

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

PREAMBLE

1. Sections Affected

R9-22-101
R9-22-108
Article 8
R9-22-801
R9-22-802
R9-22-802
R9-22-803
R9-22-804
R9-22-804
Exhibit A
R9-22-1208
Article 13
R9-22-1301
R9-22-1302
R9-22-1303
R9-22-1304
R9-22-1305
R9-22-1307
R9-22-1308
R9-22-1309

Rulemaking Action

Amend
Amend
Amend
Amend
Repeal
New Section
Amend
Repeal
New Section
New Exhibit
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend

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

Authorizing statute: A.R.S. § 36-2903.01

Implementing statute: A.R.S. §§ 36-2903.01 and 41-1092.02

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

Notice of Rulemaking Docket Opening: 6 A.A.R. 658, February 11, 2000

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

Name: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS

Arizona Administrative Register
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Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

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

The Administration amended 4 Articles in 9 A.A.C. 22 to comply with changes to state statute. The changes were implemented on July 1, 1999, when the AHCCCS administrative hearing process moved from AHCCCS to the Office of Administrative Hearings (OAH).

The Administration made most of the remaining changes to provide additional clarity and conciseness to existing rule language. The most significant change was to remove language in R9-22-804(E)(2)(c) that allowed for extended benefits beyond the end of the current certification period when a MI/MN (state-funded) member requests a hearing regarding a denial of an eligibility redetermination. The Administration modified the rule so that a member who requests a hearing regarding a denial of a redetermination shall not continue to be AHCCCS-eligible after the end of the certification period. This change is made to be consistent with statute and to be consistent with rules applicable to discontinuances.

The Administration added Exhibit A in Article 8 to illustrate the grievance and request for hearing processes.

6. Reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

Not applicable

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

Not applicable

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

The following entities will be impacted by the changes to the rule language:

- a. The Administration and the Office of Administrative Hearings (OAH) will benefit from the changes, which clarify their roles in the grievance and request for hearing process. In addition, the state may reduce expenditures as a result of the change to R9-22-804(E)(2) under which a member who requests a hearing regarding a denial of a redetermination shall not continue to be AHCCCS-eligible after the end of the certification period. This change is made to be consistent with statute and other AHCCCS rules.
- b. Counties will benefit from a number of changes that reduce time and paperwork and clarify the grievance and request for hearing process. However, Pima and Maricopa counties, which operate county hospitals, may be nominally impacted for the cost of uncompensated care that would be paid for by AHCCCS under current rule.
- c. MI/MN (state-funded) members who request a hearing regarding a denial of an additional period of eligibility, will no longer have AHCCCS coverage after the end of their certification period pending the outcome of the hearing. If the hearing decision is in favor of the member, AHCCCS will retroactively cover the expenses.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS
Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: May 16, 2000

Time: 10:30 a.m.

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Location: Casa Grande ALTCS Office
500 North Florence Street
Casa Grande, AZ 85222

Nature: Public Hearing

Date: May 17, 2000

Time: 10:00 a.m.

Location: AHCCCS
701 East Jefferson
Phoenix, AZ 85034
Turquoise Room

Location: ALTCS: Arizona Long-term Care System
110 South Church, Suite 3250
Tucson, AZ 85701

Location: ALTCS: Arizona Long-term Care System
3480 East Route 66
Flagstaff, AZ 86004

Nature: Videoconference Oral Proceeding

The Administration shall accept written comments until 5:00 p.m., Wednesday, May 17, 2000. Please submit comments to the following person:

Name: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS
Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

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

Not applicable

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

None

13. Was this rule previously adopted as an emergency rule?

No

14. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ADMINISTRATION**

ARTICLE 1. DEFINITIONS

Section

R9-22-101. Location of Definitions

R9-22-108. Grievance and ~~Appeal Process~~ Request for Hearing Related Definitions

ARTICLE 8. GRIEVANCE AND APPEAL PROCESS REQUEST FOR HEARING

Section

R9-22-801. General Provisions ~~For All Grievances and Appeals~~ for a Grievance and a Request for Hearing

R9-22-802. ~~Eligibility Appeals For Applicants, Eligible Persons and Members Receiving State-funded AHCCCS~~

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R9-22-802.	Services-
R9-22-803.	Grievance
R9-22-804.	Eligibility Appeals for Applicants, Eligible Persons, and Members Receiving SSI-Related Medical Assistance Only AHCCCS Services
R9-22-804.	Hearing for an Applicant and a Member Under 9 A.A.C. 22, Article 15, R9-22-1435, and R9-22-1704 – Refer to Exhibit A
R9-22-804.	Grievances
R9-22-804.	Eligibility Hearing for an Applicant and a Member Under 9 A.A.C. 22, Article 16 – Refer to Exhibit A
Exhibit A.	Grievance and Request for Hearing Process

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

Section	
R9-22-1208.	Grievance and Appeal Request for Hearing Process

ARTICLE 13. MEMBERS' RIGHTS AND RESPONSIBILITIES FOR EXPEDITED HEARINGS

Section	
R9-22-1301.	General Intent and Definitions
R9-22-1302.	Denial of a Request for a Service
R9-22-1303.	Reduction, Suspension, or Termination of a Service
R9-22-1304.	Content of Notice
R9-22-1305.	Exceptions from an Advance Notice
R9-22-1307.	Expedited Hearing Process
R9-22-1308.	Maintenance of Records
R9-22-1309.	Member Handbook

ARTICLE 1. DEFINITIONS

R9-22-101. Location of Definitions

A. Location of definitions. Definitions applicable to Chapter 22 are found in the following:

Definition	Section or Citation
1. "210"	R9-22-114
2. "1931"	R9-22-114
3. "1-time income"	R9-22-116
4. "1st-party liability"	R9-22-110
5. "3-month income period"	R9-22-116
6. "3rd-party"	R9-22-110
7. "3rd-party liability"	R9-22-110
8. "Accommodation"	R9-22-107
9. "Act"	R9-22-114
10. "Acute mental health services"	R9-22-112
11. "Adequate notice"	R9-22-114
12. "ADHS"	R9-22-112
13. "Administration"	R9-22-106, R9-22-114, and A.R.S. § 36-2901
<u>"Administrative law judge"</u>	<u>R9-22-108</u>
<u>"Administrative review"</u>	<u>R9-22-108</u>
14. "Adverse action"	R9-22-114
15. "AEC"	R9-22-117
16. "Affiliated corporate organization"	R9-22-106
17. "Aged"	R9-22-115
18. "Aggregate"	R9-22-107
19. "AHCCCS"	R9-22-101
20. "AHCCCS-disqualified dependent"	R9-22-101
21. "AHCCCS-disqualified spouse"	R9-22-101
22. "AHCCCS hearing officer"	R9-22-108
23. "AHCCCS inpatient hospital day or days of care"	R9-22-107
24. "Ambulance"	R9-22-102
25. "Ancillary department"	R9-22-107
26. "Annual enrollment choice"	R9-22-117
27. "Appeal"	R9-22-108
28. "Appellant"	R9-22-114

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29-	“Applicant”	R9-22-101
30-	“Application”	R9-22-101
31-	“Assignment”	R9-22-101
32-	“Assistance unit”	R9-22-114
33-	“Authorized representative”	R9-22-114
34-	“Auto-assignment algorithm”	R9-22-117
35-	“Baby Arizona”	R9-22-114
36-	“Behavior management services”	R9-22-112
37-	“Behavioral health paraprofessional”	R9-22-112
38-	“Behavioral health professional”	R9-22-112
39-	“Behavioral health service”	R9-22-112
40-	“Behavioral health technician”	R9-22-112
41-	“BHS”	R9-22-114
42-	“Billed charges”	R9-22-107
43-	“Blind”	R9-22-115
44-	“Board-eligible for psychiatry”	R9-22-112
45-	“Bona fide funeral agreement”	R9-22-114
46-	“Burial plot”	R9-22-114
47-	“Capital costs”	R9-22-107
48-	“Capped fee-for-service”	R9-22-101
49-	“Caretaker relative”	R9-22-114
50-	“Case management services”	R9-22-112
51-	“Case record”	R9-22-101
52-	“Cash assistance”	R9-22-114
53-	“Categorically eligible” A.R.S. §§ 36-2901(4)(b) and 36-2934	
54-	“Certification”	R9-22-109
55-	“Certification error”	R9-22-109
56-	“Certification period” R9-22-115 and R9-22-116	
57-	“Certified psychiatric nurse practitioner”	R9-22-112
58-	“Child welfare agency”	R9-22-114
59-	“Clean claim” A.R.S. § 36-2904	
60-	“Clinical supervision”	R9-22-112
61-	“CMDP”	R9-22-117
	<u>“Complainant”</u>	<u>R9-22-108</u>
62-	“Continuous stay”	R9-22-101
63-	“Contract”	R9-22-101
64-	“Contractor”	R9-22-101
65-	“Contractor of record”	R9-22-101
66-	“Copayment”	R9-22-107
67-	“Corrective action plan”	R9-22-109
68-	“Cost-to-charge ratio”	R9-22-107
69-	“Countable income”	R9-22-116
70-	“County eligibility department”	R9-22-109
71-	“County eligibility staff”	R9-22-116
72-	“Covered charges”	R9-22-107
73-	“Covered services”	R9-22-102
74-	“CPT”	R9-22-107
75-	“CRS”	R9-22-114
76-	“Date of determination”	R9-22-116
77-	“Date of discontinuance”	R9-22-116
78-	“Date of enrollment action”	R9-22-117
	<u>“Date of notice”</u>	<u>R9-22-108</u>
79-	“Day”	R9-22-101
80-	“DCSE”	R9-22-114
81-	“Deductible medical expense”	R9-22-116
82-	“Deemed application date”	R9-22-116
83-	“De novo hearing”	R9-22-112
84-	“Dentures”	R9-22-102
85-	“Department”	R9-22-114

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86. "Dependent child"	R9-22-114 and R9-22-116
87. "DES"	R9-22-101
88. "Determination"	R9-22-116
89. "Diagnostic services"	R9-22-102
90. "Disabled"	R9-22-115
91. "Discontinuance"	R9-22-116
92. "Discussions"	R9-22-106
93. "Disenrollment"	R9-22-117
94. "District Medical Consultant"	R9-22-114
95. "DME"	R9-22-102
96. "DRI inflation factor"	R9-22-107
97. "E.P.S.D.T. services"	R9-22-102
98. "EAC"	R9-22-101
99. "Earned income"	R9-22-116
100. "Educational income"	R9-22-116
101. "ELIC"	R9-22-101
102. "Eligibility determination date"	R9-22-114
103. "Eligible assistance children"	A.R.S. § 36-2905.03(B)
104. "Eligible applicant"	A.R.S. § 36-2901(4)
105. "Eligible low income children"	A.R.S. § 36-2905.03(C) and (D)
106. "Emancipated minor"	R9-22-116
107. "Emergency medical condition"	42 U.S.C. 1396b(v)
108. "Emergency medical services"	R9-22-102
109. "Encounter"	R9-22-107
110. "Enrollment"	R9-22-117
111. "Enumeration"	R9-22-101
112. "Equity"	R9-22-101
113. "Evaluation"	R9-22-112
114. "Expressly emancipated minor"	R9-22-116
115. "FAA" or "Family Assistance Administration"	R9-22-114
116. "Facility"	R9-22-101
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118. "FBR"	R9-22-101
119. "Federal Benefit Rate"	R9-22-101
120. "Federal emergency services program"	R9-22-101
121. "FESP"	R9-22-101
122. "Foster care maintenance payment"	R9-22-114
123. "Foster child"	R9-22-114
124. "FPL"	R9-22-114
125. "FQHC"	R9-22-101
126. "Fraudulent information"	R9-22-109
127. "Grievance"	R9-22-108
128. "GSA"	R9-22-101
129. "Guardian"	R9-22-116
130. "Head-of-household"	R9-22-116
<u>"Hearing"</u>	<u>R9-22-108</u>
131. "Hearing aid"	R9-22-102
132. "Home health services"	R9-22-102
133. "Homebound"	R9-22-114
134. "Hospital"	R9-22-101
135. "Hospitalized"	R9-22-116
136. "ICU"	R9-22-107
137. "IHS"	R9-22-117
138. "IMD"	R9-22-112
139. "Income"	R9-22-114 and R9-22-116
140. "Income-in-kind"	R9-22-116
141. "Indigent"	A.R.S. § 11-297
142. "Inmate of a public institution"	42 CFR 435.1009
143. "Inpatient psychiatric facilities for individuals under age 21"	R9-22-112

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144. "Interested party"	R9-22-106
145. "Interim change"	R9-22-116
146. "JTPA" or "Job Training Partnership Act"	R9-22-114
147. "License" or "licensure"	R9-22-101
148. "Liquid assets"	R9-22-114 and R9-22-116
149. "Liquid resources"	R9-22-116
150. "Lump-sum income"	R9-22-116
151. "Mailing date"	R9-22-114
152. "Medical education costs"	R9-22-107
153. "Medical record"	R9-22-101
154. "Medical review"	R9-22-107
155. "Medical services"	R9-22-101
156. "Medical supplies"	R9-22-102
157. "Medical support"	R9-22-114
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159. "Medicare claim"	R9-22-107
160. "Medicare HMO"	R9-22-101
161. "Mental disorder"	R9-22-112
162. "MI/MN"	A.R.S. § 36-2901(4)(a) and (c)
163. "Minor parent"	R9-22-114
164. "Month of determination"	R9-22-116
165. "New hospital"	R9-22-107
166. "NICU"	R9-22-107
167. "Noncontracting provider"	A.R.S. § 36-2931
168. "Nonliquid resources"	R9-22-116
169. "Nonparent caretaker relative"	R9-22-114
170. "NF"	42 U.S.C. 1396r(a)
<u>"OAH"</u>	<u>R9-22-108</u>
171. "Occupational therapy"	R9-22-102
172. "Offeror"	R9-22-106
173. "Operating costs"	R9-22-107
174. "Outlier"	R9-22-107
175. "Outpatient hospital service"	R9-22-107
176. "Ownership change"	R9-22-107
177. "Partial Care"	R9-22-112
178. "Peer group"	R9-22-107
179. "Pharmaceutical service"	R9-22-102
180. "Physical therapy"	R9-22-102
181. "Physician"	R9-22-102
182. "Post-stabilization services"	42 CFR 438.114
183. "Practitioner"	R9-22-102
184. "Pre-enrollment process"	R9-22-114
185. "Prescription"	R9-22-102
186. "Primary care provider"	R9-22-102
187. "Primary care provider services"	R9-22-102
188. "Prior authorization"	R9-22-102
189. "Private duty nursing services"	R9-22-102
190. "Proposal"	R9-22-106
191. "Proposal of discontinuance"	R9-22-116
192. "Prospective rate year"	R9-22-107
193. "Prospective rates"	R9-22-107
194. "Prudent layperson standard"	42 U.S.C. 1396u-2
195. "Psychiatrist"	R9-22-112
196. "Psychologist"	R9-22-112
197. "Psychosocial rehabilitation"	R9-22-112
198. "Public assistance"	R9-22-116
199. "Quality control case analysis"	R9-22-109
200. "Quality control sample review"	R9-22-109
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203:“RBHA”	R9-22-112
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205:“Recipient”	R9-22-114
206:“Redetermination”	R9-22-116
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208:“Rehabilitation services”	R9-22-102
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210:“Resources”	R9-22-114 and R9-22-116
211:“Respiratory therapy”	R9-22-102
“Respondent”	<u>R9-22-108</u>
212:“Responsible offeror”	R9-22-106
213:“Responsive offeror”	R9-22-106
214:“Review”	R9-22-114
215:“RFP”	R9-22-105 and R9-22-106
216:“Scope of services”	R9-22-102
217:“Screening”	R9-22-112
218:“SDAD”	R9-22-107
219:“Separate property”	A.R.S. § 25-213
220:“Service location”	R9-22-101
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222:“SESP”	R9-22-101
223:“S.O.B.R.A.”	R9-22-101
224:“Specialist”	R9-22-102
225:“Specified relative”	R9-22-114 and R9-22-116
226:“Speech therapy”	R9-22-102
227:“Spendthrift restriction”	R9-22-114
228:“Spouse”	R9-22-101
229:“SSA”	P.L. 103-296, Title I
230:“SSI”	R9-22-101
231:“SSN”	R9-22-101
232:“State alien”	R9-22-101
233:“State emergency services program”	R9-22-101
234:“Sterilization”	R9-22-102
235:“Subcontract”	R9-22-101
236:“Substance abuse”	R9-22-112
237:“SVES” or “State Verification and Exchange System”	R9-22-114
238:“Tier”	R9-22-107
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240:“Title IV-A”	R9-22-114
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245:“Total inpatient hospital days”	R9-22-107
246:“Treatment”	R9-22-112
247:“Unearned income”	R9-22-116
248:“Utilization management”	R9-22-105

B. General definitions. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

1. “AHCCCS” means the Arizona Health Care Cost Containment System, which is composed of the Administration, contractors, and other arrangements through which health care services are provided to an eligible person.
2. “AHCCCS-disqualified dependent” means a dependent child of an AHCCCS-disqualified spouse who resides in the same household of an AHCCCS-disqualified spouse.
3. “AHCCCS-disqualified spouse” means the spouse of an MI/MN applicant, who is ineligible for MI/MN benefits because the value of that spouse’s separate property, when combined with the value of other resources owned by household members, exceeds the allowable resource limit.
4. “Applicant” means a person who submits or whose representative submits, a written, signed, and dated application for AHCCCS benefits that has not been approved or denied.

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- 5- "Application" means an official request for medical assistance made under this Chapter.
- 6- "Assignment" means enrollment of an eligible person with a contractor by the Administration.
- 7- "Capped fee-for-service" means the payment mechanism by which a provider of care is reimbursed upon submission of a valid claim for a specific AHCCCS covered service and equipment provided to an eligible applicant. A payment is made in accordance with an upper, or capped, limit established by the Director.
- 8- "Case record" means the file and all documents in the file that are used to establish eligibility.
- 9- "Categorically eligible" means a person who is eligible as defined by A.R.S. §§ 36-2901(4)(b) and 36-2934.
- 10- "Continuous stay" means the period of time during which an eligible person receives inpatient hospital services without interruption beginning with the date of admission and ending with the date of discharge or date of death.
- 11- "Contract" means a written agreement entered into between a person, an organization, or other entity and the Administration, to provide health care services to a member under A.R.S. Title 36, Chapter 29, and these rules.
- 12- "Contractor" means a person, an organization, or an entity that agrees through a direct contracting relationship with the Administration, to provide goods and services specified by the contract under the requirements of the contract and these rules.
- 13- "Contractor of record" means an organization or an entity in which a person is enrolled for the provision of AHCCCS services.
- 14- "Day" means a calendar day unless otherwise specified in the text.
- 15- "DES" means the Department of Economic Security.
- 16- "EAC" means eligible assistance children.
- 17- "ELIC" means eligible low-income children.
- 18- "Eligible assistance children" means the children defined by A.R.S. § 36-2905.03(B).
- 19- "Eligible low income children" means the children defined by A.R.S. § 36-2905.03(C) and (D).
- 20- "Eligible applicant" means the applicant defined in A.R.S. § 36-2901(4).
- 21- "Enumeration" means the assignment of a specific 9-digit identification number to a person by the Social Security Administration.
- 22- "Equity" means the county assessor full cash or market value of a resource minus valid liens, encumbrances, or both.
- 23- "Facility" means a building or portion of a building licensed or certified by the Arizona Department of Health Services as a health care institution, under A.R.S. Title 36, Chapter 4, to provide a medical service, a nursing service, or other health care or health-related services.
- 24- "Factor" means an organization, a collection agency, a service bureau, or a person who advances money to a provider for accounts receivable that the provider assigns, sells, or otherwise transfers, including transfers through the use of a power of attorney, to the organization, the collection agency, the service bureau, or the person that receives an added fee or a deduction of a portion of the face value of the accounts receivable in return for the advanced money. The term "factor" does not include a business representative, such as a billing agent or an accounting firm described within these rules, or a health care institution.
- 25- "FBR" means Federal Benefit Rate, defined in R9-22-101(B)(26).
- 26- "Federal Benefit Rate" means the maximum monthly Supplemental Security Income payment rate for an eligible person or a married couple.
- 27- "Federal emergency services program" means a program designed to provide emergency medical services covered under 42 U.S.C. 1396b(v), to treat an emergency medical condition for a categorically eligible person who is determined eligible under A.R.S. § 36-2903.03.
- 28- "FESP" means federal emergency services program.
- 29- "FQHC" means federally qualified health center.
- 30- "GSA" means a geographical service area designated by the Administration within which a contractor of record provides, directly or through a subcontract, a covered health care service to a member enrolled with that contractor of record.
- 31- "Hospital" means a health care institution that is licensed as a hospital by the Arizona Department of Health Services under A.R.S. Title 36, Chapter 4, Article 2, and certified as a provider under Title XVIII of the Social Security Act, as amended, or is currently determined to meet the requirements of certification.
- 32- "Indigent" means meeting eligibility criteria under A.R.S. § 11-297.
- 33- "Inmate of a public institution" means a person defined by 42 CFR 435.1009.
- 34- "License" or "licensure" means a nontransferable authorization that is based on established standards in law, is issued by a state or a county regulatory agency or board, and allows a health care provider to render a health care service lawfully.
- 35- "Medical record" means all documents that relate to medical and behavioral health services provided to a member by a physician or other licensed practitioner of the healing arts and that are kept at the site of the provider.
- 36- "Medical services" means health care services provided to an eligible person by a physician, a practitioner, a dentist, or by a health professional and technical personnel under the direction of a physician, a practitioner, or a dentist.

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- 37. "Medically necessary" means a covered service provided by a physician or other licensed practitioner of the healing arts and within the scope of practice under state law to:
 - a. Prevent disease, disability, and other adverse health conditions or their progression; or
 - b. Prolong life.
- 38. "Medicare HMO" means a health maintenance organization that has a current contract with the Health Care Financing Administration (HCFA) for participation in the Medicare program under 42 CFR 417(L).
- 39. "MI/MN" means medically indigent and medically needy defined in A.R.S. § 36-2901(4)(a) and (c).
- 40. "Nursing facility" means a nursing facility defined in 42 U.S.C. 1396r(a).
- 41. "Noncontracting provider" means the provider defined in A.R.S. § 36-2931.
- 42. "Referral" means the process by which an eligible person is directed by a primary care provider or an attending physician to another appropriate provider or resource for diagnosis or treatment.
- 43. "Separate property" means property defined in A.R.S. § 25-213.
- 44. "Service location" means any location at which a member obtains any health care service provided by a contractor of record under the terms of a contract.
- 45. "Service site" means a location designated by a contractor of record as the location at which a person is to receive health care services.
- 46. "SESP" means state emergency services program.
- 47. "S.O.B.R.A." means Section 9401 of the Sixth Omnibus Budget Reconciliation Act, 1986, amended by the Medicare Catastrophic Coverage Act of 1988, 42 U.S.C. 1396a(a)(10)(A)(ii)(IX), July 1, 1988.
- 48. "Spouse" means the husband or wife who has entered into a contract of marriage, recognized as valid by Arizona.
- 49. "SSA" means Social Security Administration defined in P.L. 103-296, Title I.
- 50. "SSI" means Supplemental Security Income under Title XVI of the Social Security Act, as amended.
- 51. "SSN" means social security number.
- 52. "State alien" means an ~~unqualified~~ nonqualified alien described in A.R.S. § 36-2903.03(C).
- 53. "State emergency services program" means a program designed to provide emergency medical services identified as covered under R9-22-217 to treat an emergency medical condition for a person who is determined eligible under A.R.S. § 36-2905.05.
- 54. "Subcontract" means an agreement entered into by a contractor with any of the following:
 - a. A provider of health care services who agrees to furnish covered services to a member;
 - b. A marketing organization; or
 - c. Any other organization or person who agrees to perform any administrative function or service for a contractor specifically related to securing or fulfilling the contractor's obligation to the Administration under the terms of a contract.

