
Address of Applicant:
Relationship to or Interest in the Proposed Patient:

- 11. In the opinion of the Petitioner, the person is _____ is not _____ in such a condition that, without immediate or continuing hospitalization, s/he is likely to suffer serious physical harm or inflict serious physical harm upon another person.
- 12. In the opinion of the Petitioner, evaluation should _____ should not _____ take place on an outpatient basis, based upon the following reasons: _____

PETITIONER REQUESTS THAT THE COURT:

Issue an Order requiring the person to be given an _____ Inpatient _____ Outpatient evaluation.

DATE

Signature Of Petitioner

Printed or Typed Name

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19 _____.

Notary Public

My Commission Expires:

ADHS/BHS Form MH-105 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit B repealed, new Exhibit B adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-502 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-502. Emergency Admission for Evaluation

- A. An application for emergency evaluation pursuant to A.R.S. § 36-524 may be made to any evaluation agency licensed and approved by the Department to provide such services on Department form MH-104, Titled "Application for Emergency Admission for Evaluation," set forth in Exhibit C.
- B. Prior to admission of an individual under this rule, the evaluation agency shall notify the appropriate regional authority of the potential admission so that the regional authority may first:
 - 1. Provide services or treatment to the individual as an alternative to admission; or
 - 2. Authorize admission of the individual.
- C. If the evaluation agency does not provide notice pursuant to subsection (B) of this rule, the regional authority shall not be obligated to pay for the services provided.

- D. Only a mental health agency licensed by the Department to provide emergency services according to A.R.S. Title 36, Chapter 4 may provide court-ordered emergency admission services under A.R.S. Title 36, Chapter 5, Article 4.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-502 renumbered to R9-21-501; new Section R9-21-502 renumbered from R9-21-503 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

EXHIBIT C
APPLICATION FOR EMERGENCY ADMISSION FOR EVALUATION

(Pursuant to A.R.S. § 36-524)

STATE OF ARIZONA)
)ss
COUNTY OF _____)
_____)

The undersigned applicant, being first duly sworn/affirmed, hereby requests that _____ (Evaluation Agency)
admit the person named herein for evaluation.

1. The undersigned applicant alleges that there is now in the County a person whose name and address are:

(Name) (Address)

and that s/he believes that the person has a mental disorder and, as a result of said mental disorder, is:

[] A danger to self; [] A danger to others;

and that, during the time necessary to complete pre-petition screening under A.R.S. §§ 36-520 and 36-521, the person is likely without immediate hospitalization to suffer serious physical harm or serious illness or is likely to inflict serious physical harm upon another person.

The conclusion that the person has a mental disorder is based on the following facts: _____

The specific nature of the danger posed by this person is: _____

A summary of the personal observations upon which this statement is based is as follows: _____

PERSONAL DATA OF PROPOSED PATIENT:

Age _____ Date of Birth _____ Sex _____ Race _____
Weight _____ Height _____ Hair Color _____ Eye Color _____
Marital Status _____ Number of Children _____
Social Security No. _____ Religion _____
Distinguishing Marks _____
Occupation _____
Present Location _____
Dates and Places of Previous Hospitalization _____
How Long in Arizona _____ State Last From _____
Veteran? _____ C-No. _____ Education _____

NAME, ADDRESS AND TELEPHONE NUMBER OF:

- 1) Guardian _____
- 2) Spouse _____
- 3) Next of Kin _____
- 4) Significant Other Persons _____

_____ DATE

_____ SIGNATURE OF APPLICANT

Printed or Typed Name of Applicant _____

Relationship to Proposed Patient _____

Applicant's Address _____

Applicant's Telephone _____

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19_____.