R9-22-108. Grievance and ~~Appeal Process~~ Request for Hearing Related Definitions

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

- 1. ~~"AHCCCS hearing officer" means a person designated by the Director to preside over administrative hearings regarding eligibility appeals and grievances.~~
- 2. ~~"Appeal" means a review process initiated in accordance with Article 8.~~
"Administrative Law Judge" means the person defined in A.R.S. § 41-1092.
"Administrative review" means that portion of the grievance and request for hearing process beginning with the filing of a grievance with the Administration or its contractor and concluding with the issuance of a decision by the Administration or its contractor which advises the party of formal hearing rights.
"Complainant" means an applicant or member filing a grievance or request for hearing.
"Date of notice" means the date on a Notice of Action.
- 3. ~~"Grievance" means a complaint initiated in accordance with Article 8, which initiates an administrative review which does not involve a hearing. A party may request a hearing after an administrative review.~~
"Hearing" means an administrative hearing under Title 41, Chapter 6, Article 10.
"OAH" means the Office of Administrative Hearings defined in A.R.S. § 41-1092 et. seq.
"Respondent" means a party responsible for the adverse action which is the subject of a grievance or request for hearing.

ARTICLE 8. GRIEVANCE AND ~~APPEAL PROCESS~~ REQUEST FOR HEARING

R9-22-801. General Provisions ~~For All Grievances and Appeals~~ for a Grievance and a Request for Hearing

A. Definitions. In this ~~Article:~~ Article, "Adverse action" means any action for which a party may file a grievance or request a hearing.

- 1. ~~"Appellant" means an individual filing any grievance or appeal under this Article.~~

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2. ~~“Request for hearing” means an appeal of an adverse eligibility action; an appeal filed after an informal decision has been rendered on a grievance by the Administration; an appeal of a grievance decision rendered by a contractor; or an appeal filed because a contractor has failed to render a timely grievance decision.~~
 3. ~~“Respondent” means the party responsible for the action being grieved or appealed. In eligibility appeals regarding state-funded services, the county is the respondent. In eligibility appeals regarding SSI-related medical assistance only services, the Administration is the respondent. In most member grievances, the contractor generally is the respondent.~~
- B.** ~~Filing grievances and appeals. a grievance and a request for hearing.~~ Unless provided elsewhere in this Chapter, all grievances and appeals a grievance, a request for hearing, or other statements shall be considered filed when received in writing by the ~~Administration.~~ Administration, as established by the Office of Legal Assistance’s date stamp on the document.
- C.** Computation of time.
1. ~~In computing any period of time for establishing~~ To establish timeliness ~~of for filing grievances and appeals, a grievance,~~ the period shall ~~commence~~ begin the day after the act, event, or decision grieved ~~or appealed,~~ and shall include all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period shall be extended until the end of the next day that is not a weekend or a legal holiday.
 2. To establish timeliness of filing a request for hearing, the period of time shall be computed under R2-19-107.
- D.** ~~Appellant’s Complainant’s~~ hearing rights. The Administration shall ~~afford an appellant~~ allow a complainant the right to:
1. Have a hearing ~~that is conducted as specified in A.R.S. §§ 41-1061 and 41-1062; under A.R.S. § 41-1092; and~~
 2. Obtain copies of any relevant ~~document~~ nonprivileged documents from the respondent ~~or from AHCCCS~~ at the ~~appellant’s complainant’s~~ expense.
 3. ~~Appear at the hearing and be heard in person, by telephone if available, through a representative designated in writing by the appellant, or to submit to the Administration a written statement that is signed and notarized prior to the hearing.~~
 4. ~~Bring an interpreter to assist at the hearing.~~
 5. ~~Be provided an interpreter by the Administration if hearing challenged according to A.R.S. § 12-242.~~
- E.** Withdrawal or denial of a request for hearing.
1. Withdrawal of a request for hearing.
 - a. ~~The AHCCCS Chief Hearing Officer or designee~~ Administration shall ~~deny a request for hearing and deny a grievance or appeal~~ accept a written request for withdrawal if a written request for withdrawal is received from the ~~appellant complainant~~ before the date of the hearing. The case file then shall be closed. the hearing is scheduled with OAH.
 - b. If a notice of hearing has been issued, a complainant shall send a request for withdrawal to OAH.
 2. Denial of a request for hearing. The ~~AHCCCS Chief Hearing Officer or designee~~ Administration may deny a request for hearing ~~and dismiss a grievance or appeal~~ upon written determination that:
 - a. The request for hearing is untimely;
 - b. The request for hearing, grievance, or appeal hearing is not for a reason permitted under this Article;
 - c. ~~The appellant’s appeal rights have been waived under Article 3; or~~ The complainant’s right to hearing has been waived;
 - d. ~~The appeal request for hearing is otherwise moot.~~ moot, as determined by the Administration based on the factual circumstances of each case;
 - e. The subject matter of the grievance is a policy; or
 - f. The sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all applicants or members.
- F.** Notice of Hearing. The Notice of Hearing shall be in accordance with A.R.S. § 41-1061 and shall include the following information:
1. A statement asserting the appellant’s financial liability if AHCCCS benefits are continued during an eligibility appeal and a proposed discontinuance or redetermination denial is upheld by the Director, and
 2. A statement informing an appellant how to request a change in the scheduled hearing date.
- G.** Postponement:
1. ~~The AHCCCS Chief Hearing Officer or designee on the officer or designee’s own motion may postpone a hearing. When a request for postponement is made, it shall be in writing and received by the Administration, Office of Grievance and Appeals, no later than 5 days before the scheduled hearing date. The AHCCCS Chief Hearing Officer or designee may grant a request for postponement on a showing that:~~
 - a. There is substantial cause for the postponement, and
 - b. The cause is beyond the reasonable control of the party making the request.
 2. ~~If a postponement is granted, the hearing shall be rescheduled at the earliest practicable date.~~
- H.** Failure to appear for hearing. ~~If any party or representative fails to appear at a hearing without good cause or a postponement, the AHCCCS Chief Hearing Officer or designee may:~~

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1. Proceed with the hearing;
 2. Reschedule the hearing with further notice;
 3. Issue a decision based on the evidence of record, or
 4. Issue a default disposition.
- I.** Conduct of hearing. The hearing shall be conducted as specified in to A.R.S. §§ 41-1061 and 41-1062.
1. The hearing shall be conducted in an informal manner without formal rules of evidence or procedure.
 2. The AHCCCS Chief Hearing Officer or designee may:
 - a. Hold pre-hearing conferences to settle, simplify, or identify issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
 - b. Require parties to state their positions concerning the various issues in the proceeding;
 - c. Require parties to produce for examination those relevant witnesses and documents under their control;
 - d. Rule on motions and other procedural items;
 - e. Regulate the course of the hearing and conduct of participants;
 - f. Establish time limits for submission of motions or memoranda;
 - g. Impose appropriate sanctions against any individual failing to obey an order under these procedures, which may include:
 - i. Refusing to allow the individual to assert or oppose designated claims or defenses, or prohibiting that individual from introducing designated matters in evidence;
 - ii. Excluding all testimony of an unresponsive or evasive witness; and/or
 - iii. Expelling the individual from further participation in the hearing;
 - h. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice; and
 - i. Administer oaths or affirmations.
- J.** AHCCCS Hearing Officer recommended decision. After the conclusion of the hearing, unless the appellant withdraws or the parties stipulate to a settlement, the AHCCCS Hearing Officer shall prepare written findings of fact and conclusions of law and render a recommended decision to the Director.
- K.** Decision of the Director.
1. The Director may affirm, modify, or reject the Hearing Officer's recommendation in whole or in part; may remand a matter to any party or the Hearing Officer with specific instructions; or make any other appropriate disposition.
 2. The Director shall mail by certified mail a copy of the decision to all parties at the last known residence or place of business of each party.
 3. If a discontinuance or denial of AHCCCS eligibility is upheld, the decision also shall state that the appellant may reapply for AHCCCS benefits under the conditions specified in Article 3.
- L.F.** Petition Motion for rehearing or review. Refer to Exhibit A.
1. A Under A.R.S. § 41-1092.09, a party dissatisfied with the decision may petition the Director file with the Director a motion for rehearing or review of the decision for any of the following causes which materially affects the appellant's complainant's rights:
 - a. Irregularity in the proceedings of the a hearing or appeal whereby the that caused an aggrieved party was to be deprived of a fair hearing or appeal; hearing;
 - b. Misconduct of a party or the agency;
 - c. Newly discovered material evidence, which with reasonable diligence could not have been discovered and produced at the hearing;
 - d. That the decision is the result of passion or prejudice; or
 - e. That the decision is not justified by the evidence or is contrary to law.
 2. The petition for rehearing or review shall be filed not later than 15 days after the date of the Director's decision, which is the postmark date of the decision. The moving party also shall send a copy of the petition to all other parties. If a timely petition for rehearing or review is filed, the Director's decision is not a final administrative decision; rather, the final administrative decision is the decision the Director renders as a result of the petition.
 3. The petition for rehearing or review shall be in writing and shall specifically state the grounds upon which it is based. The Director shall review the sufficiency of the evidence if the petition is made upon the ground that the decision is not justified by the evidence.
 4. The Director may remand the case to any party; reopen the decision; If a motion for rehearing or review is filed timely, the Director or designee shall:
 - a. Order a rehearing;
 - b. order Order the taking of additional testimony or evidence before the Hearing Officer; an administrative law judge;
 - c. amend Amend findings of fact and conclusions of law;
 - d. make Make new findings and conclusions;
 - e. render Render an amended decision; or

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f. ~~deny~~ Deny the petition and affirm the previous decision.

5.3. ~~The Director, within~~ Within the time for filing a ~~petition~~ motion for rehearing or review, ~~the Director or the Director's designee~~ may on the Director's own motion order a rehearing or issue an amended decision for any reason for which the Director might have done so upon petition of a party.

M. Failure to submit a grievance, appeal, request for hearing, or petition for rehearing or review in a timely manner shall constitute a failure to exhaust administrative remedies required as a condition to seeking judicial relief.

G. Right to reapply. If a discontinuance or denial of eligibility is upheld, the decision shall state that a complainant may reapply.

~~R9-22-802. Eligibility Appeals For Applicants, Eligible Persons and Members Receiving State funded AHCCCS Services~~

~~A.~~ Adverse eligibility actions. An applicant, eligible person, or member receiving state-funded AHCCCS services may appeal and request a hearing concerning any of the following adverse eligibility actions:

- ~~1. Denial of eligibility,~~
- ~~2. Discontinuance of eligibility, or~~
- ~~3. Delay in the eligibility determination beyond 30 days from the date of application unless the head of household agrees to an extension in writing.~~

~~B.~~ Notice of an adverse eligibility action shall be personally delivered or mailed to the affected individual by regular mail. For purposes of this Section, the date of the Notice of Action shall be the date of personal delivery to the individual or the postmark date, if mailed.

~~C.~~ Appeals and requests for hearing:

- ~~1. An applicant, eligible person, member, head of household, or designated representative may appeal and request a hearing regarding an adverse eligibility action by completing and submitting the AHCCCS Request for Hearing form or by submitting a written request containing the following information:~~
 - ~~a. The case name,~~
 - ~~b. The adverse eligibility action being appealed, and~~
 - ~~c. The reason for appeal.~~
- ~~2. A request for hearing shall be filed not later than 15 days after the date of the notice of adverse action by mailing or delivering it to either the county eligibility office or the Administration, Office of Grievance and Appeals. For this Section only, the date of the request for hearing shall be the postmark date, if mailed, or the date of personal delivery.~~

~~D.~~ County responsibilities:

- ~~1. Counties shall maintain a register that documents the dates on which requests for hearings are submitted.~~
- ~~2. If requested, a county eligibility office shall assist an appellant or designated representative to complete of a Request for Hearing form.~~
- ~~3. A Pre hearing Summary shall be completed by the county eligibility office and shall summarize the facts and factual basis for the adverse eligibility action.~~
- ~~4. The county eligibility office shall send to the Administration, Office of Grievance and Appeals, the Pre-hearing Summary, a copy of the case file, and the Request for Hearing, which must be received by the Administration, Office of Grievance and Appeals, not later than 10 days from the date the county received the request for hearing. If the request for hearing is submitted directly to the Administration, the county shall send the materials to the Office of Grievance and Appeals not later than 10 days from the date of a request for the materials.~~
- ~~5. County review of eligibility determinations. If new information is acquired by the county that materially affects the adverse eligibility decision, the county shall complete a new application and render a decision according to the requirements specified in Article 3. The effective date of AHCCCS coverage shall be the date established in Article 3. A county decision in accordance with this subsection shall not be considered a disposition of a pending appeal.~~

~~E.~~ AHCCCS coverage during the appeal process:

- ~~1. Eligible persons or members appealing a discontinuance. A discontinuance is a termination of AHCCCS benefits before the last month of an individual's certification period. The effective date of a discontinuance shall be the 16th day after the date of the Notice of Action. An eligible person or member appealing a discontinuance of AHCCCS benefits within the 15 day time frame as specified in subsection (C) shall continue to be covered by AHCCCS until an adverse decision on appeal is rendered or until the end of the certification period set forth in R9-22-313, whichever comes 1st.~~
- ~~2. Individuals appealing a denial of AHCCCS coverage.~~
 - ~~a. A denial is an adverse eligibility decision that finds an applicant, eligible person, or member ineligible for AHCCCS benefits. A denial results from either an initial application or a redetermination that does not terminate benefits before the end of a current certification period.~~
 - ~~b. The effective date of a denial of an initial application is the date of the Notice of Action. An individual may appeal this denial within the 15 day time frame specified in subsection (C). If the denial is overturned, the effective date of AHCCCS coverage shall be established by the Director in accordance with applicable law.~~

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- e. ~~The effective date of a denial of a redetermination shall be the last day of the final month in the current certification period. An individual who appeals this denial within the 15-day time frame specified in subsection (C) shall continue to be covered by AHCCCS until administrative remedies are exhausted.~~
- 3. ~~An individual whose benefits are continued shall be financially liable for all AHCCCS benefits received during a period of ineligibility if a discontinuance decision or redetermination denial is upheld by the Director.~~

R9-22-802. Grievance

A. General. This Section provides the exclusive manner through which any applicant, member, or entity may grieve against the Administration, its contractors, or both in connection with any adverse action, decision, or policy. Refer to Exhibit A. This Section shall not apply to actions or decisions affecting a member's eligibility or to actions or decisions that reduce a member's services as a result of changes in state or federal law.

B. Direct grievance to the Administration.

- 1. If the adverse action, decision, or policy was made by a contractor, the complainant shall file the grievance with the contractor responsible for the decision, policy, or action being grieved, so the contractor may investigate and resolve the grievance under this Article and any applicable contracts. A complainant shall file a grievance with the Administration when grieving an adverse action, decision, or policy that was actually made or enacted by the Administration. In this instance, the Administration is the respondent. Members may file a grievance orally.
- 2. Except as provided in subsection (B)(3), a written grievance shall be filed with and received by the Administration, as determined by the Office of Legal Assistance's date stamp on the document, no later than 60 days after the date of notice issued by the Administration. Refer to Exhibit A.
- 3. A written grievance regarding a claim denial shall be filed under the timeframes in A.R.S. § 36-2903.01. Refer to Exhibit A.
- 4. A grievance shall include with particularity the factual and legal basis for the grievance and the relief requested. Failure to comply with this specificity requirement may result in the denial of a grievance. A grievance filed by a member does not need to meet this requirement.
- 5. The Administration may investigate a grievance and render an informal decision before scheduling a hearing. A hearing shall be scheduled if the Administration receives a request for hearing from any party no later than 35 days after the date of notice. Refer to Exhibit A.
- 6. If requested, a hearing shall be conducted under A.R.S. § 41-1092.

C. Grievance to a contractor.

- 1. Except as provided in subsection (C)(2), a grievance shall be filed with and received by the appropriate contractor no later than 60 days after the date of notice under A.R.S. § 36-2903.01. In this instance, the contractor is the respondent. Members may file grievances orally. Refer to Exhibit A.
- 2. A written grievance regarding a denial of a claim shall be filed under the timeframes in A.R.S. § 36-2903.01. Refer to Exhibit A.
- 3. A grievance shall include with particularity the factual and legal basis for the grievance and the relief requested. Failure to comply with this specificity requirement may result in the denial of the grievance. A grievance filed by a member does not need to meet this requirement.
- 4. A contractor shall issue a notice of the final decision to the complainant no later than 30 days after filing unless the parties agree on a longer period. The notice shall include the basis for the decision as well as the complainant's right to request a hearing from the Administration. The notice shall specify the manner in which a request for hearing may be filed with the Administration. Refer to Exhibit A.
- 5. The contractor shall record and retain information to identify:
 - a. The complainant.
 - b. The date of receipt, and
 - c. The nature of the grievance.
- 6. At the time of enrollment, a contractor shall give to a member written information regarding grievance procedures available through the contractor and the Administration.

D. A request for hearing regarding a contractor's decision.

- 1. After receiving a notice of the final decision from a contractor, a complainant may request a hearing from the Administration if:
 - a. The complainant files a written request for hearing no later than 35 days after the date of notice. Refer to Exhibit A; or
 - b. A decision is not rendered by the contractor 30 days after filing under subsection (C)(4) and the complainant files a written request for hearing based on the contractor's failure or refusal to decide the grievance in a timely manner.
- 2. The Administration may investigate a grievance and render an informal decision before scheduling a hearing. A hearing shall be scheduled if any party requests a hearing no later than 35 days after the date of notice of the informal decision of the Administration. Refer to Exhibit A.

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3. If requested, a hearing shall be conducted under A.R.S. § 41-1092.

R9-22-803. Eligibility Appeals for Applicants, Eligible Persons, and Members Receiving SSI-Related Medical Assistance Only AHCCCS Services Hearing for an Applicant and a Member Under 9 A.A.C. 22, Article 15, R9-22-1435, and R9-22-1704 – Refer to Exhibit A

~~A. Adverse eligibility actions. An applicant, eligible person, or member receiving SSI-related medical assistance only AHCCCS services may appeal and a member or applicant may request a hearing concerning any of the following adverse eligibility actions: actions. In this instance, the Administration is the respondent;~~

1. ~~Denial of eligibility, or eligibility. A denial is an adverse eligibility decision that finds an applicant ineligible for AHCCCS;~~
2. ~~Discontinuance of eligibility, or eligibility. A discontinuance is a termination of a member's AHCCCS eligibility;~~
3. ~~Delay in the eligibility determination beyond the 45- or 90-day timeframe prescribed in federal law from the date of application unless the applicant or representative agrees to an extension in writing; writing; or~~
4. ~~Adverse disability determination for an applicant under 9 A.A.C. 22, Article 15.~~

~~B. Notice of an adverse eligibility action shall be personally delivered or mailed to the affected individual by regular mail. For purposes of this Section, the date of the Notice of Action shall be the date of personal delivery to the individual or the postmark date, if mailed.~~

~~**C.B. Appeals and requests Request for hearing.**~~

1. ~~An applicant, eligible person, member, or designated representative may appeal and a member or applicant may request a hearing regarding an adverse eligibility action by completing and submitting to the Administration either the AHCCCS Request for Hearing form or by submitting a written request containing the following information:~~
 - a. The case name,
 - b. The adverse eligibility action being appealed, action, and
 - c. The reason for appeal; the request for hearing.
2. ~~For denials, the denials and discontinuances, the complainant shall file a request for hearing shall be filed not with the Administration no later than 20 35 days from after the date of the notice of adverse action. For discontinuances, the request for hearing shall be filed not later than 10 days after the effective date of action. The request for hearing shall be filed by mailing or delivering it to either the AHCCCS eligibility office or the Administration, Office of Grievance and Appeals. For this Section only, the date of the request for hearing shall be the postmark date, if mailed, or the date of personal delivery; notice. Refer to Exhibit A.~~

~~**D. Eligibility office responsibilities.**~~

1. ~~The eligibility office shall maintain a register that documents the dates on which requests for hearings are submitted.~~
2. ~~If requested, the eligibility office shall assist an appellant or designated representative to complete a Request for Hearing form.~~
3. ~~A Pre-hearing Summary shall summarize the facts and factual basis for the adverse eligibility action.~~
4. ~~The eligibility office shall send to the Administration, Office of Grievance and Appeals, the Pre-hearing Summary, a copy of the case file, and the Request for Hearing, which must be received by the Administration, Office of Grievance and Appeals, not later than 10 days from the date the eligibility office received the request for hearing. If the request for hearing is submitted directly to the Administration, Office of Grievance and Appeals, the eligibility office shall send the materials to the office of Grievance and Appeals not later than 10 days from the date of a request for the materials.~~

~~**E.C. AHCCCS coverage during the appeal hearing process.**~~

1. ~~Eligible persons or members appealing a discontinuance. A discontinuance is a termination of AHCCCS benefits. For discontinuance actions requiring 40 days' 10-day advance notice, an eligible person or a member requesting a hearing whose request for hearing is filed before the effective date of the adverse action shall continue to receive AHCCCS benefits coverage until an adverse decision on the appeal is rendered; a final administrative decision is rendered under A.R.S. § 41-1092.08 unless coverage is waived by the member.~~
2. ~~Applicants appealing a denial of AHCCCS coverage:~~
 - a. ~~A denial is an adverse eligibility decision that finds an applicant ineligible for AHCCCS benefits.~~
 - b. ~~An applicant may appeal a denial within the time frames specified in subsection (C)(2). If the denial is overturned, the effective date of AHCCCS coverage shall be established by the Director in accordance with applicable law.~~
- 3-2. ~~An eligible person or If a discontinuance decision is upheld by the Director, a member whose benefits are continued shall may be financially liable for all AHCCCS benefits received during a period of ineligibility if a discontinuance decision is upheld by the Director. ineligibility.~~
3. ~~A member who requests a hearing regarding the termination of family planning services under R9-22-1435 or the guaranteed enrollment period under R9-22-1704 shall not continue to be AHCCCS-eligible after the end of the designated time period under A.R.S. § 36-2907.04 and 42 U.S.C. 1396a(e)(2). If the termination is overturned, the effective date of AHCCCS coverage shall be established by the Director in accordance with applicable law.~~

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D. An applicant who requests a hearing regarding a denial of AHCCCS eligibility. An applicant may request a hearing regarding an eligibility denial no later than 35 days after the date of notice, as specified in subsection (B)(2). If the denial is overturned, the effective date of AHCCCS eligibility shall be established by the Director in accordance with applicable law.

~~R9-22-804.~~ Grievances

A. ~~This Section provides the exclusive manner through which any individual or entity may grieve against the Administration, its contractors, or both in connection with any adverse action, decision, or policy. This Section shall not apply to actions or decisions affecting an eligible person's or member's eligibility or to actions or decisions that reduce a categorically eligible person's or member's benefits as a result of changes in state or federal law.~~

B. ~~Direct grievances to the Administration.~~

- ~~1. A grievance may be filed directly with the agency only by individuals not enrolled with a contractor; by contractors; by counties; and by individuals or entities grieving an adverse action, decision, or policy actually made or enacted by the Administration. If the aggrieved adverse action, decision, or policy actually was made by a contractor, the appellant shall first file the grievance with the contractor responsible for the decision, policy, or action being grieved, so the contractor may investigate and resolve the grievance in accordance with this Article and any applicable contracts.~~
- ~~2. Except as provided in subsection (B)(3) a written grievance shall be filed with and received by the Administration not later than 35 days after the date of the adverse action, decision, or policy implementation being grieved.~~
- ~~3. A written grievance regarding a claim denial shall be filed not more than 12 months after the date of the service for which payment is claimed. A grievance challenging a reinsurance claim denial by the Administration shall be filed not more than 12 months after the close of the contract year in which the claim was incurred. If the claim is denied less than 35 days before expiration of the 12-month time period, the dissatisfied party shall have 35 days from the date of the denial to file the grievance.~~
- ~~4. A grievance shall state with particularity the factual and legal basis for the grievance and the relief requested. Failure to comply with this specificity requirement shall result in the denial of the grievance.~~
- ~~5. The Administration, in its sole discretion, may investigate a grievance and render a written informal decision before scheduling a hearing. A hearing shall be scheduled if any party timely requests a hearing within 15 days of the postmark date of the informal decision.~~
- ~~6. If a hearing is requested, it shall be conducted as provided in R9-22-801.~~

C. ~~Grievances to contractors.~~

- ~~1. Except as provided in subsection (C)(2) a grievance shall be filed with and received by the appropriate contractor not later than 35 days after the date of the adverse action or decision. Members may file grievances orally.~~
- ~~2. A written grievance regarding a claim denial shall be filed not more than 12 months after the date of the service for which payment is claimed.~~
- ~~3. A grievance shall state with particularity the factual and legal basis for the grievance and the relief requested. Failure to comply with this specificity requirement shall result in the denial of the grievance.~~
- ~~4. A final decision shall be rendered by the contractor on all grievances within 30 days of filing unless the parties agree on a longer period. The decision by the contractor shall be personally delivered or mailed by certified mail to the parties, and shall state the basis for the decision as well as the grievant's right to appeal the decision to the Administration. The contractor's final decision shall specify the manner in which an appeal to the Administration may be filed.~~
- ~~5. The contractor shall record and retain information to identify the grievant, date of receipt, and nature of the grievance.~~
- ~~6. At the time of enrollment, a contractor shall give to a member written information regarding grievance procedures available through the contractor and the Administration.~~

D. ~~Appeal of contractor decisions to the Administration.~~

- ~~1. After first grieving to the appropriate contractor, a grievant may appeal to and request a hearing from the Administration, Office of Grievance and Appeals if:
 - ~~a. The grievant files a written notice of appeal not more than 15 days from the date of final decision of the contractor, which is the earlier of the date of personal delivery or the postmark date of certified mail; or~~
 - ~~b. A decision is not timely rendered by the contractor until 30 days, and the grievant files a written notice of appeal based upon the contractor's failure or refusal to decide the grievance in a timely manner.~~~~
- ~~2. The Administration, in its sole discretion, may investigate a grievance and render a written informal decision before scheduling a hearing. A hearing shall be scheduled if any party timely requests a hearing within 15 days from the postmark date of the informal decision of the Administration.~~
- ~~3. If a hearing is requested, it shall be conducted as provided in R9-22-801.~~

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R9-22-804. Eligibility Hearing for an Applicant and a Member Under 9 A.A.C. 22, Article 16 – Refer to Exhibit A

A. Adverse eligibility actions. A member or applicant under 9 A.A.C. 22, Article 16 may request a hearing concerning any of the following adverse eligibility actions. In this instance, the county is the respondent.

1. Denial of eligibility. A denial is an adverse eligibility decision that finds a member or applicant ineligible for coverage. A denial results from either an initial application or a redetermination where the redetermination does not terminate coverage before the end of a current certification period;
2. Discontinuance of eligibility. For this Section, a discontinuance is a termination of coverage before the end of the current certification period;
3. Delay in the eligibility determination beyond 30 days after the date of application unless the head of household agrees to an extension in writing; or
4. Approval of a certification period ending less than 6 full months after the date of notice under R9-22-1615.

B. Request for hearing.

1. A member or applicant may request a hearing regarding an adverse eligibility action by completing and submitting to the Administration either the AHCCCS Request for Hearing form or a written request containing the following information:
 - a. The case name.
 - b. The adverse eligibility action, and
 - c. The reason for the request for hearing.
2. A complainant shall file a request for hearing with the county eligibility staff or the Administration not later than 35 days after the date of notice. A request for hearing shall be considered filed when received in writing by the county eligibility staff or the Administration. Refer to Exhibit A.

C. County responsibilities.

1. The county eligibility staff shall maintain a register that documents the date that a request for hearing was received by county eligibility staff.
2. If requested, county eligibility staff shall assist a complainant or designated representative to complete a Request for Hearing form.
3. The county eligibility staff shall complete a pre-hearing summary that summarizes the facts and factual basis for the adverse eligibility action.
4. The county eligibility staff shall send the Administration the pre-hearing summary, a copy of the case file, and the Request for Hearing, which shall be received by the Administration no later than 10 days after the date the county received the request for hearing from the complainant. If the request for hearing is submitted directly to the Administration, the county shall send the materials to the Office of Legal Assistance no later than 10 days after the date of a request for the materials.
5. If the county eligibility staff acquires new information that reverses the denial or discontinuance, the county eligibility staff shall rescind the determination and render a new determination under the requirements specified in 9 A.A.C. 22, Article 16. The effective date of AHCCCS eligibility shall be the date established in 9 A.A.C. 22, Article 16. The county eligibility staff's action to rescind the determination and render a new determination is not a disposition of a pending request for hearing.

D. AHCCCS coverage during the hearing process. Refer to exhibit A.

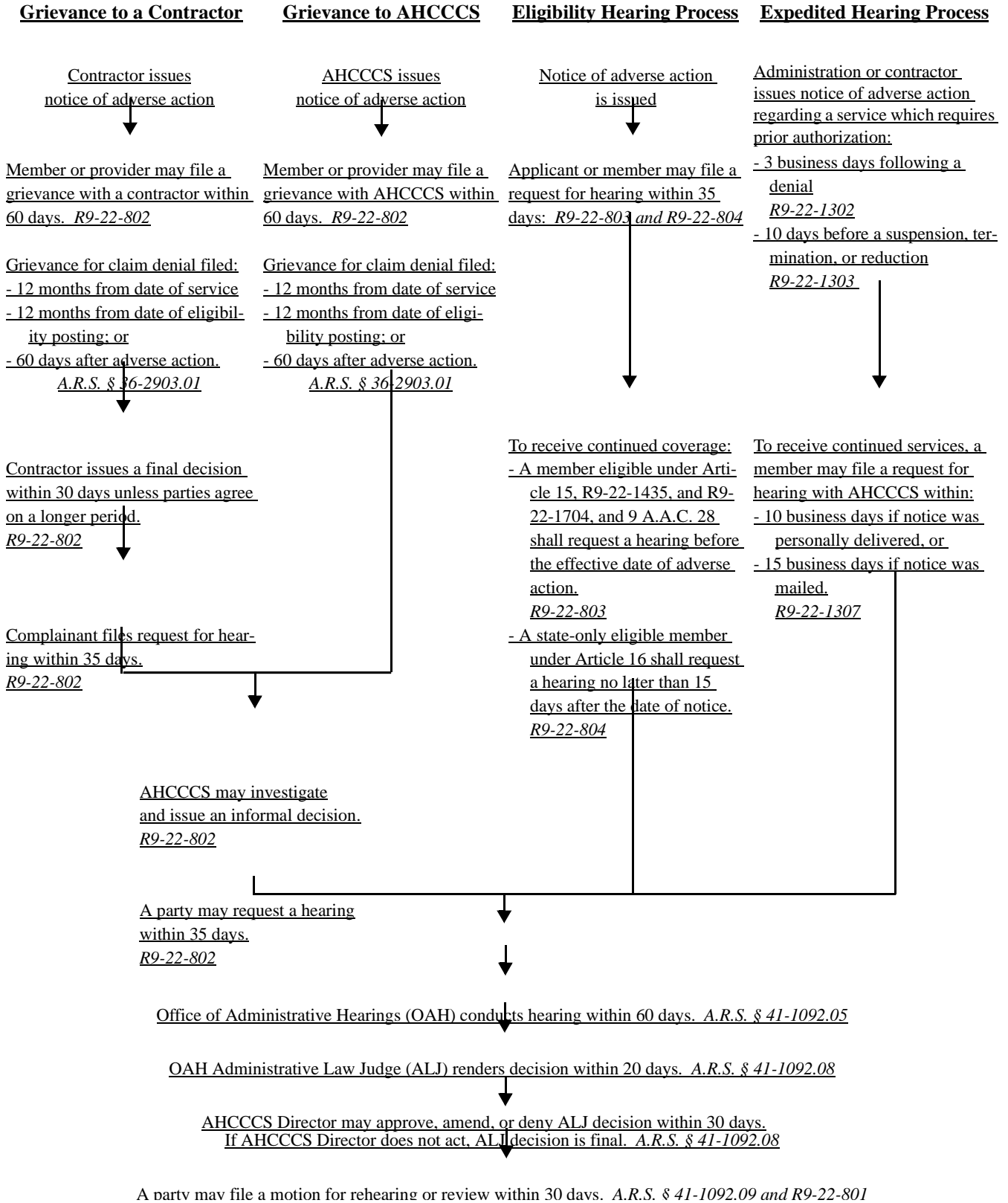
1. A member who requests a hearing regarding a discontinuance of MI/MN or ELIC coverage no later than 15 days after the date of notice shall continue to receive AHCCCS coverage until a final administrative decision is rendered or until the end of the certification period described in R9-22-1615, whichever occurs 1st.
2. If a discontinuance decision is upheld by the Director, a member whose benefits are continued under subsection (D)(1) may be financially liable for all AHCCCS benefits received during a period of ineligibility.

E. Effective date of a denial of AHCCCS eligibility.

1. The effective date of a denial of an initial application is the date of the notice of action. An applicant may request a hearing regarding this denial no later than 35 days after the date of notice, as specified in subsection (B). If the denial is overturned, the effective date of AHCCCS eligibility shall be established by the Director in accordance with applicable law.
2. The effective date of a denial of a redetermination shall be the last day of the final month in the current certification period. A person may request a hearing regarding this denial no later than the 35 days after the date of notice. A member or applicant who requests a hearing regarding a denial of a redetermination shall not continue to be AHCCCS-eligible after the end of the current certification period. If the denial is overturned, the effective date of AHCCCS eligibility shall be established by the Director in accordance with applicable law.

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Exhibit A. Grievance and Request for Hearing Process



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ARTICLE 12. BEHAVIORAL HEALTH SERVICES

R9-22-1208. Grievance and Appeal Request for Hearing Process

- A. Processing of a grievance. ~~All grievances~~ A grievance regarding ~~any~~ an adverse action, decision, or policy regarding a behavioral health services ~~service~~ shall be reviewed ~~according to~~ under A.R.S. §§ 36-2903.01, 36-3413, 41-1092.02 and 9 A.A.C. 22, ~~Article 8 and 9 A.A.C. 22, Article 13. Articles 8 and 13. Refer to Exhibit A in 9 A.A.C. 22, Article 8.~~
- B. Member ~~appeal~~ request for hearing. A member's ~~appeal of~~ request for hearing regarding a grievance under this Article shall be conducted as a contested case as specified in 9 A.A.C. 22, Article 8.
- ~~C. Other appeals. An appeal of the ADHS director's decision after an Office of Administrative Hearing decision other than de novo hearing requests by a member shall be limited to an appellate review by the Administration to determine whether substantial evidence in the record supports the decision.~~

ARTICLE 13. MEMBERS' RIGHTS AND RESPONSIBILITIES FOR EXPEDITED HEARINGS

R9-22-1301. General Intent and Definitions

- A. This Article defines the notice and ~~appeal~~ expedited hearing process when the Administration or a contractor ~~denies, reduces, suspends, or terminates a service and provides a party with the opportunity for an expedited hearing, which requires prior authorization. This Article provides an expedited hearing process and opportunity for continued services as an alternative to the provisions of 9 A.A.C. 22, Article 8.~~
- B. Definitions. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this ~~Chapter~~ Article have the following meanings unless the context explicitly requires another meaning:
1. "Action" means a denial, termination, suspension, or reduction of a covered service as defined in R9-22-102.
 2. "Contractor" means a health plan, ALTCS program contractor, the Arizona Department of Health ~~Services, Services Division of Behavioral Health Services,~~ or a Tribal or Regional Behavioral Health Authority.
 3. "Date of action" means the effective date for a termination, suspension, or reduction.
 4. "Denial" means the decision not to authorize a requested service.
 5. "Notice" means a written statement that meets the requirements specified in R9-22-1304.
 6. "Party" means a member, contractor, or the Administration.
 7. "Request for a hearing" means a clear expression by a member or a member's authorized representative that the member wants the opportunity to present the member's case to a reviewing authority.

R9-22-1302. Denial of a Request for a Service

The Administration or a contractor shall provide a member with written notice no later than 3 business days ~~from~~ after the date ~~when the Administration or a contractor denies authorization for a requested service is denied by the party giving notice, which the member does not currently receive. Refer to Exhibit A in 9 A.A.C. 22, Article 8.~~

R9-22-1303. Reduction, Suspension, or Termination of a Service

Except as permitted under R9-22-1305 and R9-22-1306, if the Administration or contractor reduces, suspends, or terminates a service currently provided by the Administration or contractor, the Administration or contractor shall provide the member written ~~Notice of Intended Action~~ notice at least 10 days ~~prior to~~ before the effective date of the intended action. Refer to Exhibit A in 9 A.A.C. 22, Article 8.

R9-22-1304. Content of Notice

- A ~~Notice of Intended Action, notice~~ required under R9-22-1302 or R9-22-1303 ~~of this Article,~~ shall contain the following:
1. A statement of the action the Administration or a contractor has taken or intends to take;
 2. The ~~succinct and~~ specific reason for the ~~intended~~ action;
 3. The specific law or rule that supports the action, or the change in federal or state law that requires the action;
 4. A ~~change in federal or state law that requires an action;~~
 - ~~5-4.~~ An explanation of:
 - a. A member's right to request an evidentiary hearing; and
 - b. The circumstances under which the Administration or a contractor shall grant a hearing for an action based on a change in the law; and
 - ~~6-5.~~ An explanation of the circumstance under which the Administration or a contractor shall continue a covered service if a member ~~appeals an action for a~~ requests a hearing regarding a service:
 - a. Reduction,
 - b. Suspension, or
 - c. ~~Termination of a service.~~ Termination.

R9-22-1305. Exceptions from an Advance Notice

The Administration or a contractor may mail a ~~Notice of Intended Action~~ notice for a reduction, suspension, or termination of a service ~~not~~ no later than the date of action if the Administration or a contractor:

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1. Has factual information confirming the death of a member;
2. Receives a written statement signed by the member that:
 - a. States services are no longer wanted; or
 - b. Provides information which requires a reduction or termination of a service and indicates that the member understands that a reduction or termination of a service shall be the result of providing that information;
3. Learns that a member has been admitted to an institution which makes the member ineligible for services;
4. Does not know the member's whereabouts and mail directed to the member is returned by the post office and no forwarding address is provided;
5. Has established the fact that the member has been approved for Medicaid services outside the state of Arizona;
6. Knows that a member's primary care provider has prescribed a change in the level of medical care; or
7. Knows the ~~Notice of Intended Action~~ notice involves an adverse determination for preadmission screening requirements specified in A.R.S. § 36-2936 for an ALTCS member.

R9-22-1307. Expedited Hearing Process

- A. Alternative hearing process. ~~This Section provides an alternative expedited hearing process for denials defined in R9-22-1301(B)(4) and an alternative expedited hearing process and continued services for actions defined in R9-22-1301(B)(1). Except as stated in this Section, the provisions of 9 A.A.C. 22, Article 8 do not apply. If the Administration determines that a request for hearing filed according to this Section is not timely or not a proper appeal of a denial or action as defined in R9-22-1301(B), the request for hearing shall instead be considered a grievance according to 9 A.A.C. 22, Article 8 and, if appropriate, forwarded to the contractor within 10 business days from the date the Administration receives the request for processing according to 9 A.A.C. 22, Article 8. In this event, services shall not be continued as provided in this Section. If a member does not seek continued services or an expedited hearing, the member may file a grievance according to 9 A.A.C. 22, Article 8.~~
1. Under the following circumstances, a request for hearing shall be considered a grievance under 9 A.A.C. 22, Article 8, and the Administration shall forward the request to the contractor within 10 business days after the day the Administration receives the request:
 - a. The Administration determines that a request for hearing filed under this Section is not timely, as determined by the Office of Legal Assistance's date stamp on the document; or
 - b. The request for hearing does not involve the denial, reduction, suspension, or termination of a service.
 2. To obtain an expedited hearing or to obtain an expedited hearing and continued services, a member shall file a request for hearing in the same manner as provided in R9-22-803.
- B. Timeframes. Refer to Exhibit A in 9 A.A.C. 22, Article 8. If the Administration or a contractor denies a service that requires authorization or reduces, suspends, or terminates an existing service; and the member ~~appeals~~ requests a hearing regarding the action and requests continued services during the hearing process or requests an expedited hearing of a denial for authorization, a member ~~must~~ shall file a request for hearing:
1. No later than 10 business days ~~from~~ after the date of personal delivery of the ~~Notice of Intended Action~~ notice to the member; or
 2. No later than 15 business days ~~from~~ after the postmark date, if mailed, of the ~~Notice of Intended Action~~ notice.
- C. Expedited hearing. A hearing under this Section shall be held no sooner than 20 days and not later than 40 days ~~from~~ after the Administration's receipt of the request for hearing. Alternatively, the hearing may be held sooner than 20 days upon the agreement of all of the parties or upon written motion of 1 of the parties ~~establishing, in the discretion of the Administration, establishing~~ extraordinary circumstances or the possibility of irreparable harm if the hearing is not held sooner.
- D. Notice of hearing date. The Administration shall provide notice of the hearing date to the member or the authorized representative and to all other parties to the ~~appeal~~ hearing.
- E. Responsibilities of the Administration or a contractor. The Administration or a contractor shall provide the current level of an existing service during the expedited hearing process, if a request for expedited hearing and ~~request to continue services are properly filed according to this Section.~~ continued services is filed in a timely manner under this Section.
- F. Previously authorized service:
1. If a member's primary care provider ~~orders~~ requests authorization for a service that was previously authorized for the member, the Administration or a contractor may issue a written denial ~~according to~~ under R9-22-1302, if the Administration or a contractor considers the request new and independent of any previous authorization. If the member's primary care provider asserts that the requested service or treatment is a necessary continuation of the previous authorization, and the member challenges the denial on this basis, then the service shall be continued pending ~~appeal, a hearing decision~~ unless:
 - a. 1. The parties reach some other agreement, or
 - b. 2. The Administration or contractor believes the primary care provider's request endangers the member.
 2. ~~Any dispute regarding reimbursement of a service under this Section is reserved until the provider submits a claim.~~

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- G.** Responsibility of a member. A member whose service is continued during the expedited hearing process is financially liable for the service received if the Director upholds the decision to reduce, suspend, or terminate the service.
- H.** General provisions. ~~The~~ If an expedited hearing process is requested, a hearing shall be conducted according to R9-22-801 subsections (A) through (E) and (G) through (M) under A.R.S. § 41-1092.

R9-22-1308. Maintenance of Records

The party providing ~~Notice of Intended Action~~ notice shall maintain records of the written notification and the date of the notice given to the member.

R9-22-1309. Member Handbook

A contractor shall furnish each member with a handbook, as specified in contract, that explains a member's right to file a grievance or ~~appear~~ request a hearing concerning a denial or an action that affects a member's receipt of medical services.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 27. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
HEALTH CARE FOR PRIVATE EMPLOYER GROUPS/AHCCCS ADMINISTERED**

PREAMBLE

- 1. Sections Affected**

<u>Sections Affected</u>	<u>Rulemaking Action</u>
R9-27-101	Amend
Article 6	Amend
R9-27-601	Amend

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

Authorizing statute: A.R.S. § 36-2912(G)(6)

Implementing statute: A.R.S. §§ 36-2912(G)(6) and 41-1092.02

- 3. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 6 A.A.R. 659, February 11, 2000

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

Name:	Cheri Tomlinson, Federal and State Policy Administrator
Address:	AHCCCS Office of Policy Analysis and Coordination 801 East Jefferson, Mail Drop 4200 Phoenix, AZ 85034
Telephone:	(602) 417-4198
Fax:	(602) 256-6756

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

The Administration amended 9 A.A.C. 27, Article 6 – Grievance and Request for Hearing, to comply with changes to state statute. The changes were implemented on July 1, 1999, when the hearing process moved from Healthcare Group Administration (HCGA) to the Office of Administrative Hearings (OAH). Most of the remaining changes were made to provide additional clarity and conciseness to existing rule language.

- 6. Reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:**

Not applicable

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

Not applicable

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

The following entities will benefit from the changes which clarify their roles in the grievance and request for hearing process:

- a. Healthcare Group Administration (HCGA);
- b. Office of Administrative Hearings (OAH);
- c. Members
- d. Healthcare Group Plans; and
- e. Healthcare Group providers.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Cheri Tomlinson, Federal and State Policy Administrator
Address: AHCCCS
Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, AZ 85034
Telephone: (602) 417-4198
Fax: (602) 256-6756

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: May 16, 2000
Time: 10:30 a.m.
Location: Casa Grande ALTCS Office
500 North Florence Street
Casa Grande, AZ 85222
Nature: Public Hearing
Date: May 17, 2000
Time: 10:00 a.m.
Location: AHCCCS
701 East Jefferson
Phoenix, AZ 85034
Turquoise Room
Location: ALTCS: Arizona Long-term Care System
110 South Church, Suite 3250
Tucson, AZ 85701
Location: ALTCS: Arizona Long-term Care System
3480 East Route 66
Flagstaff, AZ 86004
Nature: Videoconference Oral Proceeding

The Administration shall accept written comments until 5:00 p.m., Wednesday, May 17, 2000. Please submit comments to the following person:

Name: Cheri Tomlinson, Federal and State Policy Administrator
Address: AHCCCS
Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, AZ 85034
Telephone: (602) 417-4198
Fax: (602) 256-6756

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

Not applicable

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

None

13. Was this rule previously adopted as an emergency rule?

No

14. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 27. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
HEALTH CARE FOR PRIVATE EMPLOYER GROUPS/AHCCCS ADMINISTERED**

ARTICLE 1. DEFINITIONS

Section

R9-27-101. Definitions

ARTICLE 6. GRIEVANCE AND APPEAL PROCESS REQUEST FOR HEARING

Section

R9-27-601. ~~Grievances and Appeals~~ Grievance and Request for Hearing

ARTICLE 1. DEFINITIONS

R9-27-101. Definitions

In addition to the definitions contained in A.R.S. Title 36, Chapter 29, unless the context explicitly requires another meaning:

1. "AHCCCS" means the Arizona Health Care Cost Containment System.