Notary Public

My Commission Expires:

ADHS/BHS Form MH-104 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit C repealed, new Exhibit C adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-503 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-503. Voluntary Admission for Evaluation

- A.** An application for voluntary evaluation pursuant to A.R.S. § 36-522 shall be submitted on Department form MH-103, Titled "Application for Voluntary Evaluation," set forth in Exhibit D to a mental health agency.
- B.** If a regional authority receives an application according to subsection (A), the regional authority shall provide for such evaluation under A.R.S. § 36-522 for any individual who:
 - 1. Voluntarily makes application as provided in subsection (A);
 - 2. Gives informed consent; and
 - 3. Has not been adjudicated as an incapacitated person pursuant to A.R.S. Title 14, Chapter 5, or Title 36, Chapter 5.
- C.** Any mental health agency, which is not a regional authority under R9-21-501, that receives an application for voluntary evaluation shall immediately refer the individual to:
 - 1. The county responsible for voluntary evaluations; or
 - 2. If the county has contracted with a regional authority for voluntary evaluations, the appropriate regional authority.
- D.** Any mental health agency providing voluntary evaluation services pursuant to this Article shall place in the medical record of the individual to be evaluated the following:

- 1. A completed copy of the application for voluntary treatment;
- 2. A completed informed consent form pursuant to R9-21-511; and
- 3. A written statement of the individual's present mental condition.
- E.** Voluntary evaluation shall proceed only after the individual to be evaluated has given informed consent on Department form MH-103 and received information that the patient-physician privilege does not apply and that the evaluation may result in a petition for the individual to undergo court-ordered treatment or for guardianship in the method prescribed by A.R.S. § 36-522.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-503 renumbered to R9-21-502; new Section R9-21-503 renumbered from R9-21-504 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

**EXHIBIT D
APPLICATION FOR VOLUNTARY EVALUATION**

(Pursuant to A.R.S. § 36-522)

The undersigned hereby requests a mental health evaluation to be performed by psychiatrists, psychologists, and social workers at

(Regional Authority)

on the following terms:

INPATIENT. I agree to remain as an inpatient in the above agency for a period of not more than 72 hours. I understand that, at the end of that period, the agency must release me or file a Petition for Court-Ordered Treatment, in which case I may be held until the court holds a hearing, which shall be no longer than six days from the date of filing the petition, excluding weekends and holidays. If such a Petition is filed, I will have the right to representation by a lawyer, and the court will appoint one for me if I cannot afford one.

OUTPATIENT. I agree to keep all scheduled appointments required for a complete evaluation, to the best of my ability. I understand that if I fail to appear, a Petition for Court-Ordered Evaluation or Treatment may be filed, in which case I may be detained and required to undergo involuntary evaluation and treatment. If such a Petition is filed, I will have the right to representation by a lawyer, and the court will appoint one for me if I cannot afford one.

_____ I understand that the physician-patient privilege does not apply, and information I give during this evaluation may be used in court in a civil hearing for court-ordered treatment.

_____ I understand that this evaluation may lead to a court hearing to determine if I need further treatment and that such treatment, or an investigation into the need for a guardianship, may be ordered by a court.

_____ I understand that an application for my examination has been filed and I choose to be evaluated voluntarily rather than by court order.

_____ I understand that my evaluation must take place within five days of my application.

_____ I understand that I have a right to require the person who has applied for my evaluation to present evidence of the need for such evaluation to a court of law for approval or disapproval and I waive my right to require prior court review of the application.

_____ I understand that I have a right, upon written request, to be discharged within 24 hours of that request (excluding weekends and holidays) unless the medical director of the evaluation agency files a petition for court-ordered evaluation.

Presented By

Signature of Applicant

Printed or Typed Name of Applicant

Date

ADHS/BHS Form MH-103 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit D repealed, new Exhibit D adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-504 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-504. Court-ordered Treatment