"Administrative law judge" means the person defined in A.R.S. § 41-1092.

"Adverse action" means any action, including adverse eligibility actions, for which a party may file a grievance or request a hearing.

"Administrative review" means that portion of the grievance and request for hearing process beginning with the filing of a grievance with the Administration or its contractor and concluding with the issuance of a decision by the Administration or its contractor which advises the party of formal hearing rights.

2. "Ambulance" means any vehicle defined in A.R.S. § 36-2201(2).

3. "Clean claim" means one 1 that can be processed without obtaining additional information from the provider of the service or from a 3rd party. 3rd-party. It does not include a claim from a provider who is under investigation for fraud or abuse, or a claim under review for medical necessity.

4. "Coinsurance" means a predetermined amount a member agrees to pay to a provider for covered services. A coinsurance payment is a percentage of the fee schedule rate for the services.

"Complainant" means a person filing any grievance or request for hearing under this Article.

5. "Copayment" means a monetary amount specified by the Healthcare Group Administration which a member or dependent pays directly to a provider at the time covered services are rendered.

6. "Covered services" means the health and medical services described in R9-27-202.

"Date of notice" means the date on a Notice of Action or the effective date of a new policy.

7. "Day" means a calendar day unless otherwise specified in the text.

8. "Deductible" means a fixed annual dollar amount a member agrees to pay for certain covered services before the Healthcare Group Plan agrees to pay.

9. "Dependent" means the eligible spouse and children of an employee member under R9-27-303.

10. "Eligible employee" means an employee who is eligible for Healthcare Group coverage under R9-27-302.

11. "Emergency ambulance service" means:

- a. Transportation by an ambulance or air ambulance company for persons requiring emergency medical services.
- b. Emergency medical services that are provided by a person certified by the Arizona Department of Health Services to provide the services before, during, or after a member is transported by an ambulance or air ambulance company.

12. "Emergency medical services" means medical services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:

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- a. Placing the patient's health in serious jeopardy;
 - b. Serious impairment to bodily functions; or
 - c. Serious dysfunction of any bodily organ.
13. "Employer group" means the aggregate enrollment of an employed group or business that is contracting with a Healthcare Group Plan for covered services.
14. "Employee member" means an enrolled employee of an employer group.
15. "Enrollment" means the process by which an employer group or member applies for coverage and contracts with a Healthcare Group Plan.
16. "Full-time employee" means an employee who works at least 20 hours per week and expects to continue employment for at least 5 months following enrollment.
17. ~~"Grievance" means a complaint arising from an adverse action, decision, or policy by a Healthcare Group Plan, subcontractor, noncontracting provider, or the Healthcare Group Administration, presented by an individual or entity specified in R9-27-601, which initiates an administrative review which does not involve a hearing but after which a party may request a hearing.~~
18. "Group Service Agreement (GSA)" means a contract between an employer group and a Healthcare Group Plan.
- "Healthcare Group Administration (HCGA)" means the section within AHCCCS that directs and regulates the continuous development and operation of the HCG Program.
19. "Healthcare Group of Arizona (HCG)" means the registered name of the Healthcare Group Program, which is a pre-paid medical coverage product marketed by the Healthcare Group Plans to small uninsured businesses and political subdivisions within the state.
20. ~~"Healthcare Group Administration (HCGA)" means the section within AHCCCS that directs and regulates the continuous development and operation of the HCG Program.~~
21. "Healthcare Group Plan (HCG Plan or Plan)" means a prepaid health plan that is currently under contract with the HCGA to provide covered services.
- "Hearing" means an administrative hearing under Title 41, Chapter 6, Article 10.
22. "Hospital" means a health care institution licensed as a hospital by the Department of Health Services under A.R.S. Title 36, Chapter 4, Article 2, and certified as a provider under Title XVIII of the Social Security Act, as amended, or is determined by AHCCCS to meet the requirements for certification under Title XVIII of the Social Security Act, as amended.
23. "Inpatient hospital services" means medically necessary services that require an inpatient stay in an acute care hospital. Inpatient hospital services are provided by or under the direction of a physician or other health care practitioner upon referral from a member's primary care provider.
24. "Life threatening" means any condition for which a delay in obtaining pre-authorization or traveling to an approved medical facility would have a severe adverse effect on the patient's condition.
25. "Medical record" means a single, complete record kept at the site of a member's primary care provider which documents the medical services received by the member, including inpatient discharge summary, outpatient care, and emergency care.
26. "Medical services" means services pertaining to medical care that are performed at the direction of a physician, on behalf of members by physicians, nurses, or other health care practitioners and technical personnel.
27. "Medically necessary" means covered services provided by a physician or other health care practitioner within the scope of the health care practitioner's practice under state law to:
- a. Prevent disease, disability, and other adverse health conditions or their progression; or
 - b. Prolong life.
28. "Member" means an employee or dependent who is enrolled with a HCG Plan.
29. "Noncontracting provider" means a provider who renders covered services to a member but who does not have a sub-contract with the member's HCG Plan.
- "OAH" means the Office of Administrative Hearings defined in A.R.S. § 41-1092 et seq.
30. "Other health care practitioner" means a person other than a physician who is licensed or certified under Arizona law to deliver health care services.
31. "Outpatient services" means medically necessary services that may be provided in any setting on an outpatient basis (does not require an overnight stay in an inpatient hospital). Outpatient services are provided by or under the direction of a physician or other health care practitioner, upon referral from a member's primary care provider.
32. "Pharmaceutical services" means medically necessary drugs prescribed by a physician, a practitioner, or dentist upon referral by a primary care provider and dispensed ~~in accordance with~~ under R9-27-207.
33. "Physician services" means services provided within the scope of practice of medicine or osteopathy as defined by state law or by or under the personal supervision of ~~an individual~~ a person licensed under state law to practice medicine or osteopathy.
34. "Political subdivision" means the state of Arizona or a county, city, town, or school district within the state.

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35. "Primary care practitioner" means a physician's assistant or a registered nurse practitioner who is certified and practicing in an appropriate affiliation with a physician, as authorized by law.
36. "Pre-existing condition" means an illness or injury that is diagnosed or treated within the 12-month period preceding the effective date of coverage.
37. "Premium" means the monthly prepayment submitted to HCGA by the employer group.
38. "Pre-payment" means submission of the employer group's premium payment 30 days in advance of the effective date of coverage ~~in accordance with~~ under R9-27-306.
39. "Prescription" means an order to a provider for covered services, which is signed or transmitted by a provider licensed under applicable state law to prescribe or order the services.
40. "Primary care provider" means a patient's primary care physician or a primary care practitioner.
41. "Prior authorization" means the process by which the HCG Plan authorizes, in advance, the delivery of ~~covered services.~~ covered services.
42. "Quality management" means a methodology used by professional health personnel to assess the degree of conformance to desired medical standards and practices and to implement activities designed to continuously improve and maintain quality service and care, and which is performed through a formal program with involvement of multiple organizational components and committees.
- "Respondent" means the party responsible for the adverse action which is the subject of a grievance or request for hearing.
43. "Referral" means the process by which a primary care provider directs a member to another appropriate provider or resource for diagnosis or treatment.
44. "Rider or contract rider" means an amendment to the group service agreement between an employer group and a HCG Plan.
45. "Scope of services" means the covered, limited, and excluded services listed in R9-27-201 through R9-27-210.
46. "Service area" means the geographic area designated by HCGA where each HCG Plan shall provide covered health care benefits to members directly or through subcontracts.
47. "Spouse" means the husband or wife of a HCG member who has entered into a marriage recognized as valid by Arizona.
48. "Subcontract" means an agreement entered into by a HCG Plan with any of the following:
- a. A provider of health care services who agrees to furnish covered services to members;
 - b. A marketing organization; or
 - c. Any other organization.
49. "Subscriber" means an enrolled employee of an employer group.
50. "Subscriber agreement" means a contract between an employee member and HCG Plan.
51. "Utilization control" means an overall accountability program encompassing quality management and utilization review.
52. "Utilization review" means a methodology used by professional health personnel to assess the medical indications, appropriateness, and efficiency of care provided.

ARTICLE 6. GRIEVANCE AND APPEAL PROCESS REQUEST FOR HEARING

R9-27-601. Grievances and Appeals Grievance and Request for Hearing

- A.** ~~The provisions of this Article provide~~ This Article provides the exclusive manner through which any ~~individual person or~~ individual person or entity may grieve against the HCGA, the HCG Plans, or both in connection with any adverse action, decision, or policy.
- B.** ~~Definitions. For the purpose of this Article:~~
1. ~~"Appellant" means the individual or entity filing any grievance or appeal under this Article.~~
 2. ~~"Request for hearing" means an appeal of an adverse eligibility action; an appeal filed after an informal decision has been rendered on a grievance by the HCGA; an appeal of a grievance decision rendered by a HCG Plan; or an appeal filed because a HCG Plan has failed to render a timely grievance decision.~~
 3. ~~"Respondent" means the party responsible for the action being grieved or appealed. In most grievances, the HCG Plan is the respondent.~~
- ~~C.~~B.** ~~Filing grievances and appeals. a grievance and a request for hearing.~~ a grievance and a request for hearing. Unless provided elsewhere in this Chapter, ~~all grievances and appeals~~ a grievance and a request for hearing or other statements shall be considered filed when received in writing by the ~~HCGA.~~ HCGA, as determined by the HCGA's date stamp on the document.
- ~~D.~~C.** Computation of time.
1. ~~In computing any period of time for establishing~~ To establish timeliness ~~of for filing grievances and appeals, a~~ of a grievance, the period shall ~~commence~~ begin the day after the act, event, or decision grieved ~~or appealed,~~ and shall include all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period shall be extended until the end of the next day which is not a weekend or a legal holiday.
 2. To establish timeliness of filing a request for hearing, the period of time shall be computed under R2-19-107.
- D.** Complainant's hearing rights. The HCGA shall allow a complainant the right to:

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1. Have a hearing under A.R.S. § 41-1092; and
 2. Obtain copies of any relevant nonprivileged documents from the respondent at the complainant's expense.
- E.** Withdrawal or denial of a request for hearing.
1. Withdrawal of a request for hearing.
 - a. The HCGA shall accept a written request for withdrawal if a written request for withdrawal is received from the complainant before the hearing is scheduled with OAH.
 - b. If a notice of hearing has been issued, a complainant shall send a request for withdrawal to OAH.
 2. Denial of a request for hearing. The HCGA may deny a request for hearing upon written determination that:
 - a. The request for hearing is untimely;
 - b. The request for hearing is not for a reason permitted under this Article;
 - c. The complainant's right to hearing has been waived;
 - d. The request for hearing is otherwise moot as determined by HCGA based on the factual circumstances of each case;
 - e. The subject matter of the grievance is a policy; or
 - f. The sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all members.
- F.** Motion for rehearing or review.
1. Under A.R.S. § 41-1092.09, a party dissatisfied with the decision may file with the Director, a motion for rehearing or review of the decision for any of the following causes which materially affects the complainant's rights:
 - a. Irregularity in the proceedings of a hearing that caused an aggrieved party to be deprived of a fair hearing;
 - b. Misconduct of a party or the HCGA;
 - c. Newly discovered material evidence, which with reasonable diligence could not have been discovered and produced at the hearing;
 - d. That the decision is the result of passion or prejudice; or
 - e. That the decision is not justified by the evidence or is contrary to law.
 2. If a motion for rehearing or review is filed timely, the Director or designee shall:
 - a. Order a rehearing;
 - b. Order the taking of additional testimony or evidence before an administrative law judge;
 - c. Amend findings of fact and conclusions of law;
 - d. Make new findings and conclusions;
 - e. Render an amended decision; or
 - f. Deny the petition and affirm the previous decision.
 3. Within the time for filing a motion for rehearing or review, the Director or the Director's designee may on the Director's own motion order a rehearing or issue an amended decision for any reason for which the Director might have done so upon petition of a party.
- E.G.** Direct grievances grievance to the HCGA.
1. A grievance may be filed directly with the HCGA only by HCG Plans or by individuals or entities grieving an adverse action, decision, or policy actually made or enacted by the HCGA. If the aggrieved adverse action, decision, or policy actually was made by a HCG Plan, the appellant shall 1st file the grievance with the HCG Plan responsible for the decision, policy or action being grieved, so that the HCG Plan may investigate and resolve the grievance in accordance with this Article and any applicable contracts. If the adverse action, decision, or policy was made by a contractor, the complainant shall file the grievance with the contractor responsible for the decision, policy, or action being grieved, so the contractor may investigate and resolve the grievance under this Article and any applicable contracts. A complainant shall file a grievance with the HCGA when grieving an adverse action, decision, or policy that was actually made or enacted by the HCGA. In this instance the HCGA is the respondent. Members may file a grievance orally.
 2. Except as provided in subsection ~~(E)(3); (G)(3)~~, all a written grievance grievance shall be filed with and received by the HCGA not HCGA, as determined by the HCGA's date stamp on the document, no later than 35 60 days after the date of the adverse action, decision, or policy implementation being grieved. date of notice issued by the HCGA.
 3. Written grievance A written grievance regarding a claim denials denial shall be filed not more than 12 months after the date of the service for which payment is claimed. If the claim is denied less than 35 days before the expiration of the 12 month time period, the dissatisfied party shall have 35 60 days from the date of the denial to file the grievance. under the timeframes in A.R.S. § 36-2903.01.
 4. All grievance A grievance shall state include with particularity the factual and legal basis for the grievance and the relief requested. Failure to comply with the this specificity requirements shall requirement may result in the denial of the grievance. A grievance filed by a member does not need to meet this requirement.
 5. The HCGA or its designee, in its sole discretion, designee may investigate the a grievance and render a written an informal decision before scheduling a hearing. A hearing shall be scheduled if the HCG receives a request for hearing

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~~from any party timely requests a hearing within 15 days of no later than 35 days after the postmark date of the informal decision. date of notice.~~

6. Pending final resolution of a grievance, appeal, or request for judicial review, a grieving HCG Plan shall proceed diligently with the performance of the contract and in accordance with the HCGA, its designee, or the Director's decision.
7. If a hearing is requested, ~~it a hearing shall be conducted according to the provisions in this Article. under A.R.S. § 41-1092.~~

F. ~~H.~~ Grievances to HCG Plans. Grievance to a HCG Plan.

1. ~~A grievance shall be considered filed when received in writing by the HCG Plan. Except as provided in subsection (F)(2); (H)(2), all grievances a grievance shall be filed with and received by the appropriate HCG Plan not no later than 35 60 days after the date of the adverse action or decision. date of notice. In this instance, the HCG plan is the respondent. Members may file grievances orally.~~
2. ~~Written grievances A written grievance regarding claim denials a denial of a claim shall be filed not more than 12 months after the date of the service for which payment is claimed. If the claim is denied less than 35 days before the expiration of the 12-month time period, the dissatisfied party shall have 35 days from the date of the denial to file the grievance. under the timeframes in A.R.S. § 326-2903.01.~~
3. ~~All grievances A grievance shall state include with particularity the factual and legal basis for the grievance and the relief requested. Failure to comply with the this specificity requirement shall may result in the denial of the grievance. A grievance filed by a member does not need to meet this requirement.~~
4. ~~A final decision shall be rendered by the HCG Plan on grievances that involve issues related to continuity or delivery of medical services within 15 days of filing. A final decision shall be rendered by the HCG Plan on all other grievances within 30 days of filing unless the parties agree on a longer period. The decision by the HCG Plan shall be personally delivered or mailed by certified mail to the parties, and it shall state the basis for the decision as well as the appellant's right to appeal the decision to the HCGA. The HCG Plan's final decision shall specify the manner in which an appeal to the HCGA may be filed. A HCG plan shall issue a notice of the final decision to the complainant no later than 30 days after filing unless the parties agree on a longer period. The notice shall include the basis for the decision as well as the complainant's right to request a hearing from the HCGA. The notice shall specify the manner in which a request for hearing may be filed with the HCGA.~~
5. The HCG Plan shall record and retain information to ~~identify the appellant, identify:~~
 - a. The complainant,
 - b. The date of receipt, and
 - c. The nature of the grievance.
6. At the time of enrollment, ~~a HCG Plans Plan shall give to members a member~~ written information regarding grievance procedures available through the HCG Plan and the HCGA.

G. ~~L.~~ Appeal of HCG Plan decisions to the HCGA. Request for hearing regarding a HCG Plan's decision.

1. ~~After 1st grieving to the appropriate receiving a notice of the final decision from the HCG Plan, an appellant a complainant may appeal to and request a hearing from the HCGA or designee if:~~
 - a. ~~The appellant complainant files a written notice of appeal not more than 15 days after the date of the final decision of the HCG Plan, which is the earlier of the date of personal delivery or the postmark date of certified mail; or request for hearing no later than 35 days after the date of notice; or~~
 - b. ~~A decision is not timely rendered by the HCG Plan, Plan 30 days after filing under subsection (H)(4) and the appellant complainant files a written notice of appeal request for hearing based upon on the HCG Plan's failure or refusal to timely decide the grievance. grievance in a timely manner.~~
2. ~~The HCGA or its designee, in its sole discretion, designee may investigate the a grievance and render a written an informal decision before scheduling a hearing. A hearing shall be scheduled if any party timely requests a hearing within 15 days of the postmark date no later than 35 days after the date of notice of the informal decision. decision of the HCGA.~~
3. If a hearing is requested, ~~it a hearing shall be conducted according to the provisions in this Article. under A.R.S. § 41-1092.~~

H. Appellant's hearing rights. The Administration shall afford an appellant the right to:

1. ~~Have a hearing that is conducted as specified in A.R.S. §§ 41-1061 and 41-1062.~~
2. ~~Obtain copies of any relevant documents from the respondent or from the HCGA at the appellant's expense.~~
3. ~~Appear at the hearing and be heard in person, by telephone if available, through a representative designated in writing by the appellant, or to submit to the HCGA a written statement that is signed and notarized before the hearing.~~
4. ~~Bring an interpreter to assist at the hearing.~~
5. ~~Be provided an interpreter by the Administration if hearing challenged according to A.R.S. § 12-242.~~

I. Withdrawal or denial of a request for hearing.

1. ~~The HCGA or designee shall deny a request for hearing and deny a grievance or appeal if a written request for withdrawal is received from the appellant before the date of the hearing. The case file shall then be closed.~~

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2. The HCGA or designee may deny a request for hearing and dismiss a grievance or appeal upon written determination if:
 - a. The request for hearing is untimely;
 - b. The request for hearing, grievance, or appeal is not for a reason permitted under this Article; or
 - c. The appeal is otherwise moot.
- J.** Notice of Hearing. The Notice of Hearing shall be in accordance with A.R.S. § 41-1061 and shall include a statement detailing how an appellant may request a change in the scheduled hearing date.
- K.** Postponement.
 1. The HCGA or designee's own motion may postpone a hearing. When a request for postponement is made by a party, it shall be in writing and received by the HCGA or designee no later than 5 days before the scheduled hearing date. The HCGA or designee may grant a request for postponement on a showing that:
 - a. There is good cause for the postponement; and
 - b. The cause is beyond the reasonable control of the party making the request.
 2. If a postponement is granted, the hearing shall be rescheduled at the earliest practicable date.
- L.** Failure to appear for hearing. If any party or representative fails to appear at the hearing without good cause or a postponement, the HCGA or designee may:
 1. Proceed with the hearing;
 2. Reschedule the hearing with further notice;
 3. Issue a decision based on the evidence of record; or
 4. Issue a default disposition.
- M.** Conduct hearing. The hearing shall be conducted as specified in A.R.S. §§ 41-1061 and 41-1062.
 1. The hearing shall be conducted in an informal manner without formal rules of evidence or procedure.
 2. The HCGA or designee may:
 - a. Hold prehearing conferences to settle, simplify, or identify issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
 - b. Require parties to state their positions concerning the various issues in the proceeding;
 - c. Require parties to produce for examination those relevant witnesses and documents under their control;
 - d. Rule on motions and other procedural items;
 - e. Regulate the course of the hearing and conduct of participants;
 - f. Establish time limits for submission of motions or memoranda;
 - g. Impose appropriate sanctions against any individual failing to obey an order under these procedures, which may include:
 - i. Refusing to allow the individual to assert or oppose designated claims or defenses, or prohibiting that individual from introducing designated matters in evidence;
 - ii. Excluding all testimony of an unresponsive or evasive witness; and
 - iii. Expelling the individual from further participation in the hearing.
 - h. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matter of judicial notice; and
 - i. Administer oaths or affirmations.
- N.** Recommended decision. After the conclusion of the hearing, unless the appellant withdraws or the parties stipulate to a settlement, the hearing officer of the HCGA or designee shall prepare written findings of fact and conclusions of law and render a recommended decision to the Director.
- O.** Decision of the Director.
 1. The Director may affirm, modify, or reject the recommended decision in whole or in part; may remand a matter to any party or the hearing officer with specific instructions; or make any other appropriate disposition.
 2. The Director shall mail by certified mail a copy of the decision to all parties at their last known residences or places of business.
- P.** Petition for rehearing or review.
 1. A party dissatisfied with the decision may petition the Director for rehearing or review of the decision for any of the following causes which materially affects the appellant's rights:
 - a. Irregularity in the proceedings of the hearing or appeal that caused the aggrieved party to be deprived of a fair hearing or appeal;
 - b. Misconduct of a party or the HCGA;
 - c. Newly discovered material evidence, which with reasonable diligence could not have been discovered and produced at the hearing;
 - d. That the decision is the result of passion or prejudice; or
 - e. That the decision is not justified by the evidence or is contrary to law.
 2. The petition for rehearing or review shall be filed not later than 15 days after the date of the Director's decision, which is the postmark date of the decision. The moving party shall also send a copy of the petition to all other parties.

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If a timely petition for rehearing or review is filed, the Director's decision is not a final administrative decision; rather, the Director shall render a final decision which is the final administrative decision.

3. ~~The petition for rehearing or review shall be in writing and shall specifically state the grounds upon which it is based. The Director shall review the sufficiency of the evidence if the petition is made upon the ground that the decision is not justified by the evidence.~~
 4. ~~The Director may remand the case to any party; reopen the decision; order the taking of additional testimony or evidence before the hearing officer; amend findings of fact and conclusions of law; make new findings and conclusions; render an amended decision; or deny the petition and affirm the previous decision.~~
 5. ~~The Director, within the time for filing a petition for rehearing or review, may on the Director's own motion order a rehearing or issue an amended decision for any reason for which the Director might have done so upon petition of any party.~~
- Q. Failure to submit a grievance, appeal, request for hearing, or petition for rehearing or review in a timely manner shall constitute a failure to exhaust administrative remedies required as a condition to seeking judicial relief.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

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

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R9-28-101 | Amend |
| R9-28-108 | Amend |
| Article 8 | Amend |
| R9-28-801 | Repeal |
| R9-28-801 | New Section |
| R9-28-802 | Repeal |
| R9-28-802 | New Section |
| R9-28-803 | Repeal |
| R9-28-803 | New Section |
| R9-28-1108 | Amend |
| Article 12 | Amend |
| R9-28-1201 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 36-2932(I)(1)
Implementing statute: A.R.S. §§ 36-2932(I)(1) and 41-1092.02
- 3. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 6 A.A.R. 660, February 11, 2000
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Cheri Tomlinson, Federal and State Policy Administrator
Address: AHCCCS
Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, AZ 85034
Telephone: (602) 417-4198
Fax: (602) 256-6756
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
The Administration amended 3 Articles in 9 A.A.C. 28 to comply with changes to state statute. The changes were implemented on July 1, 1999, when the hearing process moved from the AHCCCS Administration to the Office of

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Administrative Hearings (OAH). In addition, whenever possible, the language was cross-referenced to 9 A.A.C. 22 to streamline and enhance the uniformity of rule language.

6. Reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

Not applicable

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

Not applicable

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

The AHCCCS Administration and the Office of Administrative Hearings (OAH) will benefit from the changes, which clarify their roles in the grievance and request for hearing process and comply with changes to state statute.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS
Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: May 16, 2000

Time: 10:30 a.m.

Location: Casa Grande ALTCS Office
500 North Florence Street
Casa Grande, AZ 85222

Nature: Public Hearing

Date: May 17, 2000

Time: 10:00 a.m.

Location: AHCCCS
701 East Jefferson
Phoenix, AZ 85034
Turquoise Room

Location: ALTCS: Arizona Long-term Care System
110 South Church, Suite 3250
Tucson, AZ 85701

Location: ALTCS: Arizona Long-term Care System
3480 East Route 66
Flagstaff, AZ 86004

Nature: Videoconference Oral Proceeding

The Administration shall accept written comments until 5:00 p.m., Wednesday, May 17, 2000. Please submit comments to the following person:

Name: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS
Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200

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Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

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

Not applicable

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

None

13. Was this rule previously adopted as an emergency rule?

No

14. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

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

ARTICLE 1. DEFINITIONS

Section

R9-28-101. General Definitions

R9-28-108. Grievance and ~~Appeal~~ Request for Hearing Related Definitions

ARTICLE 8. GRIEVANCE AND ~~APPEAL PROCESS~~ REQUEST FOR HEARING

Section

~~R9-28-801.~~ ~~General Provisions for All Grievances and Appeals~~

R9-28-801. General Provisions for a Grievance and a Request for Hearing

~~R9-28-802.~~ ~~Eligibility Appeals and Hearing Requests for Applicant or Recipients of ALTCS~~

R9-28-802. Grievance

~~R9-28-803.~~ ~~Grievances~~

R9-28-803. Eligibility Hearing for an Applicant or a Member Under 9 A.A.C. 28, Article 4

ARTICLE 11. BEHAVIORAL HEALTH SERVICES

Section

R9-28-1108. Grievance and ~~Appeal~~ Request for Hearing Process

ARTICLE 12. MEMBERS' RIGHTS AND RESPONSIBILITIES FOR EXPEDITED HEARINGS

Section

R9-28-1201. Rights and Responsibilities for Expedited Hearings

ARTICLE 1. DEFINITIONS

R9-28-101. General Definitions

A. Location of definitions. Definitions applicable to Chapter 28 are found in the following:

Definition	Section or Citation
1. "211"	R9-28-104
2. "217"	R9-28-104
3. "236"	R9-28-104
4. "Administration"	A.R.S. § 36-2931
5. "ADHS"	R9-28-111
6. "AFDC"	R9-22-101
7. "Aggregate"	R9-22-107
8. "AHCCCS"	R9-22-101
9. " AHCCCS hearing officer "	R9-22-108
10. "Algorithm"	R9-28-104
11. "ALTCS"	A.R.S. § 36-2932

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12.	“ALTCS acute care services”	R9-28-104
13.	“Alternative HCBS setting”	R9-28-101
14.	“Ambulance”	R9-22-102
15.	“Appeal”	R9-22-108
16.	“Bed hold”	R9-28-102
17.	“Behavior intervention”	R9-28-102
18.	“Behavior management services”	R9-28-111
19.	“Behavioral health paraprofessional”	R9-28-111
20.	“Behavioral health professional”	R9-28-111
21.	“Behavioral health service”	R9-28-111
22.	“Behavioral health technician”	R9-28-111
23.	“Billed charges”	R9-22-107
24.	“Board eligible for psychiatry”	R9-28-111
25.	“Capped fee-for-service”	R9-22-101
26.	“Case management plan”	R9-28-101
27.	“Case management services”	R9-28-111
28.	“Case manager”	R9-28-101
29.	“Case record”	R9-22-101
30.	“Categorically eligible”	A.R.S. § 36-2934
31.	“Certification”	R9-28-105
32.	“Certified psychiatric nurse practitioner”	R9-28-111
33.	“CFR”	R9-28-101
34.	“Clean claim”	A.R.S. § 36-2904
35.	“Clinical supervision”	R9-28-111
36.	“Community Spouse”	R9-28-104
37.	“Community Spouse Resource Deduction”	R9-28-104
38.	“Contract”	R9-22-101
39.	“Contractor”	R9-22-101
40.	“County of fiscal responsibility”	R9-28-107
41.	“Covered services”	R9-22-102
42.	“CPT”	R9-22-107
43.	“CSR”	R9-28-104
44.	“Day”	R9-22-101
45.	“DES Division of Developmental Disabilities”	A.R.S. § 36-551
46.	“De novo hearing”	R9-28-111
47.	“Developmental disability”	A.R.S. § 36-551
48.	“Diagnostic services”	R9-22-102
49.	“Disenrollment”	R9-22-117
50.	“DME”	R9-22-102
51.	“Eligible person”	A.R.S. § 36-2931
52.	“Emergency medical services”	R9-22-102
53.	“Encounter”	R9-22-107
54.	“Enrollment”	R9-22-117
55.	“Estate”	A.R.S. § 14-1201
56.	“Evaluation”	R9-28-111
57.	“Facility”	R9-22-101
58.	“Factor”	R9-22-101
59.	“Fair consideration”	R9-28-104
60.	“FBR”	R9-22-101
61.	“Grievance”	R9-22-108
62.	“GSA”	R9-22-101
63.	“Guardian”	R9-22-116
64.	“HCBS”	A.R.S. §§ 36-2931 and 36-2939
	<u>“Hearing”</u>	<u>R9-22-108</u>
65.	“Home”	R9-28-101
66.	“Home health services”	R9-22-102
67.	“Hospital”	R9-22-101
68.	“ICF-MR”	R9-28-101
69.	“IHS”	R9-28-101

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70. “IMD”	42 CFR 435.1009
71. “Indian”	P.L. 94-437
72. “Inpatient psychiatric facilities for individuals under age 21”	R9-28-111
73. “Institutionalized”	R9-28-104
74. “Interested Party”	R9-28-106
75. “JCAHO”	R9-28-101
76. “License” or “licensure”	R9-22-101
77. “Medical record”	R9-22-101
78. “Medical services”	R9-22-101
79. “Medical supplies”	R9-22-102
80. “Medically eligible”	R9-28-104
81. “Medically necessary”	R9-22-101
82. “Member”	A.R.S. § 36-2931
83. “Mental disorder”	R9-28-111
84. “MMMNA”	R9-28-104
85. “NF”	42 U.S.C. 1396r(a)
86. “Noncontracting provider”	A.R.S. § 36-2931
87. “Occupational therapy”	R9-22-102
88. “Partial care”	R9-28-111
89. “PAS”	R9-28-103
90. “PASARR”	R9-28-103
91. “Pharmaceutical service”	R9-22-102
92. “Physical therapy”	R9-22-102
93. “Physician”	R9-22-102
94. “Post-stabilization services”	42 CFR 438.114
95. “Practitioner”	R9-22-102
96. “Primary care provider”	R9-22-102
97. “Primary care provider services”	R9-22-102
98. “Prior authorization”	R9-22-102
99. “Prior period coverage”	R9-28-101
100. “Prior-quarter period”	R9-28-101
101. “Private duty nursing services”	R9-22-102
102. “Program contractor”	A.R.S. § 36-2931
103. “Provider”	A.R.S. § 36-2931
104. “Prudent layperson standard”	42 U.S.C. 1396u-2
105. “Psychiatrist”	R9-28-111
106. “Psychologist”	R9-28-111
107. “Psychosocial rehabilitation”	R9-28-111
108. “Quality management”	R9-22-105
109. “RBHA”	R9-28-111
110. “Radiology”	R9-22-102
111. “Reassessment”	R9-28-103
112. “Redetermination”	R9-28-104
113. “Referral”	R9-22-101
114. “Reinsurance”	R9-22-107
115. “Representative”	R9-28-104
116. “Respiratory therapy”	R9-22-102
117. “Respite care”	R9-28-102
118. “RFP”	R9-22-105
119. “Room and board”	R9-28-102
120. “Scope of services”	R9-22-102
121. “Screening”	R9-28-111
122. “Speech therapy”	R9-22-102
123. “Spouse”	R9-28-104
124. “SSA”	P.L. 103-296, Title I
125. “SSI”	R9-22-101
126. “Subcontract”	R9-22-101
127. “Substance abuse”	R9-28-111
128. “Treatment”	R9-28-111

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~~129.~~“Utilization management” R9-22-105

~~130.~~“Ventilator dependent” R9-28-102

B. General definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning:

~~1.~~ “AHCCCS” is defined in 9 A.A.C. 22, Article 1.

~~2.~~ “ALTCS” means the Arizona Long-term Care System as authorized by A.R.S. § 36-2932.

~~3.~~ “Alternative HCBS setting” means a living arrangement approved by the Director and licensed or certified by a regulatory agency of the state, where a member may reside and receive HCBS including:

~~a.~~ For a person with a developmental disability (DD) specified in A.R.S. § 36-551:

~~i.~~ Community residential setting defined in A.R.S. § 36-551;

~~ii.~~ Group home defined in A.R.S. § 36-551;

~~iii.~~ State-operated group home defined in A.R.S. § 36-591;

~~iv.~~ Family foster home defined in 6 A.A.C. 5, Article 58;

~~v.~~ Group foster home defined in 6 A.A.C. 5, Article 59;

~~vi.~~ Licensed residential facility for a person with traumatic brain injury specified in A.R.S. § 36-2939(C); and

~~vii.~~ Behavioral health service agency specified in A.R.S. § 36-2939(B)(2) and 9 A.A.C. 20, Articles 6, 7, and 8 for Levels I, II, or III;

~~b.~~ For a person who is elderly or physically disabled (EPD), and the facility, setting, or institution is registered with AHCCCS:

~~i.~~ Adult foster care homes defined in A.R.S. § 36-401; and as authorized in A.R.S. § 36-2939; and an assisted living home or residential unit, as defined in A.R.S. § 36-401, and as authorized in A.R.S. § 36-2939.

~~ii.~~ Licensed residential facility for a person with a traumatic brain injury specified in A.R.S. § 36-2939(C); and

~~iii.~~ Behavioral health service agency specified in A.R.S. § 36-2939(C) and 9 A.A.C. 20, Articles 6, 7, and 8 for Levels I and II.

~~iv.~~ Alzheimer’s treatment assistive living facility demonstration pilot project as specified in Laws 1999, Ch. 313, § 35.

~~4.~~ “Case management plan” means a service plan developed by a case manager that involves the overall management of a member’s or an eligible person’s care, and the continued monitoring and reassessment of the member’s or the eligible person’s need for services.

~~5.~~ “Case manager” means a person who is either a degreed social worker, a licensed registered nurse, or a person with a minimum of 2 years of experience in providing case management services to a person who is elderly and physically disabled or has developmental disabilities.

~~6.~~ “CFR” means Code of Federal Regulations, unless otherwise specified in this Chapter.

~~7.~~ “Contract” is defined in 9 A.A.C. 22, Article 1.

~~8.~~ “Day” is defined in 9 A.A.C. 22, Article 1.

~~9.~~ “DES Division of Developmental Disabilities” is defined in A.R.S. § 36-551.

~~10.~~ “Disenrollment” is defined in 9 A.A.C. 22, Article 1.

~~11.~~ “Eligible person” is defined in A.R.S. § 36-2931.

~~12.~~ “Enrollment” is defined in 9 A.A.C. 22, Article 1.

~~13.~~ “Facility” is defined in 9 A.A.C. 22, Article 1.

~~14.~~ “Factor” is defined in 9 A.A.C. 22, Article 1.

~~15.~~ “HCBS” means home and community based services defined in A.R.S. §§ 36-2931 and 36-2939.

~~16.~~ “Home” means a residential dwelling that is owned, rented, leased, or occupied at no cost to a member, including a house, a mobile home, an apartment, or other similar shelter. A home is not a facility, a setting, or an institution, or a portion and any of these, licensed or certified by a regulatory agency of the state as a:

~~a.~~ Health care institution defined in A.R.S. § 36-401;

~~b.~~ Residential care institution defined in A.R.S. § 36-401;

~~c.~~ Community residential facility defined in A.R.S. § 36-551; or

~~d.~~ Behavioral health service facility defined in 9 A.A.C. 20, Articles 6, 7, and 8.

~~17.~~ “Hospital” is defined in 9 A.A.C. 22, Article 1.

~~18.~~ “GSA” is defined in 9 A.A.C. 22, Article 1.

~~19.~~ ~~ICF-MR~~ “ICF-MR” means an intermediate care facility for the mentally retarded and is defined in 42 CFR 435.1009 and 440.150.

~~20.~~ “IHS” means the Indian Health Services.

~~21.~~ “Indian” is defined in P.L. 94-437.

~~22.~~ “JCAHO” means the Joint Commission on Accreditation of Healthcare Organizations.

~~23.~~ “License” or “licensure” is defined in 9 A.A.C. 22, Article 1.

~~24.~~ “Medical record” is defined in 9 A.A.C. 22, Article 1.

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- 25- "Medical services" is defined in 9 A.A.C. 22, Article 1.
- 26- "Medically necessary" is defined in 9 A.A.C. 22, Article 1.
- 27- "Member" is defined in A.R.S. § 36-2931.
- 28- "NF" means nursing facility and is defined in 9 A.A.C. 22, Article 1.
- 29- "Noncontracting provider" is defined in A.R.S. § 36-2931.
- 30- "Prior period coverage" means the period of time from the 1st day of the month of application or the 1st eligible month whichever is later to the day a member is enrolled with the program contractor. the program contractor receives notification from the Administration of the member's enrollment.
- 31- "Prior-quarter period" means the 3 calendar months immediately preceding the month of application during which a member may be eligible for services covered under this Chapter, retroactively under federal law and under A.R.S. § 36-2937.
- 32- "Program contractor" is defined in A.R.S. § 36-2931.
- 33- "Provider" is defined in A.R.S. § 36-2931.
- 34- "Referral" is defined in 9 A.A.C. 22, Article 1.
- 35- "SSA" means Social Security Administration defined in P.L. 103-296, Title I.
- 36- "SSI" is defined in 9 A.A.C. 22, Article 1.
- 37- "Subcontract" is defined in 9 A.A.C. 22, Article 1.

R9-28-108. Grievance and Appeal Request for Hearing Related Definitions

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1 have the following meanings unless the context of the Chapter explicitly requires another meaning:

1. ~~"AHCCCS hearing officer" is defined in 9 A.A.C. 22, Article 1.~~
2. ~~"Appeal" is defined in 9 A.A.C. 22, Article 1.~~
3. "Grievance" is defined in 9 A.A.C. 22, Article 1.
- "Hearing" is defined in 9 A.A.C. 22, Article 1.

ARTICLE 8. GRIEVANCE AND APPEAL PROCESS REQUEST FOR HEARING

~~R9-28-801. General Provisions for All Grievances and Appeals~~

~~All grievances and appeals regarding ALTCS shall be filed and processed in accordance with A.A.C. R9-22-801, and all references in that rule to AHCCCS also shall apply to ALTCS. In eligibility appeals, ALTCS is the respondent.~~

R9-28-801. General Provisions for a Grievance and a Request for Hearing

A grievance and a request for hearing under this Chapter shall comply with A.A.C. R9-22-801

~~R9-28-802. Eligibility Appeals and Hearing Requests for Applicant or Recipients of ALTCS~~

- ~~**A.** Adverse eligibility actions. An applicant, eligible person, or member may appeal and request a hearing concerning any of the following adverse eligibility actions:~~
- ~~1. Denial of eligibility;~~
 - ~~2. Discontinuance of eligibility;~~
 - ~~3. Delay in the eligibility determination;~~
 - ~~4. Adverse post-eligibility treatment of income; or~~
 - ~~5. Adverse disability determination.~~
- ~~**B.** The Administration shall provide notice of an adverse eligibility action to the affected individual by personal delivery or regular mail. For purposes of this Section, the date of the Notice of Adverse eligibility action shall be the date of personal delivery to the individual or the postmark date, if mailed.~~
- ~~**C.** Appeals and requests for hearing:~~
- ~~1. An applicant, eligible person, member, or authorized representative may appeal and request a hearing regarding any adverse eligibility action by completing and submitting the ALTCS Request for Hearing form or by submitting a written request containing the following information:~~
 - ~~a. The case name;~~
 - ~~b. The adverse eligibility action being appealed, and~~
 - ~~e. The reason for appeal.~~
 - ~~2. The request for hearing shall be submitted within 20 days of a notice of denial or 10 days after the effective date of all other adverse actions by mailing or delivering it to either the eligibility office that rendered the adverse decision or directly to the Administration, Office of Grievance and Appeals. For this Section only, the date of the request for hearing shall be the postmark date, if mailed, or the date of personal delivery.~~
- ~~**D.** Eligibility office responsibilities:~~
- ~~1. Eligibility offices shall maintain a register that documents the dates on which ALTCS Requests for Hearing are submitted.~~

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2. If requested, an eligibility office shall help an appellant or authorized representative to complete the ALTCS Request for Hearing form.
3. The prehearing summary shall be completed by the eligibility office and shall summarize the facts and factual basis for the adverse eligibility action.
4. The eligibility office shall send to the Administration, Office of Grievance and Appeals:
 - a. The prehearing summary;
 - b. A copy of the case file;
 - c. Documents pertinent to the adverse action; and
 - d. The request for hearing. These materials must be received by the Administration, Office of Grievance and Appeals, not later than 10 days from the date of the receipt of the request for hearing. If the request for hearing is submitted directly to the Administration, Office of Grievance and Appeals, the eligibility office shall send the materials to the Office of Grievance and Appeals, not later than 10 days from the date of a request for the materials.

E. ALTCS coverage during the appeal process.

1. Eligible persons or members appealing a discontinuance. A discontinuance is a termination of ALTCS benefits. For actions requiring 10 days' advance notice, an eligible person or member requesting a hearing before the effective date of the adverse action shall receive continued ALTCS benefits until an adverse decision on appeal is rendered.
2. Applicants appealing a denial of ALTCS coverage:
 - a. A denial is an adverse eligibility decision that finds an applicant ineligible for ALTCS benefits.
 - b. An applicant may appeal a denial within the time frame specified in subsection (C)(2). If the denial is overturned, the effective date of ALTCS coverage shall be established by the Director in accordance with applicable law.
3. An eligible person or member whose benefits are continued under subsection (E)(1) may be financially liable for all ALTCS benefits received during a period of ineligibility, if a discontinuance decision is upheld by the Director.

R9-28-802. Grievance

A grievance under this Chapter shall comply with R9-22-802.

R9-28-803. Grievances

All grievances regarding ALTCS shall be filed and processed in accordance with A.A.C. R9-22-804, and all references in that rule to AHCCCS also shall apply to ALTCS.

R9-28-803. Eligibility Hearing for an Applicant or a Member Under 9 A.A.C. 28, Article 4

- A.** General. Except as provided in this Section, an eligibility hearing for an applicant or a member under this Chapter shall comply with R9-22-803.
- B.** Adverse eligibility actions. In addition to adverse eligibility actions in R9-22-803, an applicant or member may request a hearing for an increase in the member's share of cost. When the request for hearing is filed before the effective date of the adverse action, the share of cost shall not be increased pending a hearing decision.

ARTICLE 11. BEHAVIORAL HEALTH SERVICES

R9-28-1108. Grievance and Appeal Request for Hearing Process

- A.** Processing of a grievance. ~~All grievances~~ A grievance regarding ~~any an~~ adverse action, decision, or policy regarding a behavioral health services service shall be reviewed ~~according to~~ under A.R.S. §§ 36-2932, 36-3413, 41-1092.02, and 9 A.A.C. 28, Article 8, and 9 A.A.C. 28, Article 12. 9 A.A.C. 28, Articles 8 and 12.
- B.** Member ~~appeal~~ request for hearing. A member's ~~appeal of~~ request for hearing regarding a grievance under this Article shall be conducted as a contested case as specified in 9 A.A.C. 28, Article 8.
- C.** Other appeals. ~~An appeal of the Director's decision after an Office of Administrative Hearing decision other than de novo hearing requests by a member shall be limited to an appellate review by the Administration to determine whether substantial evidence in the record supports the decision.~~

ARTICLE 12. MEMBERS' RIGHTS AND RESPONSIBILITIES FOR EXPEDITED HEARINGS

R9-28-1201. Rights and Responsibilities for Expedited Hearings

The Administration and its contractors shall meet the requirements specified in 9 A.A.C. 22, Article 13.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 29. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
QUALIFIED MEDICARE BENEFICIARY (QMB)

PREAMBLE

- 1. Sections Affected**

	<u>Rulemaking Action</u>
R9-29-101	Amend
Article 5	Amend
R9-29-501	Repeal
R9-29-501	New Section
R9-29-502	Repeal
R9-29-502	New Section
R9-29-503	Repeal
R9-29-503	New Section
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 36-2972(B)
Implementing statute: A.R.S. §§ 36-2903.01 and 41-1092.02
- 3. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 6 A.A.R. 661, February 11, 2000
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Cheri Tomlinson, Federal and State Policy Administrator
Address: AHCCCS
Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, AZ 85034
Telephone: (602) 417-4198
Fax: (602) 256-6756
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

The Administration amended 9 A.A.C. 29, Article 5 to comply with changes to state statute. The changes were implemented on July 1, 1999, when the hearing process moved from AHCCCS to the Office of Administrative Hearings (OAH). In addition, whenever possible, the language was cross-referenced to 9 A.A.C. 22 to streamline and enhance the uniformity of rule language.
- 6. Reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:**

Not applicable
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**

AHCCCS and the Office of Administrative Hearings (OAH) will benefit from the changes, which clarify their roles in the grievance and request for hearing process and comply with changes to state statute.
- 9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Cheri Tomlinson, Federal and State Policy Administrator

Arizona Administrative Register
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Address: AHCCCS
Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: May 16, 2000

Time: 10:30 a.m.

Location: Casa Grande ALTCS Office
500 North Florence Street
Casa Grande, AZ 85222

Nature: Public Hearing

Date: May 17, 2000

Time: 10:00 a.m.

Location: AHCCCS
701 East Jefferson
Phoenix, AZ 85034
Turquoise Room

Location: ALTCS: Arizona Long-term Care System
110 South Church, Suite 3250
Tucson, AZ 85701

Location: ALTCS: Arizona Long-term Care System
3480 East Route 66
Flagstaff, AZ 86004

Nature: Videoconference Oral Proceeding

The Administration shall accept written comments until 5:00 p.m., Wednesday, May 17, 2000. Please submit comments to the following person:

Name: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS
Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

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

Not applicable

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

None

13. Was this rule previously adopted as an emergency rule?

No

14. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 29. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
QUALIFIED MEDICARE BENEFICIARY (QMB)**

ARTICLE 1. DEFINITIONS

Section

R9-29-101. ~~Definitions~~ Location of Definitions

ARTICLE 5. GRIEVANCE AND ~~APPEAL PROCESS~~ REQUEST FOR HEARING

Section

~~R9-29-501. General Provisions for All Grievances and Appeals~~

R9-29-501. General Provisions for a Grievance and a Request for Hearing

~~R9-29-502. Eligibility Appeals and Hearing Requests for Applicants or Recipients of QMB Services~~

R9-29-502. Grievance

~~R9-29-503. Grievances~~

R9-29-503. Eligibility Hearing for an Applicant or a Member Under 9 A.A.C. 29, Article 2

ARTICLE 1. DEFINITIONS

R9-29-101. ~~Definitions~~ Location of Definitions

A. Location of definitions. Definitions applicable to Chapter 29 are found in the following:

<u>Definition</u>	<u>Section or Citation</u>
<u>"1st-party liability"</u>	<u>R9-22-110</u>
<u>"3rd-party"</u>	<u>R9-22-110</u>
<u>"3rd-party liability"</u>	<u>R9-22-110</u>
<u>"AHCCCS"</u>	<u>R9-22-101</u>
<u>"ALTCS"</u>	<u>A.R.S. § 36-2932</u>
<u>"CFR"</u>	<u>R9-29-101</u>
<u>"Contractor"</u>	<u>R9-22-101</u>
<u>"Dual Eligible"</u>	<u>A.R.S. § 36-2971</u>
<u>"Enrollment"</u>	<u>R9-22-117</u>
<u>"Grievance"</u>	<u>R9-22-108</u>
<u>"Hearing"</u>	<u>R9-22-108</u>
<u>"Program contractor"</u>	<u>A.R.S. § 36-2971</u>
<u>"QMB-only"</u>	<u>A.R.S. § 36-2971</u>

B. General definitions. The following words and phrases, in addition to definitions contained in A.R.S. § 36-2971, have the following meanings unless the context of the Chapter explicitly requires another meaning:

1. "1st-party liability" has the meaning is defined in 9 A.A.C. 22, Article 1.
2. "3rd-party" has the meaning "3rd-party" is defined in 9 A.A.C. 22, Article 1.
3. "3rd-party liability" has the meaning is defined in 9 A.A.C. 22, Article 1.
4. "AHCCCS" has the meaning is defined in 9 A.A.C. 22, Article 1.
5. "ALTCS" means the Arizona Long-term Care System as authorized by A.R.S. § 36-2931 et seq.
6. "CFR" means the Code of Federal Regulations.
7. "Contractor" has the meaning is defined in 9 A.A.C. 22, Article 1.
8. "Dual eligible" has the meaning is defined in A.R.S. § 36-2971.
9. "Enrollment" has the meaning is defined in 9 A.A.C. 22, Article 1.
10. "Grievance" is defined in 9 A.A.C. 22, Article 1.
11. "Hearing" is defined in 9 A.A.C. 22, Article 1.
12. "Program contractor" has the meaning is defined in A.R.S. § 36-2971.
13. "QMB-only" means Qualified Medicare Beneficiary only and is defined in A.R.S. § 36-2971.

ARTICLE 5. GRIEVANCE AND ~~APPEAL PROCESS~~ REQUEST FOR HEARING

~~R9-29-501. General Provisions for All Grievances and Appeals~~

~~All grievances and appeals regarding QMB shall be filed and processed as specified in A.A.C. R9-22-801.~~

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R9-29-501. General Provisions for a Grievance and a Request for Hearing

A grievance and a request for hearing under this Chapter shall comply with R9-22-801.

R9-29-502. Eligibility Appeals and Hearing Requests for Applicants or Recipients of QMB Services

- ~~**A.** An individual affected by an adverse eligibility action may appeal and request a hearing concerning any of the following adverse eligibility actions:~~
- ~~1. Denial of eligibility;~~
 - ~~2. Discontinuance of eligibility; or~~
 - ~~3. Delay in the eligibility determination.~~
- ~~**B.** Notice of an adverse eligibility action shall be personally delivered or mailed to the affected individual by regular mail. For purposes of this Section, the date of the Notice of Action shall be the date of personal delivery to the individual or the postmark date, if mailed.~~
- ~~**C.** Appeals and requests for hearing:~~
- ~~1. An applicant, eligible person, or authorized representative may appeal and request a hearing from an adverse eligibility action by completing and submitting, no later than 35 days after the date of the Notice of Action, the AHCCCS request for hearing form, or a written request that contains the following information:~~
 - ~~a. The case name;~~
 - ~~b. The adverse eligibility action being appealed; and~~
 - ~~c. The reason for appeal.~~
 - ~~2. The request for hearing shall be submitted to the Office of Grievance and Appeals, AHCCCS Administration. If the request for hearing is submitted by mail, the date of request shall be the postmark date. If the request for hearing is submitted in person, the date of the request shall be the date on which the request is submitted to the Office of Grievance and Appeals.~~
- ~~**D.** Eligibility office responsibilities:~~
- ~~1. If requested, the eligibility office shall assist the individual or authorized representative to complete the request for hearing.~~
 - ~~2. The eligibility office shall send to the AHCCCS Office of Grievance and Appeals the Pre-Hearing Summary and documents pertinent to the denial or discontinuance action within 5 days after the date of receipt of a request for materials from the AHCCCS Office of Grievance and Appeals.~~
 - ~~3. The eligibility office shall complete and send to the AHCCCS Office of Grievance and Appeals with the Pre-Hearing Summary a summary of the factual basis for the adverse eligibility action.~~
- ~~**E.** Eligibility and benefits during the appeal process:~~
- ~~1. Individuals appealing a discontinuance. A discontinuance is a termination of eligibility and benefits. An individual requesting a hearing within the time frame specified in subsection (C) shall continue to be eligible and receive benefits until an adverse decision on appeal is rendered.~~
 - ~~2. Individuals appealing a denial of eligibility:~~
 - ~~a. A denial is an adverse eligibility decision that finds an applicant ineligible as a Qualified Medicare Beneficiary.~~
 - ~~b. The effective date of a denial is the date of notice of an adverse action. An individual may appeal this denial within the time frame specified in subsection (C). If the denial is overturned, the effective date of eligibility shall be established by the Director in accordance with federal and state law.~~

R9-29-502. Grievance

A grievance under this Chapter shall comply with R9-22-802.

R9-29-503. Grievances

All grievances regarding QMB shall be filed and processed as specified in A.A.C. R9-22-804.

R9-29-503. Eligibility Hearing for an Applicant or a Member Under 9 A.A.C. 29, Article 2

An eligibility hearing for a member or an applicant under this Chapter shall comply with R9-22-803.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 30. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
PREMIUM SHARING DEMONSTRATION PROJECT**

PREAMBLE

1. Sections Affected

Rulemaking Action

R9-30-101	Amend
R9-30-106	Amend
Article 6	Amend
R9-30-601	Repeal
R9-30-601	New Section
R9-30-602	Repeal
R9-30-602	New Section
R9-30-603	Repeal
R9-30-603	New Section
Exhibit A	New Exhibit
Article 8	Amend
R9-30-801	Amend
R9-30-802	Amend
R9-30-803	Amend
R9-30-804	Amend
R9-30-805	Amend
R9-30-807	Amend
R9-30-808	Amend
R9-30-809	Amend

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

Authorizing statute: Laws 1997, Ch. 186, § 3, as amended by Laws 1997, 2nd Special Session, Ch. 1, § 1, Laws 1998, Ch. 214, § 21, and Laws 1999, Ch. 313, § 31.

Implementing statute: Laws 1997, Ch. 186, § 3, as amended by Laws 1997, 2nd Special Session, Ch. 1, § 1; Laws 1998, Ch. 214, § 21; Laws 1999, Ch. 313, § 31; and A.R.S. § 41-1092.02

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

Notice of Rulemaking Docket Opening: 6 A.A.R. 662, February 11, 2000

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

Name: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS
Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

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

The Administration amended 2 Articles in 9 A.A.C. 30 to comply with changes to state statute. The changes were implemented on July 1, 1999, when the hearing process moved from the Premium Sharing Administration (PSA) Office of Legal Assistance to the Office of Administrative Hearings (OAH). In addition, whenever possible, the language was cross-referenced to 9 A.A.C. 22 to streamline and enhance the uniformity of rule language. The Administration added Exhibit A in Article 6 to illustrate the grievance and request for hearing processes.

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6. Reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

Not applicable

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

Not applicable

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

The following entities will benefit from the changes which clarify their roles in the grievance and request for hearing process:

- a. Premium Share Administration (PSA);
- b. Office of Administrative Hearings (OAH);
- c. Premium Share members and applicants;
- d. Premium Sharing Plans; and
- e. Premium Share providers.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS
Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: May 16, 2000

Time: 10:30 a.m.

Location: Casa Grande ALTCS Office
500 North Florence Street
Casa Grande, AZ 85222

Nature: Public Hearing

Date: May 17, 2000

Time: 10:00 a.m.

Location: AHCCCS
701 East Jefferson
Phoenix, AZ 85034
Turquoise Room

Location: ALTCS: Arizona Long-term Care System
110 South Church, Suite 3250
Tucson, AZ 85701

Location: ALTCS: Arizona Long-term Care System
3480 East Route 66
Flagstaff, AZ 86004

Nature: Videoconference Oral Proceeding

The Administration shall accept written comments until 5:00 p.m., Wednesday, May 17, 2000. Please submit comments to the following person:

Name: Cheri Tomlinson, Federal and State Policy Administrator

Arizona Administrative Register
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Address: AHCCCS
Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

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

Not applicable

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

None

13. Was this rule previously adopted as an emergency rule?

No

14. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 30. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
PREMIUM SHARING DEMONSTRATION PROJECT**

ARTICLE 1. DEFINITIONS

Section

R9-30-101. Location of Definitions
R9-30-106. Grievance and ~~Appeals~~ Request for Hearing Related Definitions

ARTICLE 6. GRIEVANCES AND APPEALS GRIEVANCE AND REQUEST FOR HEARING

Section

~~R9-30-601. General Provisions for all Grievances and Appeals~~
R9-30-601. General Provisions for a Grievance and a Request for Hearing
~~R9-30-602. Eligibility Appeals and Hearing Requests for an Applicant and a Premium Share Member~~
R9-30-602. Grievance
~~R9-30-603. Grievances~~
R9-30-603. Eligibility Hearing for an Applicant and a Premium Share Member
Exhibit A. Grievance and Request for Hearing Process

ARTICLE 8. MEMBERS' RIGHTS AND RESPONSIBILITIES FOR EXPEDITED HEARINGS

Section

R9-30-801. General Intent and Definitions
R9-30-802. Denial of a Request for a Service
R9-30-803. Reduction, Suspension, or Termination of a Service
R9-30-804. Content of Notice
R9-30-805. Exceptions from an Advance of Notice
R9-30-807. Expedited Hearing Process
R9-30-808. Maintenance of Records
R9-30-809. Member Handbook

ARTICLE 1. DEFINITIONS

R9-30-101. Location of Definitions

A. Location of definitions. Definitions applicable to Chapter 30 are found in the following:

Definition	Section or Citation
1- "AHCCCS"	R9-22-101
2- "Ambulance"	R9-22-102
3- "Applicant"	R9-30-101
4- "Chronic disease"	R9-30-102

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5-	“Chronically ill member”	R9-30-102
6-	“Clean claim”	A.R.S. § 36-2904
7-	“Contract year”	R9-30-101
8-	“Contractor”	R9-22-101
9-	“Copayment”	R9-30-107
10-	“Covered services”	R9-30-102
11-	“Date of application”	R9-30-103
	<u>“Date of notice”</u>	<u>R9-22-108</u>
12-	“Day”	R9-22-101
13-	“Eligible for AHCCCS benefits”	R9-30-103
14-	“Eligible household member”	R9-30-101
15-	“Emergency medical services”	R9-22-102
16-	“Enrollment”	R9-30-103
17-	“E.P.S.D.T. services”	R9-22-102
18-	“FPL”	R9-30-103
19-	“Fund”	A.R.S. § 36-2923
20-	“Grievance”	R9-30-106 <u>R9-22-108</u>
21-	“Head-of-household”	R9-30-103
	<u>“Hearing”</u>	<u>R9-22-108</u>
22-	“Hospital”	R9-22-101
23-	“Household income”	R9-30-103
24-	“Household unit”	R9-30-103
25-	“Inpatient hospital services”	R9-30-101
26-	“Life threatening”	R9-27-102
27-	“Medical record”	R9-22-101
28-	“Medical services”	R9-22-101
29-	“Medically necessary”	R9-22-101
30-	“Month of application”	R9-30-103
31-	“Noncontracting provider”	A.R.S. § 36-2931
32-	“Offeror”	R9-22-106
33-	“Other health care practitioner”	R9-27-101
34-	“Outpatient hospital services”	R9-22-107
35-	“Pharmaceutical services”	R9-22-102
36-	“Plan”	Laws 1997, Ch.186, § 3, as amended by Laws 1997, 2nd Special Session, Ch. 1, § 1; Laws 1998, Ch. 214, § 21
37-	“Population”	Laws 1997, Ch. 186, § 3, as amended by Laws 1997, 2nd Special Session, Ch. 1, § 1; Laws 1998, Ch. 214, § 21
38-	“Practitioner”	R9-22-102
39-	“Premium”	R9-30-107
40-	“Premium Share”	R9-30-107
41-	“Premium Share member”	R9-30-103
42-	“Pre-payment”	R9-30-107
43-	“Prescription”	R9-22-102
44-	“Primary care provider”	R9-22-102
45-	“Prior authorization”	R9-22-102
46-	“Providers”	A.R.S. § 36-2901
47-	“PSA”	R9-30-101
48-	“PSDP”	R9-30-101
49-	“Quality management”	R9-22-105
50-	“Redetermination”	R9-30-103
51-	“Referral”	R9-22-101
	<u>“Respondent”</u>	<u>R9-22-108</u>
52-	“RFP”	R9-22-105
53-	“Service area”	R9-30-103
54-	“Scope of services”	R9-22-101

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- 55- "Subcontract" R9-22-101
- 56- "System" A.R.S. § 36-2901
- 57- "Utilization management" R9-22-105

- B.** General definitions. The words and phrases in this Chapter have the following meanings unless the context of the Chapter explicitly requires another meaning.
- 1- "Applicant" means a person who submits, or on whose behalf is submitted, a signed and dated application for enrollment in the PSDP.
 - 2- "Contract year" means October 1 through September 30.
 - 3- "Eligible household member" means a person in a household unit that is eligible for PSDP coverage under this Chapter.
 - 4- "Inpatient hospital services" means medically necessary services that require an inpatient stay in an acute hospital. Inpatient hospital services are provided by or under the direction of a physician or other health care practitioner upon referral from a Premium Share member's primary care provider.
 - 5- "PSA" means the Premium Sharing Administration, which is the entity designated by the AHCCCS Director to carry out the administrative functions of the PSDP under Laws 1997, Ch. 186, § 3, as amended by Laws 1997, 2nd Special Session, Ch. 1, § 1; Laws 1998, Ch. 214, § 21.
 - 6- "PSDP" means Premium Sharing Demonstration Project, which is a 3-year pilot program established under A.R.S. § 36-2923.

R9-30-106. Grievance and Appeals Request for Hearing Related Definitions

Definitions. The words and phrases in this Chapter have the following meanings unless the context of the Chapter explicitly requires another meaning: "Grievance" means a complaint initiated in accordance with Article 6 of this Chapter.

"Date of notice" is defined in 9 A.A.C. 22, Article 1.

"Grievance" is defined in 9 A.A.C. 22, Article 1.

"Hearing" is defined in 9 A.A.C. 22, Article 1.

"Respondent" is defined in 9 A.A.C. 22, Article 1.

ARTICLE 6. GRIEVANCES AND APPEALS GRIEVANCE AND REQUEST FOR HEARING

~~R9-30-601. General Provisions for all Grievances and Appeals~~

- ~~**A.** General Requirements. All grievances and appeals regarding Premium Sharing shall be filed and processed in accordance with A.A.C. R9-22-801. All references in that rule to AHCCCS also shall apply to PSA, and all references to health plans and system providers shall also apply to Premium Sharing Plans. In eligibility appeals, PSA is the respondent.~~
- ~~**B.** The AHCCCS Chief Hearing Officer or designee may deny a request for hearing if the sole issue presented is a state law requiring an automatic change adversely affecting some or all applicants or Premium Share members.~~

R9-30-601. General Provisions for a Grievance and a Request for Hearing

General requirements. A grievance and a request for hearing under this Chapter shall comply with R9-22-801. All references in that rule to AHCCCS shall apply to PSA, and all references to health plans and system providers shall apply to Premium Sharing Plans. In a request for hearing regarding eligibility, PSA is the respondent. Refer to Exhibit A.

~~R9-30-602. Eligibility Appeals and Hearing Requests for an Applicant and a Premium Share Member~~

- ~~**A.** Adverse eligibility action. An applicant and a Premium Share member may appeal and request a hearing concerning any of the following adverse eligibility actions:
 - 1- Denial of eligibility;
 - 2- Discontinuance of eligibility;
 - 3- Determination of premium amount; or
 - 4- Chronic illness determination.~~
- ~~**B.** Notice of an adverse eligibility action. Notice of an adverse eligibility action shall be personally delivered or mailed to the affected person by regular mail. For purposes of this Section, the date of the notice of action shall be the date of personal delivery to the person or the postmark date, if mailed.~~
- ~~**C.** Appeals and requests for hearing.
 - 1- The applicant or a Premium Share member may appeal and request a hearing regarding any adverse eligibility action by completing and submitting the premium sharing request for hearing form or by submitting a written request containing the following information:
 - a- The case name;
 - b- The adverse eligibility action being appealed; and
 - c- The reason for appeal.
 - 2- The Request for Hearing shall be filed not later than 15 days after the date of the notice of adverse action by mailing or delivering it to the PSA, Office of Legal Assistance. For this Section only, the date of the request for hearing shall be the postmark date, if mailed, or the date of personal delivery.~~

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D. PSA responsibilities.

1. The PSA shall maintain a register which documents the dates on which requests for hearings are submitted.
2. If requested, the PSA shall assist the applicant or a Premium Share member in the completion of the request for hearing form.
3. The pre-hearing summary shall be completed by the PSA and shall summarize the facts and factual basis for the adverse eligibility action.
4. The PSA shall send to the Office of Legal Assistance, the pre-hearing summary, a copy of the case file, documents pertinent to the adverse action, and the request for hearing, which must be received by the Office of Legal Assistance not later than 10 days from the date of the receipt of the request. If the request is submitted directly to the Office of Legal Assistance, the PSA shall send the materials to the Office of Legal Assistance, not later than 10 days from the date of a request for the materials.

E. PSDP coverage during the appeal process.

1. A Premium Share member appealing a discontinuance. A discontinuance is a termination of Premium Sharing benefits. If a Premium Share member requests a timely hearing, the Premium Share member shall receive continued Premium Sharing benefits until an adverse decision on appeal is rendered only if the Premium Share member pays for 3 months worth of premiums, by cashier's check, personal check, or money order, within 15 days of the mailing of the notice of discontinuance.
2. An applicant appealing a denial of Premium Sharing coverage. A denial is an adverse eligibility decision which finds the applicant ineligible for PSDP benefits. In the event that a timely request for hearing is filed, and the denial is overturned, the effective date of PSDP coverage shall be established by the Director in accordance with applicable law.
3. A Premium Share member whose benefits have been continued shall be financially liable for all PSDP benefits received during a period of ineligibility, if a discontinuance decision is upheld by the Director.

R9-30-602. Grievance

General requirements. A grievance under this Chapter shall be filed and processed under R9-22-802. All references in that rule to AHCCCS shall apply to the PSA and all references to contractors shall apply to Premium Sharing Plans. Refer to Exhibit A.

~~R9-30-603. Grievances~~

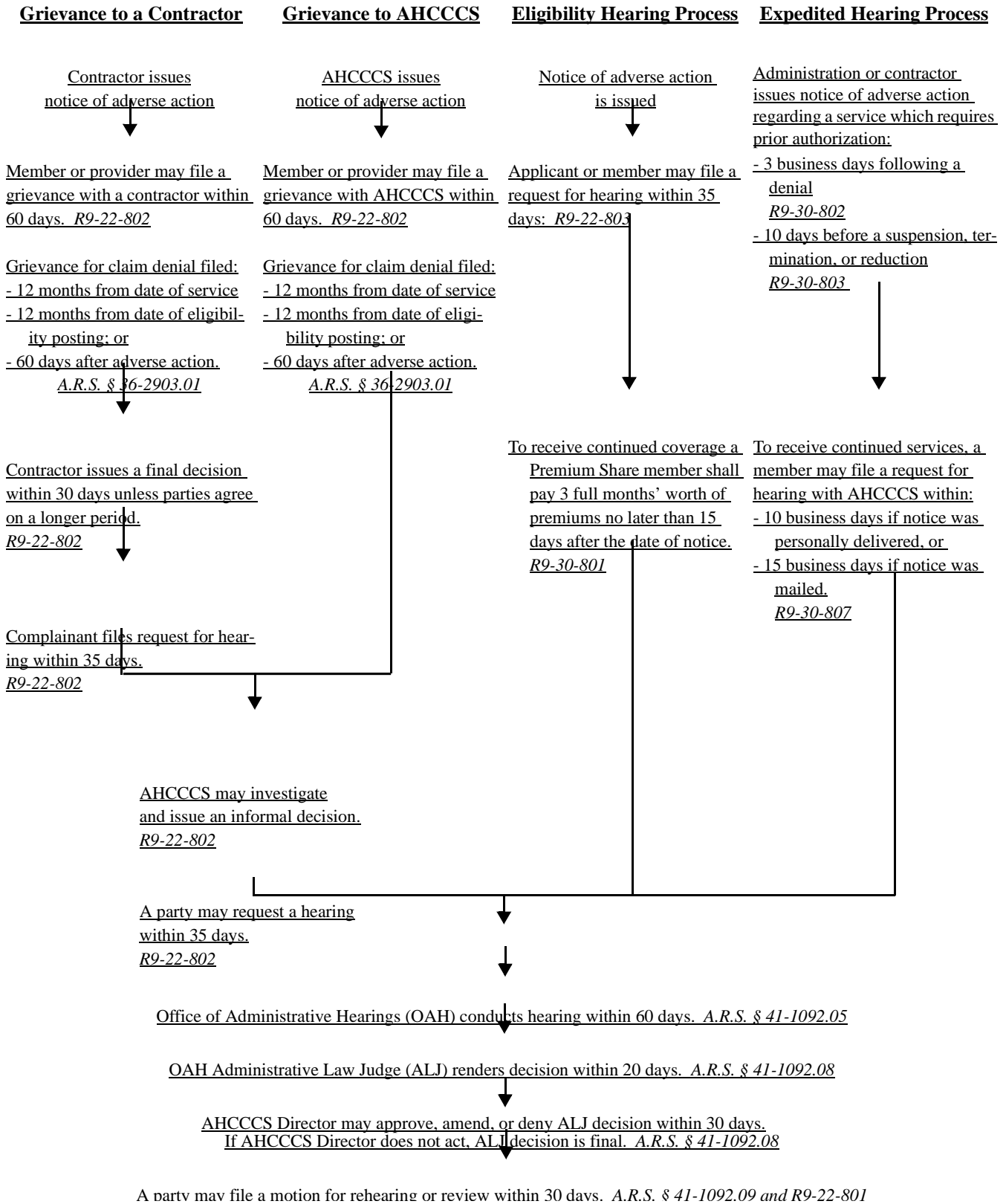
~~General Requirements. All grievances regarding PSDP shall be filed and processed in accordance with A.A.C. R9-22-804. All references in that rule to AHCCCS also shall apply to the PSA, and all references to contractors shall also apply to PSDP contractors.~~

R9-30-603. Eligibility Hearing for an Applicant and a Premium Share Member

- A. Except as provided in this Section, an eligibility hearing for an applicant or a Premium Share member shall comply with R9-22-803. Refer to Exhibit A.**
- B. Adverse eligibility action. An applicant and a Premium Share member may request a hearing concerning any of the following adverse eligibility actions:**
 1. Denial of eligibility. A denial is an adverse eligibility decision that finds an applicant ineligible for PSDP;
 2. Discontinuance of eligibility. A discontinuance is a termination of Premium Sharing eligibility;
 3. Determination of premium amount; or
 4. Chronic illness determination.
- C. PSDP coverage during the hearing process. A Premium Share member who requests a hearing regarding a discontinuance shall receive continued Premium Sharing coverage until a final administrative decision is rendered only if the Premium Share member pays for 3 full months' worth of premiums under R9-30-701, which shall be received no later than 15 days after the date of notice. Refer to Exhibit A.**
- D. Non-refundable premium. The Administration shall not refund any portion of the advance premiums paid.**
 1. If a Premium Share member's discontinuance is upheld, any remaining advance premium paid shall be applied toward the cost to the system.
 2. If a Premium Share member's discontinuance is overturned, any remaining advance premium paid shall be applied to the next month's premium charge.