- A.** The regional authority shall perform, either directly or by contract, all treatment required by A.R.S. Title 36, Chapter 5, Article 5 and this Article. In order to perform these functions, the regional authority or its contractor must be licensed by the Department.
- B.** A mental health agency may provide court-ordered treatment pursuant to A.R.S. Title 36, Chapter 5, Article 5, other than through contract with the regional authority, provided that:
1. The mental health agency is licensed by the Department to provide the court-ordered treatment;
 2. The mental health agency complies with all applicable requirements under A.R.S. Title 36, Chapter 5, Article 5; and
 3. The individual ordered to undergo treatment is not a client of the regional authority.
- C.** Upon a determination that an individual is a danger to self or others, gravely disabled, or persistently or acutely disabled, and if no alternatives to court-ordered treatment exist, the medical director of the agency that provided the court-ordered evaluation shall file the appropriate affidavits on Department form MH-112, set forth in Exhibit E, with the court, together with one of the following petitions:
1. A petition for court-ordered treatment for an individual alleged to be gravely disabled, which shall be filed on Department form MH-110, set forth in Exhibit F.
 2. A petition for court-ordered treatment for an individual alleged to be a danger to self or others, which shall be filed on Department form MH-110, set forth in Exhibit F.
 3. A petition for court-ordered treatment for an individual alleged to be persistently or acutely disabled, which shall be filed on Department form MH-110, set forth in Exhibit F.
- D.** Any mental health agency filing a petition for court-ordered treatment of a client pursuant to subsection (A) above shall do so in consultation with the client's clinical team prior to filing the petition.
- E.** With respect to inpatient and outpatient treatment, the petition filed with the court shall request that the individual be committed to the care and supervision of the regional authority, if the individual is a client, or to an appropriate mental health treatment agency, if the individual is not a client.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-504 renumbered to R9-21-503; new Section R9-21-504 renumbered from R9-21-505 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

Department of Health Services – Behavioral Health Services for Persons with Serious Mental Illness

5. The conclusion that the person is dangerous or disabled is based on the following: _____

6. The conclusion that all available alternatives have been investigated and deemed inappropriate is based on the following:

Physician's Signature

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19_____.

Notary Public

My Commission Expires: _____

ADHS/BHS Form MH-112 (9/93)

PERSISTENTLY OR ACUTELY DISABLED (EXHIBIT E, ADDENDUM NO. 1)

RE: _____

IF PERSISTENTLY OR ACUTELY DISABLED:

- 1. Does the person have a severe mental disorder that, if not treated, has a substantial probability of causing the person to suffer or continue to suffer severe and abnormal mental, emotional, or physical harm that significantly impairs judgment, reason, behavior, or capacity to recognize reality?
Yes _____ No _____

If yes, provide the facts that support this conclusion: _____

- 2. Does the severe mental disorder substantially impair the person’s capacity to make an informed decision regarding treatment?
Yes _____ No _____

If yes, provide the facts that support this conclusion: _____

- 2a. Does this impairment cause the person to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment, and understanding and expressing an understanding of the alternatives to the particular treatment offered?
Yes _____ No _____

If yes, provide the facts that support this conclusion: _____

- 2b. Were the advantages and disadvantages of accepting treatment explained to the person?
Yes _____ No _____

- 2c. Were the alternatives to treatment and the advantages and disadvantages of such alternatives explained to the person?
Yes _____ No _____

2d. Explain the specific reasons why the person is incapable of understanding and expressing an understanding of the explanations described in 2a, 2b, and 2c: _____

- 3. Is there a reasonable prospect that the severe mental disorder is treatable by outpatient, inpatient, or combined inpatient and outpatient treatment?
Yes _____ No _____

If yes, please provide the facts that support this conclusion: _____

GRAVELY DISABLED (EXHIBIT E, ADDENDUM NO. 2)

RE: _____

IF GRAVELY DISABLED:

1. Is the person’s condition evidenced by behavior in which s/he, as a result of a mental disorder, is likely to come to serious physical harm or serious illness because s/he would be unable to provide for his/her basic physical needs without hospitalization?
Yes _____ No _____

2. If Yes, explain how his/her mental disability affects his/her ability to do the following and how any inability might harm him/her. Provide examples, if available, to support your conclusion:

a. Provide for food: _____

b. Provide for clothing and maintain hygiene: _____

c. Provide for shelter: _____

d. Obtain and maintain steady employment: _____

e. Respond in an emergency: _____

f. Care for present or future medical problems: _____

g. Manage money: _____

h. Other: _____

ADHS/BHS Form MH-112 Addendum No. 2 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit E repealed, new Exhibit E with Addenda 1 and 2 adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-505 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