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Exhibit A. Grievance and Request for Hearing Process



ARTICLE 8. MEMBERS' RIGHTS AND RESPONSIBILITIES FOR EXPEDITED HEARINGS

R9-30-801. General Intent and Definitions

- A. This Article defines the notice and ~~appeal~~ expedited hearing process when a Premium Share contractor denies, reduces, suspends, or terminates a service ~~and provides a party with the opportunity for an expedited hearing, which requires prior authorization. This Article provides an expedited hearing process and opportunity for continued services as an alternative to the provisions of 9 A.A.C. 30, Article 6. Refer to Exhibit A in 9 A.A.C. 30, Article 6.~~
- B. Definitions. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this ~~Chapter~~ Article have the following meanings unless the context explicitly requires another meaning:
1. "Action" means a denial, termination, suspension, or reduction of a covered service as defined in R9-30-102.
 2. "Contractor" means a health plan, Arizona Department of Health ~~Services~~, Services Division of Behavioral Health Services, or a Tribal or Regional Behavioral Health Authority.
 3. "Date of action" means the effective date for a ~~termination, suspension, or reduction.~~
 4. "Denial" means the decision not to authorize a requested service.
 5. "Notice" means a written statement that meets the requirements specified in R9-30-804.
 6. "Party" means a member or contractor.
 7. "Request for a hearing" means a clear expression by a Premium Share member or a member's authorized representative that the Premium Share member wants the opportunity to present the Premium Share member's case to a reviewing authority.

R9-30-802. Denial of a Request for a Service

A Premium Share contractor shall provide a Premium Share member with written notice no later than 3 business days ~~from after the date when the Administration or a contractor denies authorization for a requested service is denied by the party giving notice.~~ which the Premium Share member does not currently receive. Refer to Exhibit A in 9 A.A.C. 30, Article 6.

R9-30-803. Reduction, Suspension, or Termination of a Service

Except as permitted under R9-30-805 and R9-30-806, if the Premium Share contractor reduces, suspends, or terminates a service currently provided by the Premium Share contractor, the Premium Share contractor shall provide the member written ~~Notice of Intended Action~~ notice at least 10 days ~~prior to~~ before the date of the intended action. Refer to Exhibit A in 9 A.A.C. 30, Article 6.

R9-30-804. Content of Notice

- A ~~Notice of Intended Action~~, notice required under R9-30-802 or R9-30-803 ~~of this Article~~, shall contain the following:
1. A statement of the action the Premium Share contractor has taken or intends to take;
 2. The ~~succinct and~~ specific reason for the ~~intended~~ action;
 3. The specific law or rule that supports the action, or the change in federal or state law that requires the action;
 4. ~~A change in federal or state law that requires an action;~~
 - 5.4. An explanation of:
 - a. A Premium Share member's right to request an evidentiary hearing; and
 - b. The circumstances under which the Premium Share contractor shall grant a hearing for an action based on a change in the law; and
 - 6.5. An explanation of the circumstance under which the Premium Share contractor shall continue a covered service if a Premium Share member ~~appeals an action for a:~~ requests a hearing regarding a service:
 - a. Reduction,
 - b. Suspension, or
 - c. ~~Termination of a service.~~ Termination.

R9-30-805. Exceptions from an Advance Notice

- A Premium Share contractor may mail a ~~Notice of Intended Action~~ notice for a reduction, suspension, or termination of a service ~~not~~ no later than the date of action if the Premium Share contractor:
1. Has factual information confirming the death of a Premium Share member;
 2. Receives a written statement signed by the Premium Share member that:
 - a. States services are no longer wanted; or
 - b. Provides information which requires a reduction or a termination of a service and indicates that the Premium Share member understands that a reduction or a termination of a service shall be the result of providing that information;
 3. Learns that a Premium Share member has been admitted to an institution which makes the Premium Share member ineligible for further services;
 4. Does not know the Premium Share member's whereabouts and mail directed to the Premium Share member is returned by the post office and no forwarding address is provided;
 5. Has established the fact that a Premium Share member has been approved for Medicaid;

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6. Knows that the Premium Share member's primary care provider has prescribed a change in the level of medical care.

R9-30-807. Expedited Hearing Process

- A. Alternative hearing process. ~~This Section provides an alternative expedited hearing process for denials defined in R9-30-801(B)(4) and an alternative expedited hearing process and continued services for an action defined in R9-30-801(B)(1). Except as stated in this Section, the provisions of 9 A.A.C. 30, Article 6 do not apply. If the PSA determines that a request for hearing filed according to this Section is not timely or not a proper appeal of a denial or action defined in R9-30-801(B), the request for expedited hearing shall instead be considered a grievance according to 9 A.A.C. 30, Article 6 and, if appropriate, forwarded to the Premium Share contractor within 10 business days from the date the PSA receives the request for processing according to 9 A.A.C. 30, Article 6. In this event, services shall not be continued as provided in this Section. If a Premium Share member does not seek continued services or an expedited hearing, the Premium Share member may file a grievance according to 9 A.A.C. 30, Article 6.~~
1. Under the following circumstances, a request for hearing shall be considered a grievance under 9 A.A.C. 30, Article 6, and the Administration shall forward the request to the contractor within 10 business days after the day the Administration receives the request:
 - a. The Administration determines that a request for hearing filed under this Section is not timely as determined by the Office of Legal Assistance's date stamp on the document; or
 - b. The request for hearing does not involve the denial, reduction, suspension, or termination of a service.
 2. To obtain an expedited hearing or to obtain an expedited hearing and continued services, a Premium Share member shall file a request for hearing in the same manner as provided in R9-22-803.
- B. Timeframes. Refer to Exhibit A in 9 A.A.C. 30, Article 6. If the Premium Share contractor denies a service that requires authorization or reduces, suspends, or terminates an existing service; and the Premium Share member ~~appeals~~ requests a hearing regarding the action and requests continued services during the hearing process or requests an expedited hearing of a denial for authorization, the Premium Share member ~~must~~ shall file a request for hearing:
1. No later than 10 business days ~~from~~ after the date of personal delivery of the ~~Notice of Intended Action~~ notice to the Premium Share member; or
 2. No later than 15 business days ~~from~~ after the postmark date, if mailed, of the ~~Notice of Intended Action~~ notice.
- C. Expedited hearing. A hearing under this Section shall be held no sooner than 20 days and not later than 40 days ~~from~~ after the PSA's receipt of the request for hearing. Alternatively, the hearing may be held sooner than 20 days upon the agreement of all of the parties or upon written motion of 1 of the parties ~~establishing, in the discretion of the PSA,~~ establishing extraordinary circumstances or the possibility of irreparable harm if the hearing is not held sooner.
- D. Notice of hearing date. The PSA shall provide notice of the hearing date to the Premium Share member or the authorized representative and to all other parties to the ~~appeal~~ hearing.
- E. Responsibilities of the PSA or a contractor. The Premium Share contractor shall provide the current level of an existing service during the expedited hearing process, if a request for expedited hearing and ~~request to continue~~ continued services ~~are properly~~ is filed ~~according to~~ in a timely manner under this Section.
- F. Previously authorized service.
1. If a Premium Share member's primary care provider ~~orders~~ requests authorization for a service that was previously authorized for the Premium Share member, the Premium Share contractor may issue a written denial ~~according to~~ under R9-30-802, if the Premium Share contractor considers the request new and independent of any previous authorization. If the Premium Share member's primary care provider asserts that the requested service or treatment is a necessary continuation of the previous authorization, and the member challenges the denial on this basis, then the service shall be continued pending ~~appeal;~~ a hearing decision unless:
 - a. 1. The parties reach some other agreement, or
 - b. 2. The Premium Share contractor believes the primary care provider's request endangers the Premium Share member.
 2. ~~Any dispute regarding reimbursement of a service under this Section is reserved until the provider submits a claim.~~
- G. Responsibility of a Premium Share member. A Premium Share member whose service is continued during the expedited hearing process is financially liable for the service received if the Director upholds the decision to reduce, suspend, or terminate the service.
- H. General provisions. ~~The~~ If an expedited hearing ~~process is requested,~~ a hearing shall be conducted ~~according to R9-30-601 and R9-22-801, subsections (A) through (E) and (G) through (M);~~ under A.R.S. § 41-1092.

R9-30-808. Maintenance of Records

The Premium Share contractor providing ~~Notice of Intended Action~~ notice shall maintain records of the written notification and the date of the notice given to the Premium Share member.

R9-30-809. Member Handbook

A Premium Share contractor shall furnish each Premium Share member with a handbook, as specified in contract, that clearly explains a Premium Share member's right to file a grievance or ~~appeal~~ request a hearing concerning a ~~denial or an~~ action that affects a Premium Share member's receipt of medical services.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
CHILDREN'S HEALTH INSURANCE PROGRAM**

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
R9-31-101	Amend
R9-31-108	Amend
R9-31-113	Repeal
Article 8	Amend
R9-31-801	Repeal
R9-31-801	New Section
R9-31-802	Repeal
R9-31-802	New Section
R9-31-803	Repeal
R9-31-803	New Section
R9-31-804	Repeal
Exhibit A	New Exhibit
Article 13	Amend
R9-31-1301	Amend
R9-31-1302	Amend
R9-31-1303	Amend
R9-31-1304	Amend
R9-31-1305	Amend
R9-31-1306	Amend
R9-31-1307	Amend
R9-31-1308	Amend
R9-31-1309	Amend

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

Authorizing statute: A.R.S. § 36-2986(L)(2)

Implementing statute: A.R.S. §§ 36-2903.01(B)(4) and 41-1092.02

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

Notice of Rulemaking Docket Opening: 6 A.A.R. 662, February 11, 2000

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

Name: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS
Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

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

The Administration amended 4 Articles in 9 A.A.C. 31 to comply with changes to state statute. The changes were implemented on July 1, 1999, when the hearing process moved from AHCCCS to the Office of Administrative Hearings (OAH). In addition, whenever possible, the language was cross-referenced to 9 A.A.C. 22 to streamline and enhance the uniformity of rule language.

The Administration added Exhibit A in Article 8 to illustrate the grievance and request for hearing processes.

6. Reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

Not applicable

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

Not applicable

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

The following entities will benefit from the changes which clarify their roles in the grievance and request for hearing process:

- a. AHCCCS Administration;
- b. Office of Administrative Hearings (OAH);
- c. KidsCare members and applicants;
- d. KidsCare contractors; and
- e. KidsCare providers.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS
Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: May 16, 2000

Time: 10:30 a.m.

Location: Casa Grande ALTCS Office
500 North Florence Street
Casa Grande, AZ 85222

Nature: Public Hearing

Date: May 17, 2000

Time: 10:00 a.m.

Location: AHCCCS
701 East Jefferson
Phoenix, AZ 85034
Turquoise Room

Location: ALTCS: Arizona Long-term Care System
110 South Church, Suite 3250
Tucson, AZ 85701

Location: ALTCS: Arizona Long-term Care System
3480 East Route 66

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Flagstaff, AZ 86004

Nature: Videoconference Oral Proceeding

The Administration will accept written comments until 5:00 p.m., Wednesday, May 17, 2000. Please submit comments to the following person:

Name: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS
Office of Policy Analysis and Coordination
801 East Jefferson, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

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

Not applicable

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

None

13. Was this rule previously adopted as an emergency rule?

No

14. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
CHILDREN'S HEALTH INSURANCE PROGRAM**

ARTICLE 1. DEFINITIONS

Section

R9-31-101. Location of Definitions

R9-31-108. Grievance and ~~Appeal~~ Request for Hearing Related Definitions

R9-31-113. ~~Members' Rights and Responsibilities Related Definitions~~ Repealed

ARTICLE 8. GRIEVANCE AND ~~APPEAL PROCESS~~ REQUEST FOR HEARING

Section

~~R9-31-801. General Provisions for All Grievances and Appeals~~

R9-31-801. General Provisions For a Grievance and Request for Hearing

~~R9-31-802. Eligibility Appeals and Hearing Requests for an Applicant and a Member~~

R9-31-802. Grievance

~~R9-31-803. Grievances~~

R9-31-803. Eligibility Hearing for an Applicant and a Member Under 9 A.A.C. 31 Article 3

~~R9-31-804. Grievance and Appeal Process for Behavioral Health~~

Exhibit A. Grievance and Request for Hearing Process

ARTICLE 12. COVERED BEHAVIORAL HEALTH SERVICES

Section

R9-31-1208. Grievance and ~~Appeal~~ Request for Hearing Process

ARTICLE 13. MEMBERS' RIGHTS AND RESPONSIBILITIES FOR EXPEDITED HEARINGS

Section

R9-31-1301. General Provisions

R9-31-1302. Denial of a Request for a Service

R9-31-1303. Reduction, Suspension, or Termination of a Service

R9-31-1304. Content of Notice

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R9-31-1305. Exceptions from an Advance Notice
R9-31-1306. Notice in a Case of Probable Fraud
R9-31-1307. Expedited Hearing Process
R9-31-1308. Maintenance of Records
R9-31-1309. Member Handbook

ARTICLE 1. DEFINITIONS

R9-31-101. Location of Definitions

- A.** For purposes of this Article the term member shall be substituted for the term eligible person.
B. Location of definitions. Definitions applicable to Chapter 31 are found in the following.

Definition	Section or Citation
1. "1st-party liability"	R9-22-110
2. "3rd-party"	R9-22-110
3. "3rd-party liability"	R9-22-110
4. "Accommodation"	R9-22-107
5. "Action"	R9-31-113
6. "Acute mental health services"	R9-22-112
7. "Administration"	A.R.S. § 36-2901
<u>"Adverse action"</u>	<u>R9-22-108</u>
8. "Aggregate"	R9-22-107
9. "AHCCCS"	R9-31-101
10. "AHCCCS hearing officer"	R9-22-108
11. "Ambulance"	R9-22-102
12. "Ancillary department"	R9-22-107
13. "Appeal"	R9-22-108
14. "Appellant"	R9-31-108
15. "Applicant"	R9-31-101
16. "Application"	R9-31-101
17. "ADHS"	R9-31-112
18. "Behavior management services"	R9-31-112
19. "Behavioral health paraprofessional"	R9-31-112
20. "Behavioral health professional"	R9-31-112
21. "Behavioral health service"	R9-31-112
22. "Behavioral health technician"	R9-31-112
23. "Billed charges"	R9-22-107
24. "Board eligible for psychiatry"	R9-31-112
25. "Capital costs"	R9-22-107
26. "Case management services"	R9-31-112
27. "Certified nurse practitioner"	R9-31-102
28. "Certified psychiatric nurse practitioner"	R9-31-112
29. "Child"	42 U.S.C. 1397jj
30. "Clean claim"	A.R.S. § 36-2904
31. "Clinical supervision"	R9-31-112
32. "CMDP"	R9-31-103
33. "Continuous stay"	R9-22-101
34. "Contract"	R9-22-101
35. "Contractor"	R9-31-101
36. "Contract year"	R9-31-101
37. "Copayment"	R9-22-107
38. "Cost avoidance"	R9-31-110
39. "Cost-to-charge ratio"	R9-22-107
40. "Covered charges"	R9-31-107
41. "Covered services"	R9-22-102
42. "CPT"	R9-22-107
43. "CRS"	R9-31-103
44. "Date of action"	R9-31-113
45. "Day"	R9-22-101
46. "Denial"	R9-31-113

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47-	“De novo hearing”	R9-31-112
48-	“Dentures”	R9-22-102
49-	“DES”	R9-31-103
50-	“Determination”	R9-31-103
51-	“Diagnostic services”	R9-22-102
52-	“Director”	A.R.S. § 36-2981
53-	“DME”	R9-22-102
54-	“DRI inflation factor”	R9-22-107
55-	“EAC”	A.R.S. § 36-2905.03(B)
56-	“ELIC”	A.R.S. § 36-2905.03(C) and (D)
57-	“Emergency medical condition”	42 U.S.C. 1396(v)
58-	“Emergency medical services”	R9-22-102
59-	“Encounter”	R9-22-107
60-	“Enrollment”	R9-31-103
61-	“Evaluation”	R9-31-112
62-	“Facility”	R9-22-101
63-	“Factor”	R9-22-101
64-	“FPL”	A.R.S. § 36-2981
65-	“Grievance”	R9-22-108
66-	“Group Health Plan”	42 U.S.C. 1397jj
67-	“GSA”	R9-22-101
68-	“Guardian”	R9-22-103
69-	“Head of Household”	R9-31-103
70-	“Health plan”	A.R.S. § 36-2981
	“Hearing”	<u>R9-22-108</u>
71-	“Hearing aid”	R9-22-102
72-	“Home health services”	R9-22-102
73-	“Hospital”	R9-22-101
74-	“Household income”	R9-31-103
75-	“ICU”	R9-22-107
76-	“IGA”	R9-31-116
77-	“IHS”	R9-31-116
78-	“IHS” or “Tribal Facility Provider”	R9-31-116
79-	“IMD”	R9-31-112
80-	“Inmate of a public institution”	42 CFR 435.1009
81-	“Inpatient hospital services”	R9-31-101
82-	“Inpatient psychiatric facilities for individuals under age 21”	R9-31-112
83-	“License” or “licensure”	R9-22-101
84-	“Medical record”	R9-22-101
85-	“Medical review”	R9-31-107
86-	“Medical services”	R9-22-101
87-	“Medical supplies”	R9-22-102
88-	“Medically necessary”	R9-22-101
89-	“Member”	A.R.S. § 36-2981
90-	“Mental Disorder”	R9-31-112
91-	“MI/MN”	A.R.S. § 36-2901(4)(a) and (c)
92-	“New hospital”	R9-22-107
93-	“NF”	42 U.S.C. 1396r(a)
94-	“NICU”	R9-22-107
95-	“Noncontracting provider”	A.R.S. § 36-2981
96-	“Occupational therapy”	R9-22-102
97-	“Offeror”	R9-31-106
98-	“Operating costs”	R9-22-107
99-	“Outlier”	R9-31-107
100-	“Outpatient hospital service”	R9-22-107
101-	“Ownership change”	R9-22-107
102-	“Partial care”	R9-31-112
103-	“Peer group”	R9-22-107
104-	“Pharmaceutical service”	R9-22-102

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105: "Physical therapy"	R9-22-102
106: "Physician"	A.R.S. § 36-2981
107: "Post stabilization services"	42 CFR 438.114
108: "Practitioner"	R9-22-102
109: "Pre-existing condition"	R9-31-105
110: "Prepaid capitated"	A.R.S. § 36-2981
111: "Prescription"	R9-22-102
112: "Primary care physician"	A.R.S. § 36-2981
113: "Primary care practitioner"	A.R.S. § 36-2981
114: "Primary care provider"	R9-22-102
115: "Primary care provider services"	R9-22-102
116: "Prior authorization"	R9-22-102
117: "Private duty nursing services"	R9-22-102
118: "Program"	A.R.S. § 36-2981
119: "Proposal"	R9-31-106
120: "Prospective rates"	R9-22-107
121: "Prudent layperson standard"	42 U.S.C. 1396u-2
122: "PSP"	R9-31-103
123: "Psychiatrist"	R9-31-112
124: "Psychologist"	R9-31-112
125: "Psychosocial rehabilitation"	R9-31-112
126: "Qualified alien"	P.L. 104-193
127: "Qualifying Health Center"	A.R.S. § 36-2981
128: "Qualifying plan"	A.R.S. § 36-2981
129: "Quality management"	R9-22-105
130: "Radiology services"	R9-22-102
131: "Rebasing"	R9-22-107
132: "Redetermination"	R9-31-103
133: "Referral"	R9-22-101
134: "RBHA"	R9-31-112
135: "Registered nurse"	R9-31-112
136: "Rehabilitation services"	R9-22-102
137: "Reinsurance"	R9-22-107
138: "Request for hearing"	R9-31-108
139: "RFP"	R9-31-106
140: "Respiratory therapy"	R9-22-102
141: "Respondent"	R9-31-108 R9-22-108
142: "Scope of services"	R9-22-102
143: "Screening"	R9-31-112
144: "SDAD"	R9-22-107
145: "SMI"	A.R.S. § 36-550
146: "Service location"	R9-22-101
147: "Service site"	R9-22-101
148: "Specialist"	R9-22-102
149: "Speech therapy"	R9-22-102
150: "Spouse"	R9-31-103
151: "SSI-MAO"	R9-31-103
152: "Sterilization"	R9-22-102
153: "Subcontract"	R9-22-101
154: "Substance abuse"	R9-31-112
155: "TRBHA"	R9-31-116
156: "Tier"	R9-22-107
157: "Tiered per diem"	R9-31-107
158: "Title XIX"	42 U.S.C. 1396
159: "Title XXI"	42 U.S.C. 1397jj
160: "Treatment"	R9-31-112
161: "Tribal facility"	A.R.S. § 36-2981
162: "Utilization management"	R9-22-105

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C. General definitions. The words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

1. "AHCCCS" means the Arizona Health Care Cost Containment System, which is composed of the Administration, contractors, and other arrangements through which health care services are provided to a member.
2. "Applicant" means a person who submits, or on whose behalf is submitted, a written, signed, and dated application for Title XXI benefits which has not been completed or denied.
3. "Application" means an official request for Title XXI benefits made in accordance with Article 3.
4. "Contractor" means a health plan that contracts with the Administration for the provision of hospitalization and medical care to members ~~according to~~ under the provisions of this Article or a qualifying plan.
5. "Contract year" means the date beginning on October 1 and continuing until September 30 of the following year.
6. "Inpatient hospital services" means medically necessary services that require an inpatient stay in an acute hospital. Inpatient hospital services are provided by or under the direction of a physician or other health care practitioner upon referral from a member's primary care provider.