EXHIBIT F. PETITION FOR COURT-ORDERED TREATMENT
Gravely Disabled Person

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF _____

In the Matter of)
) MH
)
) PETITION FOR COURT-
) ORDERED TREATMENT
) (Pursuant to A.R.S. § 36-533)
re: Mental Health Services) Danger to Self/Others or
) Persistently or Acutely Disabled or
_____)Gravely Disabled

STATE OF ARIZONA)
) ss
COUNTY OF _____)
_____)

Petitioner _____, being first duly sworn/affirmed, alleges that:
(Medical Director)

- 1. _____ is, as a result of a mental disorder:
[] danger to self [] danger to others
[] persistently or acutely disabled
[] gravely disabled
and in need of treatment.
2. The court-ordered treatment alternatives that are appropriate and available are:
[] outpatient treatment [A.R.S. § 36-540(A)(1)].
[] combined inpatient and outpatient treatment [A.R.S. § 36-540(A)(2)].
[] inpatient treatment [A.R.S. § 36-540(A)(3)] at.
3. The person is unwilling or is unable to accept treatment voluntarily.
4. A summary of the facts supporting the above allegations is in the attached reports of examining physicians.
5. The person is residing or present in this county, or is admitted to an institution pursuant to an order of a court of competent jurisdiction sitting in this county, or who was committed by an Arizona tribal court, which order of commitment was duly domesticated pursuant to A.R.S. § 12-1702 et seq.
6. The person is entitled to notice of hearing of the petition and may be found at _____
(location)
7. Petitioner believes the person requires a:
_____ Title 14 guardian; _____ Conservator; _____ Title 36 guardian
and requests the Court to order an investigation and report to be made to the Court regarding this need. Said need exists because: _____
8. Petitioner believes the proposed person needs the immediate services of a temporary _____ guardian _____ conservator and requests that the Court appoint the same because: _____

- 9. Petitioner believes that _____ address: _____, is the person’s guardian/conservator, who should receive notice of any hearing.
- 10. A copy of this Petition has been mailed to the Public Fiduciary of _____ County and (other guardian, if any) _____

PETITIONER requests that the Court:

- 1. Set a date for a hearing; and
- 2. After notice and hearing find that the person is suffering from a mental disorder the result of which renders him/her dangerous to self or others, persistently or acutely disabled, or gravely disabled and order a period of treatment, all as set forth in paragraphs (1) and (2) above.
- 3. Check if applicable;
 - Order an independent investigation and report to the Court regarding the need for a Title 14 guardian or conservator or Title 36 guardian.
 - Appoint the following-named person as temporary guardian and/or conservator of the person, who Petitioner believes to be a fit and proper person to serve in that capacity:

_____ (Proposed Temporary Guardian/Conservator) _____ (Relation to Patient)

_____ (Address of Proposed Temporary Guardian/Conservator)

- Impose the duties of a Title 36 guardian upon the person’s A.R.S. Title 14 guardian who is _____

_____ DATE _____ Signature of Petitioner
Medical Director

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19_____.

NOTARY PUBLIC OR DEPUTY CLERK OF THE SUPERIOR COURT

My Commission Expires:

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit F repealed, new Exhibit F adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-505 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-505. Coordination of Court-ordered Treatment Plans with ISPs and ITDPs

- A. All inpatient and outpatient treatment plans prepared for clients according to A.R.S. §§ 36-533, 36-540 and 36-540.01, and any modifications to the treatment plans, shall be developed and implemented according to the individual service planning procedures in Article 3 of this Chapter, including the right of the client to request different services and to appeal the treatment plan.
- B. If a client’s ISP or ITDP is inconsistent with an inpatient or outpatient treatment plan ordered by the court, the mental health agency or regional authority, whichever is appropriate,

- shall recommend to the court that the court-ordered plan be amended so that it is consistent with the client’s ISP or ITDP.
- C. If, during the period a client is on outpatient status, an emergency occurs that satisfies the standards for emergency admission under A.R.S. §§ 36-524 and 36-526, and that requires immediate revocation or modification of an outpatient order, a modification may be submitted to the court in consultation with the client’s clinical team without complying with the individual service planning procedures, provided that the client and clinical team subsequently review any such modification according to the individual service planning procedures in Article 3 of this Chapter.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-505 renumbered to R9-21-504; new Section R9-21-505 renumbered from R9-21-506 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-506. Review of Court-ordered Individual

A. The mental health treatment agency that provides care for an individual ordered by a court to undergo treatment shall:

1. Assure that an examination and review of a court-ordered individual is accomplished in an effective and timely fashion, but not less than 30 days prior to expiration of any treatment portion of the order.
2. Require written documentation of the examination and review.
3. Maintain a special record that shall include:
 - a. The expiration date of any treatment portion of the court-ordered treatment; and
 - b. The date by which the review and examination must be initiated.
4. Establish specific dates by which the review and examination will be accomplished.
5. Conduct the review and examination by the specified dates.

B. In addition to subsection (A), the examination and review process for court-ordered clients shall, at a minimum, include the following:

1. The client's clinical team shall hold an ISP meeting pursuant to R9-21-307, not less than 30 days prior to the expiration of any treatment portion of the court order, which shall include the treatment team of the treatment agency providing behavioral health services under the court order. The ISP meeting shall include a determination by the clinical team of:
 - a. Whether the client continues to be a danger to others, a danger to self, gravely disabled, or persistently or acutely disabled;
 - b. That no alternatives to court-ordered treatment are appropriate; and
 - c. Whether court-ordered treatment should continue.
2. If, upon conclusion of the ISP meeting, the clinical team determines that the client:
 - a. Continues to be a danger to others, a danger to self, gravely disabled, or persistently or acutely disabled;
 - b. That no alternatives to court-ordered treatment are appropriate; and
 - c. That court-ordered treatment should continue, the medical director of the mental health treatment agency providing care for the client committed by court order shall appoint two physicians (one of whom must be a psychiatrist) and the mental health worker assigned to the case to conduct an examination to determine whether the client continues to be a danger to others, a danger to self, gravely disabled, or persistently or acutely disabled.
3. After such examination, the examining physicians shall enter a note in the progress sheet of the medical record stating the findings, decision, and the basis for that decision.
4. If the medical finding is that the client continues to be a danger to self, a danger to others, gravely disabled, or

persistently or acutely disabled, and if no alternatives to court-ordered treatment exist, the mental health treatment agency shall file a petition and affidavit(s) as provided in R9-21-505.

C. In addition to subsection (A), the examination and review process for non-clients shall, at a minimum, include the following:

1. A person designated by the mental health agency providing treatment shall notify the medical director of the agency in writing of the expiration date 30 days prior to expiration of the court-ordered treatment.
2. The medical director shall within five days notify one or more physicians (at least one of whom must be a psychiatrist) and the mental health worker assigned to the case of the expiration date of the court-ordered treatment and appoint them to determine whether the non-client continues to be a danger to others, a danger to self, gravely disabled, or persistently or acutely disabled.
3. After such examination, the examining physician(s) shall enter a note in the progress sheet of the medical record stating the findings, decision, and the basis for that decision.
4. If the medical finding is that the non-client continues to be a danger to self, a danger to others, gravely disabled, or persistently or acutely disabled, and if no alternatives to court-ordered treatment exist, the mental health treatment agency shall file a petition and affidavits as provided in R9-21-505.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-506 renumbered to R9-21-505; new Section R9-21-506 renumbered from R9-21-507 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-507. Transfers of Court-ordered Persons

A. For the purpose of this Section, "non-client" means an individual who is seriously mentally ill but is not currently being evaluated or treated for a mental disorder by or through a regional authority.

B. An individual ordered by the court to undergo treatment and without a guardian may be transferred from a mental health agency to another mental health agency, provided that the medical director of the mental health agency initiating the transfer has established that:

1. There is no reason to believe the individual will suffer more serious physical harm or serious illness as a result of the transfer; and
2. The individual is being transferred to a level and kind of treatment more appropriate to the individual's treatment needs and has been accepted for transfer by the medical director of the receiving mental health agency pursuant to subsection (D).

C. The medical director of the mental health agency initiating the transfer shall:

1. Be the medical director of the mental health agency to which the court committed the individual; or
2. Obtain the court's consent to the transfer as necessary.

D. All clients shall be transferred according to the procedures in Article 3 of this Chapter. With regard to non-clients, the medical director of the mental health agency initiating the transfer may not transfer a non-client to, or use the services of, any other mental health agency, unless the medical director of the

other mental health agency has agreed to provide such services to a non-client to be transferred, and the Department has licensed and approved the mental health agency to provide those services.

- E.** The medical director of the mental health agency initiating the transfer shall notify the receiving mental health agency in sufficient time for the intended transfer to be accomplished in an orderly fashion, but not less than three days. This notification shall include:
1. A summary of the individual's needs.
 2. A statement that, in the medical director's judgment, the receiving mental health agency can adequately meet the individual's needs.
 3. If the individual is a client, a modification of a client's ISP according to R9-21-314, when applicable.
 4. Documentation of the court's consent, when applicable.
- F.** The medical director of the transferring mental health agency shall present a written compilation of the individual's clinical needs and suggestions for future care to the medical director of the receiving mental health agency, who shall accept and approve it before an individual can be transferred according to subsection (B).
- G.** The transportation of individuals transferred from one mental health agency to another shall be the responsibility of the mental health agency initiating the transfer, irrespective of the allocation of the cost of the transportation defined elsewhere.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section

R9-21-507 renumbered to R9-21-506; new Section R9-21-507 renumbered from R9-21-508 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-508. Requests for Notification

- A.** At any time during a specified period of court-ordered treatment in which an individual has been found to be a danger to others, a relative or victim wishing to be notified in the event of an individual being released prior to the expiration of the period of court-ordered treatment shall file a demand, according to A.R.S. § 36-541.01(D), on Department form MH-127 in Exhibit G.
- B.** At any time during a specified period of court-ordered treatment in which an individual has been found to be a danger to others, a person other than a relative or victim wishing to be notified in the event of an individual being released prior to the expiration of the period of court-ordered treatment shall file a petition and form of order, to A.R.S. § 36-541.01(D) on Department form MH-128 in Exhibit H.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended by exempt rulemaking at 9 A.A.R. 530, effective January 29, 2003 (Supp. 03-1). Former Section R9-21-508 renumbered to R9-21-507; new Section R9-21-508 renumbered from R9-21-509 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

EXHIBIT G
DEMAND FOR NOTICE BY RELATIVE OR VICTIM

(Pursuant to A.R.S. § 36-541.01)

REGARDING: _____
(Full Name of Patient)

Pursuant to A.R.S. § 36-541.01, with respect to the above-named patient, a person who was ordered to undergo treatment for a mental disorder as a danger to others pursuant to A.R.S. § 36-540 by a court order of the Superior Court of _____ County, Case Number _____, or who was committed by an Arizona tribal court, which order of commitment was duly domesticated pursuant to A.R.S. §§ 12-1702 et seq., the undersigned _____ relative _____ victim does hereby demand that the medical director of _____, the mental health treatment agency providing court-ordered treatment for said person, provide the undersigned with written notice of intention to release or discharge said person prior to the expiration of the period for treatment ordered by the Court, as provided for in A.R.S. § 36-541.01(D).

The undersigned person demanding notice hereby agrees to advise the treatment agency in writing, by certified mail, return receipt requested, of any change in the address to which notice is to be mailed.

Signature of Applicant
Printed or Typed Name of Applicant
Date
Address to Mail Notice
Telephone Number of Applicant

ADHS/BHS Form MH-127 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit G repealed and a new Exhibit G adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-509 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

EXHIBIT H
PETITION FOR NOTICE

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF _____

In the matter of)
) MH _____
)
) PETITION FOR NOTICE
)
) (Pursuant to A.R.S. § 36-541.01)
re: Mental Health Services)
)
_____)

REGARDING: _____
(Full Name of Patient)

Pursuant to A.R.S. § 36-541.01, with respect to the above-named patient, a person who was ordered to undergo treatment for a mental disorder as a danger to others pursuant to A.R.S. § 36-540 by a court order of the Superior Court of _____ County, Case Number _____, the undersigned, a person other than a relative or victim of the person hereby asserting a legitimate reason for receiving such notice, does hereby petition the Court to require that the medical director of _____

_____ The above-named petitioner found by the Court to have a legitimate reason for receiving prior notice.

IT IS FURTHER ORDERED that a copy of this Order for Notice shall be delivered to the above-named mental health treatment agency and shall be filed with the patient's clinical record, and if the patient is transferred to another agency or institution, any orders for notice shall be transferred with the patient.

DATED this _____ day of _____, 19 _____

SUPERIOR COURT JUDGE/COMMISSIONER

ADHS/BHS Form MH-128 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit H repealed, new Exhibit H adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-509 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-509. Voluntary Admission for Treatment

- A.** Application for admission for voluntary treatment according to A.R.S. § 36-518 shall be made to a mental health agency on Department form MH-210, Titled "Application for Voluntary Treatment," in Exhibit I, by any individual who:
1. Voluntarily makes application as provided in subsection (A);
 2. Gives informed consent;
 3. Has not been adjudicated as an incapacitated person according to A.R.S. Title 14, Chapter 5, or Title 36, Chapter 5; and
 4. If a minor, is appropriately admitted according to A.R.S. § 36-518.
- B.** Any mental health agency that is not a regional authority under R9-21-501 and that receives an application for voluntary treatment by a client shall immediately refer the client to the appropriate regional authority for treatment as provided under this rule, except that in the case of an emergency, a mental health treatment agency licensed by the Department to provide treatment under A.R.S. § 36-518 may accept an application for voluntary treatment and admit the client for treatment as follows:
1. Prior to admission of a client under this rule, the agency shall notify the appropriate regional authority of the potential admission and treatment so that the regional authority may first:
 - a. Provide other services or treatment to the client as an alternative; or
 - b. Authorize treatment of the client.
2. If the agency does not provide notice according to subsection (B)(1) above, the regional authority shall not be obligated to pay for the treatment provided.
- C.** Any mental health agency providing treatment according to A.R.S. § 36-518 shall place in the medical record of the individual to be treated the following:
1. A completed copy of the application for voluntary treatment;
 2. A completed informed consent form according to R9-21-511; and
 3. A written statement of the individual's present mental condition.
- D.** If the client admitted under this rule does not have an ISP, the regional authority shall prepare one in accordance with Article 3 of this Chapter. If the client already has an ISP, the regional authority shall commence a review of the ISP as provided in R9-21-313 and, if necessary, take steps to modify the ISP in accordance with R9-21-314.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-509 renumbered to R9-21-508; new Section R9-21-509 renumbered from R9-21-510 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

EXHIBIT I
APPLICATION FOR VOLUNTARY TREATMENT

(Pursuant to A.R.S. § 36-518)

I, _____, hereby request that the
(Person's Name)
_____ place me in a program or agency for mental health treatment.
(Mental Health Agency)

I understand that my capacity to give informed consent to treatment will be determined before I am allowed to voluntarily consent to treatment. My informed consent to treatment will be given on a separate form.

Further, I am aware that I am entitled to:

- 1. Withdraw or modify my consent to treatment at any time.
2. Receive a booklet explaining my rights under Arizona law and assistance from a human rights advocate if I desire.
3. A fair explanation of the treatment I am to receive and the purposes of that treatment.
4. A description of any material and substantial risk reasonably to be expected as a result of the treatment.
5. An answer to my inquiries concerning treatment.
6. Revoke my consent to treatment at any time.
7. Discharge within 24 hours of my written request (excluding weekends and holidays) unless the medical director of the treatment agency files a petition for court-ordered treatment.

Person's Signature

Date

ADHS/BHS Form MH-210 (9/93)

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Exhibit I repealed, new Exhibit I adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Renumbered from a position after R9-21-510 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-510. Informed Consent in Voluntary Application for Admission and Treatment

- A. Prior to beginning any course of medication or other treatment for an individual who is subject to voluntary admission under A.R.S. §§ 36-518 and 36-522, a mental health agency shall obtain an informed consent to treatment and enter it in the medical record. For all clients, the informed consent shall be obtained according to R9-21-206.01.
B. For clients, the mental health agency shall make reasonable inquiry into an individual's capacity to give informed consent, record these findings, and enter these findings in the client's ISP or record pursuant to Articles 2 and 3 of this Chapter. For non-clients, the agency shall adopt admission procedures that shall include the following:
1. The medical director or the medical director's designee shall make reasonable inquiry into an individual's capacity to give informed consent.
2. The medical director or the medical director's designee shall record his findings regarding the individual's capacity to give and of having given informed consent.
3. That the findings of the medical director or the medical director's designee shall be entered into the individual's record.

- C. Informed consent to treatment may be revoked at any time by a reasonably clear statement in writing.
1. An individual shall receive assistance in writing the revocation as necessary.
2. If informed consent to treatment is revoked, treatment shall be promptly discontinued, provided that a course of treatment may be concluded or phased out where necessary to avoid the harmful effects of abrupt withdrawal.
D. An informed consent form shall be signed by the individual and shall state that the following information was presented to the individual:
1. A fair explanation of the treatments and their purposes.
2. A description of any material and substantive risk reasonably to be expected.
3. An offer to answer any inquiries concerning the treatments.
4. Notice that the individual is free to revoke informed consent to treatment; and
5. For clients, all information required by R9-21-206.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary

of State October 14, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Former Section R9-21-510 renumbered to R9-21-509; new Section R9-21-510 renumbered from R9-21-511 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

EXHIBIT J. REPEALED

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4).

EXHIBIT K. REPEALED

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4).

R9-21-511. Use of Psychotropic Medication

- A.** Psychotropic medications may only be ordered for individuals undergoing court-ordered evaluation according to R9-21-204 or R9-21-207.
- B.** Psychotropic medications may not be ordered for and administered to individuals undergoing court-ordered treatment, except as follows:
 1. In an emergency involving the safety of the individual or another, as documented in the individual's medical record;
 2. If the individual or guardian gives an informed consent to use the medication;
 3. If provision for use of the medications shall be contained in the individual's treatment plan or ISP. At a minimum, the plan shall specify:
 - a. A description of the circumstances under which the medication may be used.
 - b. A description of the objectives that are expected to be achieved by use of the medication. This description must indicate how the individual's condition would be improved by using the medication and indicate what result would be expected if the medication were not used; or
 4. According to R9-21-204 or R9-21-207.

- C.** The agency shall have the capability to detect drug side effects or toxic reactions that may result from the medications used.
- D.** The agency shall have written policies and procedures governing the use of psychotropic medication. These policies and procedures shall specify:
 1. Protective measures that will ensure the individual's safety and promote the avoidance or mitigation of short and long-term deleterious effects on the individual.
 2. Periodic individual care monitoring, i.e., evaluating and updating the treatment plan and reviewing problem areas such as failure of the individual to achieve treatment plan objectives.
 3. Recordkeeping requirements.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-511 renumbered to R9-21-510; new Section R9-21-511 renumbered from R9-21-512 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-512. Seclusion and Restraint

Individuals undergoing court-ordered evaluation or court-ordered treatment shall not be placed in seclusion or restraint except as permitted by Article 2 of this Chapter, and specifically R9-21-204.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Former Section R9-21-512 renumbered to R9-21-511; new Section R9-21-512 renumbered from R9-21-513 and amended by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).

R9-21-513. Renumbered

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6 pursuant to Laws 1992, Ch. 301, § 61, effective October 7, 1992; received in the Office of the Secretary of State October 14, 1992 (Supp. 92-4). Renumbered to R9-21-512 by exempt rulemaking at 9 A.A.R. 3296, effective June 30, 2003 (Supp. 03-2).