R9-31-108. Grievance and ~~Appeal~~ Request for Hearing Related Definitions

Definitions. The words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

1. ~~"Appellant" means an individual filing any grievance or appeal under this Article.~~
2. ~~"Request for hearing" means an appeal of an adverse eligibility action; an appeal filed after an informal decision has been rendered on a grievance by the Administration; an appeal of a grievance decision rendered by a contractor; or an appeal filed because a contractor has failed to render a timely grievance decision.~~
3. ~~"Respondent" means the party responsible for the action being grieved or appealed. In Title XXI eligibility appeals, the Administration is the respondent. In most member grievances, the contractor generally is the respondent.~~

~~"Adverse action" is defined in 9 A.A.C. 22, Article 1.~~

~~"Grievance" is defined in 9 A.A.C. 22, Article 1.~~

~~"Hearing" is defined in 9 A.A.C. 22, Article 1.~~

~~"Respondent" is defined in 9 A.A.C. 22, Article 1.~~

R9-31-113. ~~Members' Rights and Responsibilities Related Definitions~~ Repealed

Definitions. The words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

1. ~~"Action" means a termination, suspension, or reduction of a covered service for the purposes of 9 A.A.C. 31, Article 13 only.~~
2. ~~"Date of action" means the intended date on which a termination, suspension, or reduction becomes effective for the purposes of 9 A.A.C. 31, Article 13 only.~~
3. ~~"Denial" means the decision not to authorize a requested service for the purposes of 9 A.A.C. 31, Article 13 only.~~

ARTICLE 8. GRIEVANCE AND ~~APPEAL~~ PROCESS REQUEST FOR HEARING

R9-31-801. ~~General Provisions For All Grievances and Appeals~~

- ~~A. As specified in A.R.S. § 36-2986, the Director shall, by rule, establish a grievance and appeal procedure.~~
- ~~B. All grievances and appeals shall be filed and processed according to A.A.C. R9-22-801. In eligibility appeals, the Administration is the respondent.~~
- ~~C. The AHCCCS chief hearing officer or designee may deny a request for a hearing if either of the following occurs:
 1. The sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all applicants or members, or
 2. The Administration reaches the maximum number of members the program shall serve as specified in A.R.S. § 36-2985.~~
- ~~D. A parent or legal guardian may file a grievance only over a denial of a covered service or a claim for a covered service, as specified in R9-31-803. A parent or legal guardian may not file an eligibility appeal and is not entitled to receive a continued service on appeal. If the parent or legal guardian prevails in the AHCCCS grievance process, the contractor shall provide any service or pay any claim determined to be medically necessary regardless of whether judicial review is sought. A provider may file a grievance regarding a denial of a covered service or a claim for a covered service of a parent or legal guardian.~~

R9-31-801. General Provisions For a Grievance and Request for Hearing

A. A grievance and a request for hearing under this Chapter shall comply with R9-22-801.

B. In addition to the reasons in R9-22-801, the Administration may deny a request for a hearing if the program reaches the maximum number of members under A.R.S. § 36-2985.

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R9-31-802. Eligibility Appeals and Hearing Requests for an Applicant and a Member

- A.** Adverse eligibility actions. An applicant or a member may appeal and request a hearing concerning either of the following adverse eligibility actions:
1. Denial of eligibility, or
 2. Discontinuance of eligibility.
- B.** Notice of an adverse eligibility action. Notice of an adverse eligibility action shall be personally delivered or mailed to the affected individual by regular mail. For purposes of this Section, the date of the Notice of Action shall be the date of personal delivery to the individual or the postmark date, if mailed.
- C.** Appeals and requests for hearing:
1. An applicant or a member may appeal and request a hearing regarding an adverse eligibility action by completing and submitting the AHCCCS Request for Hearing form or by submitting a written request containing the following information:
 - a. The case name,
 - b. The adverse eligibility action being appealed, and
 - c. The reason for appeal.
 2. For denials, the request for hearing shall be filed not later than 20 days from the date of the notice of adverse action. For discontinuances, the request for hearing shall be filed not later than 10 days after the effective date of action. The request for hearing shall be filed by mailing or delivering it to either the Title XXI eligibility office or the Administration, Office of Grievance and Appeals. For this Section only, the date of the request for hearing shall be the postmark date, if mailed, or the date of personal delivery.
- D.** Eligibility office responsibilities:
1. The eligibility office shall maintain a register which documents the date on which a request for hearing is submitted.
 2. If requested, the eligibility office shall assist the appellant or designated representative in the completion of the Request for Hearing form.
 3. A Pre-Hearing Summary shall be completed by the eligibility office and shall summarize the facts and factual basis for the adverse eligibility action.
 4. The eligibility office shall send to the Administration, Office of Grievance and Appeals, the Pre-Hearing Summary, a copy of the case file, documents pertinent to the adverse action, and the Request for Hearing, which must be received by the Administration, Office of Grievance and Appeals, not later than 10 days from the date the request is received. If the request is submitted directly to the Administration, Office of Grievance and Appeals, the eligibility office shall send the materials to the Office of Grievance and Appeals, not later than 10 days from the date of a request for the materials.
- E.** Title XXI coverage during the appeal process:
1. Applicants appealing a denial of Title XXI coverage. A denial is an adverse eligibility decision which finds the applicant ineligible for Title XXI benefits. In the event that a timely request for hearing is filed and the denial is overturned, the effective date of Title XXI coverage shall be established by the Director in accordance with applicable law.
 2. Members appealing a discontinuance. A discontinuance is a termination of Title XXI benefits. For actions requiring 10 days advance notice, a member who requests a hearing before the effective date of the adverse action shall continue to receive Title XXI benefits until an adverse decision on the appeal is rendered, unless the program is suspended or terminated as specified in A.R.S. § 36-2985.
 3. Member's financial responsibility for benefits. A member whose benefits have been continued shall be financially liable for all Title XXI benefits received during a period of ineligibility if a discontinuance decision is upheld by the Director.

R9-31-802. Grievance

- A.** General. A grievance under this Chapter shall be filed and processed under R9-22-802. Refer to Exhibit A.
- B.** Grievance filed by a parent or a legal guardian.
1. A parent or a legal guardian of an applicant or a member may file a grievance under R9-22-802 on behalf of the applicant or the member.
 2. A parent or a legal guardian who receives coverage under A.R.S. § 36-2984 may file a grievance on their own behalf regarding a denial of a covered service.
- C.** Grievance filed by a provider.
1. A provider may file a grievance regarding a denial of a claim for a covered service for a member.
 2. A provider may file a grievance regarding a denial of a claim for a covered service for a parent or a legal guardian who receives coverage under A.R.S. § 36-2984.

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~~R9-31-803. Grievances~~

~~All grievances regarding Title XXI shall be filed and processed according to A.A.C. R9-22-804. For purposes of this Chapter, a member's grievance does not need to state with particularity the legal or factual basis for the requested relief.~~

R9-31-803. Eligibility Hearing for an Applicant and a Member Under 9 A.A.C. 31, Article 3

- A.** General. Except as provided in this Section, an eligibility hearing for an applicant or a member under this Chapter shall comply with R9-22-803. Refer to Exhibit A.
- B.** Adverse eligibility actions.
1. In addition to adverse eligibility actions in R9-22-803, an applicant or member may request a hearing for:
 - a. A delay in the eligibility determination timeframe under R9-31-302; or,
 - b. The determination of or payment of a premium amount under 9 A.A.C. 31, Article 14.
 2. Except when filed on behalf of an applicant or member, a parent or legal guardian may not file a request for hearing concerning any adverse eligibility action.
- C.** Filing a request for hearing. A request for hearing shall be considered filed when received in writing by the Administration, as established by the Office of Legal Assistance's date stamp on the document.

~~R9-31-804. Grievance and Appeal Process for Behavioral Health~~

- ~~A.~~** ~~All Title XXI grievances relating to an adverse action, decision, or policy regarding behavioral health issues shall be processed according to the standards set by the Administration, as specified in contract with ADHS, contractors, and provider agreements.~~
- ~~B.~~** ~~An appeal of a grievance decision under subsection (A) shall be conducted as a contested case according to R9-31-801 and R9-31-803.~~

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

R9-31-1208. Grievance and Appeal Request for Hearing Process

- A. Processing of a grievance. ~~All grievances~~ A grievance regarding ~~any an~~ adverse action, decision, or policy regarding a behavioral health services ~~service~~ shall be reviewed ~~according to~~ under A.R.S. §§ 36-2986, 36-3413, 41-1092.02, 9 A.A.C. 31, Article 8, and ~~9 A.A.C. 31, Article 13; and 9 A.A.C. 31, Articles 8 and 13.~~
- B. Member ~~appeal request for hearing.~~ A member's appeal of request for hearing regarding a grievance under this Article shall be conducted as a contested case ~~according to~~ under 9 A.A.C. 31, Article 8.
- ~~C. Other appeals. An appeal of the ADHS director's decision after an Office of Administrative Hearing decision other than de novo hearing requests by a member shall be limited to an appellate review by the Administration to determine whether substantial evidence in the record supports the decision.~~

ARTICLE 13. MEMBERS' RIGHTS AND RESPONSIBILITIES FOR EXPEDITED HEARINGS

R9-31-1301. General Provisions

- A. The Administration shall administer the program as specified in A.R.S. § 36-2982.
- B. The Director has full operational authority to adopt rules or to use the appropriate rules adopted as specified in A.R.S. § 36-2986.
- C. This Article defines the notice and ~~appeal~~ expedited hearing process when a contractor ~~denies, reduces, suspends or terminates a service and provides a member with the opportunity for an expedited hearing; which requires prior authorization.~~ This Article provides an expedited hearing process and opportunity for continued services as an alternative to the provisions of 9 A.A.C. 31, Article 8. Refer to Exhibit A in 9 A.A.C. 31, Article 8.
- D. For the purpose of this ~~Article;~~ Article, "Action" means a denial, termination, suspension, or reduction of a covered service ~~as defined in R9-22-102.~~
1. ~~Contractor~~ "Contractor" means a health plan, a qualifying plan, TRBHA, a RBHA RBHA, or ADHS. ADHS Division of Behavioral Health Services
2. Request for hearing means a clear expression by a member or an authorized representative that a member wants the opportunity to present the member's case to a reviewing authority.
- "Notice" means a written statement that meets the requirements specified in R9-31-1304.
- "Party" means a member or a contractor.

R9-31-1302. Denial of a Request for a Service

A contractor shall provide a member with a written notice no later than 3 business days ~~from~~ after the date ~~when a contractor denies authorization for a requested service is denied by the party giving notice; which the member does not currently receive.~~ Refer to Exhibit A in 9 A.A.C. 31, Article 8.

R9-31-1303. Reduction, Suspension, or Termination of a Service

Except as permitted under R9-31-1305 and R9-31-1306, ~~if a contractor reduces, suspends, or terminates a service currently provided by the contractor, a contractor shall provide a member with a written Notice of Intended Action notice at least 10 days prior to before the effective date of the action by a contractor when there is a reduction, suspension, or termination of a service currently provided by a contractor; intended action. Refer to Exhibit A in 9 A.A.C. 31, Article 8.~~

R9-31-1304. Content of Notice

A notice, required under R9-31-1302 or R9-31-1303 ~~of this Article,~~ shall contain the following:

1. A statement of ~~what the~~ the action a contractor has taken or intends to take;
2. The ~~succinct and specific reasons~~ reason for the ~~intended~~ action;
3. The specific law or rule that supports the action, or a the change in federal or state law that requires ~~an~~ the action;
4. An explanation of:
 - a. A member's right to request an evidentiary hearing; and
 - b. The circumstances under which the Administration or a contractor shall grant a hearing ~~in cases of~~ for an action based on a change in the law; and
5. An explanation of the circumstance under which a contractor shall continue a covered service if a member requests a hearing ~~to appeal an action for a~~ regarding a service:
 - a. Reduction,
 - b. Suspension, or
 - c. ~~Termination of a service.~~ Termination.

R9-31-1305. Exceptions from an Advance Notice

A contractor may mail a notice of a reduction, suspension, or termination of a service ~~not~~ no later than the date of action if a contractor:

1. Has factual information that confirms the death of a ~~member;~~ member;

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2. Receives a ~~clear~~ written statement signed by the member that:
 - a. ~~Services States services~~ are no longer wanted, or
 - b. Provides information which requires a reduction or termination of a service and indicates that a member understands that a reduction or termination of a service shall be the result of providing that ~~information, information;~~
3. Learns that a member has been admitted to an institution which makes a member ineligible for further ~~services, services;~~
4. Does not know a member's whereabouts and ~~mail directed to the member is returned by the post office returns mail directed to a member indicating and no forwarding address, address is provided;~~
5. Has established a fact that a member has been accepted for Title XIX or Title XXI services outside the state of ~~Arizona, Arizona;~~ or
6. Knows that a member's primary care provider has prescribed a change in the level of medical care.

R9-31-1306. Notice in a Case of Probable Fraud

A contractor may shorten the period of advance notice to 5 days before the date of action if:

1. The ~~facts~~ circumstances indicate that action should be taken because of probable fraud by a member; and
2. The facts have been verified through secondary resources, if possible.

R9-31-1307. Expedited Hearing Process

A. Alternative hearing process. ~~This Section provides an alternative expedited hearing process for denials defined in R9-31-113 and an alternative expedited hearing process and continued services for actions defined in R9-31-113. Except as stated in this Section, the provisions of 9 A.A.C. 31, Article 8 do not apply. If the Administration determines that a request for hearing filed according to this Section was not timely or not a proper appeal of a denial or action as defined in R9-31-113, the request for hearing shall instead be considered a grievance according to 9 A.A.C. 31, Article 8 and, if appropriate, forwarded to the contractor for processing according to 9 A.A.C. 31, Article 8. In this event, services shall not be continued as provided in this Section. If a member does not seek continued services or an expedited hearing, a member may file a grievance according to 9 A.A.C. 31, Article 8. A member shall not receive continued behavioral health services on appeal beyond the statutory limitation on such services.~~

1. Under the following circumstances, a request for hearing shall be considered a grievance under 9 A.A.C. 31, Article 8, and the Administration shall forward the request to the contractor within 10 business days after the day the Administration receives the request:

- a. The Administration determines that a request for hearing filed under this Section is not timely as determined by the Office of Legal Assistance's date stamp on the document; or
- b. The request for hearing does not involve the denial, reduction, suspension, or termination of a service.

2. To obtain an expedited hearing or to obtain an expedited hearing and continued services, a member shall file a request for hearing in the same manner as provided in R9-31-803.

B. Timeframes. ~~Refer to Exhibit A in 9 A.A.C. 31, Article 8. If a contractor determines to deny denies a service that requires authorization or determines to reduce, suspend, or terminate reduces, suspends, or terminates an existing services; service; and a member desires to appeal the determination requests a hearing regarding the action and either requests continued services during the hearing process or requests an expedited hearing of a denial for authorization, a member must shall file a request for hearing:~~

1. No later than 10 business days ~~from~~ after the date of personal delivery of the ~~Notice of Intended Action notice~~ to the member; or
2. No later than 15 business days ~~from~~ after the postmark date, if mailed, of the ~~Notice of Intended Action notice.~~

C. Expedited hearing. A hearing ~~according to under~~ this Section shall be held no sooner than 20 days and not later than 40 days ~~from~~ after the Administration's receipt of the request for hearing. Alternatively, the hearing may be held sooner than 20 days upon the agreement of all of the parties or upon a written motion of 1 of the parties ~~establishing, in the discretion of the Administration, establishing~~ extraordinary circumstances or the possibility of irreparable harm if the hearing is not held sooner.

D. Notice of hearing date. The Administration shall provide notice of the hearing date to the member or the authorized representative and to all other parties to the ~~appeal hearing.~~

E. Responsibilities of a contractor. A contractor shall provide the current level of an existing service during the expedited hearing process, if a request for expedited hearing and ~~request to continue services are properly filed according to continued services is filed in a timely manner under~~ this Section.

F. Previously authorized service. If a member's primary care provider ~~orders~~ requests authorization for a service that ~~has been was~~ previously authorized for a member, a contractor may issue a written denial ~~according to under~~ R9-31-1302, if a contractor considers the request new and independent of any previous authorization. If a member's primary care provider asserts that the requested service or treatment is ~~merely~~ a necessary continuation of the previous authorization, and a member challenges the denial on this basis, then the service ~~will~~ shall be continued pending ~~appeal, unless a hearing decision, unless:~~

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1. ~~the~~ The parties reach some other ~~agreement~~ agreement, or
 2. ~~a~~ The contractor believes the primary care provider's request endangers the member. ~~A contractor and a provider shall reserve any dispute over reimbursement until a later date when a provider submits a claim.~~
- G.** Responsibility of a member. A member whose service is continued during the expedited hearing process is financially liable for the service received if the Director upholds the decision to reduce, suspend, or terminate ~~a member's~~ the service.
- H.** General provisions. ~~The~~ If an expedited hearing process is requested, a hearing shall be conducted according to A.A.C. R9-22-801(A),(E),(G), and (M) under A.R.S. § 41-1092.

R9-31-1308. Maintenance of Records

The party providing notice shall ~~ensure that written records are maintained, that~~ maintain records of the written notification ~~was given to the member, including and the date the notification was provided.~~ of the notice given to the member.

R9-31-1309. Member Handbook

A contractor shall furnish each member with a handbook that ~~clearly~~ explains a member's right to file a grievance or ~~appeal~~ request a hearing concerning ~~a denial or an~~ action that affects a member's receipt of medical services, as specified in contract.

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 8. ARIZONA STATE PARKS BOARD

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
R12-8-101	Amend
R12-8-102	Amend
R12-8-104	Amend
R12-8-105	Amend
R12-8-106	Amend
R12-8-108	Amend
R12-8-111	Amend
R12-8-112	Amend
R12-8-113	Amend
R12-8-115	Amend
R12-8-116	Amend
R12-8-125	Amend
R12-8-201	Amend
R12-8-202	Amend
R12-8-204	Amend
R12-8-205	Repeal
R12-8-206	Repeal
R12-8-207	Amend
R12-8-301	Renumber
R12-8-301	New Section
R12-8-302	Renumber
R12-8-302	New Section
R12-8-303	Renumber
R12-8-303	New Section
R12-8-304	Renumber
R12-8-304	Amend
R12-8-305	Renumber
R12-8-305	Amend
R12-8-306	Renumber
R12-8-306	Amend
R12-8-307	Renumber
R12-8-307	Amend

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

Authorizing Statute: A.R.S. § 41-511 et seq.

For proposed rules R12-8-101 through R12-8-125:

Implementing Statute: A.R.S. § 41-511.05

For proposed rules R12-8-201 through R12-8-204:

Implementing Statute: A.R.S. § 41-511.01

For proposed rules R12-8-207:

Implementing Statute: A.R.S. § 41-511.05

For proposed rules R12-8-301 through R12-8-307:

Implementing Statute: A.R.S. § 41-511.04

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 6 A.A.R. 963, March 10, 2000

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

For proposed rules R12-8-101 through R12-8-125 contact:

Name: Rich Evans

Address: 1300 W. Washington
Phoenix, AZ 85007

Telephone: (602) 542-7151

Fax: (602) 542-6961

For proposed rules R12-8-201 through R12-8-204 contact:

Name: Debbie Busser

Address: 1300 W. Washington
Phoenix, AZ 85007

Telephone: (602) 542-7107

Fax: (602) 542-6961

For proposed rule R12-8-207 contact:

Name: Susan Bayer

Address: 1300 W. Washington
Phoenix, AZ 85007

Telephone: (602) 542-6936

Fax: (602) 542-6961

For proposed rules R12-8-301 through R12-8-303 contact:

Name: Carol Griffith

Address: 1300 W. Washington
Phoenix, AZ 85007

Telephone: (602) 542-7141

Fax: (602) 542-6961

For proposed rules R12-8-304 through R12-8-307 contact:

Name: Sandra Snider

Address: 1300 W. Washington

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Phoenix, AZ 85007

Telephone: (602) 542-6998

Fax: (602) 542-6961

5. An explanation of the rule, including the agency's reason(s) for initiating the rule:

For proposed rules R12-8-101 through R12-125:

The amendments will provide further detail and clarification to both the public and the personnel charged with the enforcement of these rules.

For proposed rules R12-8-201 through R12-204:

The Board shall adopt rules for the conduct of its meetings. The amendments will provide further detail and clarification to both the public and the personnel charged with the enforcement of these rules. Additionally, there are technical changes eliminating reference to gender.

For repealed rules R12-8-205 through R12-8-206:

Plan, coordinate, and administer a state historic preservation program in Arizona.

For proposed rule R12-8-207:

Make such contracts, leases, and agreements and incur such obligations as are reasonably necessary or desirable. Revision of the rule's language will provide additional clarity and direction.

For proposed rules R12-8-301 through 307:

Accept, on behalf of the State Historic Preservation Officer, applications for classification as historic property received from the county assessor and adopt rules for minimum maintenance standards for the property.

6. A reference to any study that the agency proposes to rely on its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

No study is available or was relied on.

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

Not applicable

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

For proposed rules R12-8-101 through R12-8-125: As these rules pertain to rules and regulations for the protection of, and to maintain and keep peace in, state parks and monuments as prescribed in A.R.S. § 41-511-05(9), no economic, small business, or consumer impact statement is anticipated.

For proposed rules R12-8-201 through R12-8-204: As these rules pertain to procedures to conduct Board meetings, no economic, small business, or consumer impact statement is anticipated.

For proposed rule R12-8-207: This rule may decrease agency mailing costs. The anticipated impact is minimal and expected to be less than \$300 per year.

For proposed rules R12-8-301 through R12-8-307: Although revisions to the rule are mainly for clarification, the revisions simplify the process for the user and should reduce time and effort required for certification.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

For proposed rules R12-8-101 through R12-8-125 contact:

Name: Rich Evans

Address: 1300 W. Washington
Phoenix, AZ 85007

Telephone: (602) 542-7151

Fax: (602) 542-6961

For proposed rules R12-8-201 through R12-8-204 contact:

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Name: Debbie Busser
Address: 1300 W. Washington
Phoenix, AZ 85007
Telephone: (602) 542-7107
Fax: (602) 542-6961

For proposed rule R12-8-207 contact:

Name: Susan Bayer
Address: 1300 W. Washington
Phoenix, AZ 85007
Telephone: (602) 542-6936
Fax: (602) 542-6961

For proposed rules R12-8-301 through R12-8-303 contact:

Name: Carol Griffith
Address: 1300 W. Washington
Phoenix, AZ 85007
Telephone: (602) 542-7141
Fax: (602) 542-6961

For proposed rules R12-8-304 through R12-8-307 contact:

Name: Sandra Snider
Address: 1300 W. Washington
Phoenix, AZ 85007
Telephone: (602) 542-6998
Fax: (602) 542-6961

10. The time, place, and nature of the proceedings for the adoption, amendment or repeal of this rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: May 18, 2000
Time: 9:00 a.m.
Location: Arizona State Parks (Board Room)
1300 W. Washington
Phoenix, AZ 85007

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

Not applicable

12. Incorporation by reference and their location in the rules:

Roberts Rules of Order, R12-8-204
Cyclical Maintenance for Historic Buildings, R12-8-306
Secretary of the Interior's Standards for Historic Preservation Projects, R12-8-306
The Secretary of the Interior's Standards for Rehabilitation, R12-8-306

13. Was this rule previously adopted as an emergency rule:

No

14. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 8. ARIZONA STATE PARKS BOARD

ARTICLE 1. GENERAL PROVISIONS

Section

R12-8-101.	Definitions
R12-8-102.	Permission to enter or remain in a state park <u>State Park</u>
R12-8-104.	Hours of use; use; closure
R12-8-105.	Day use areas/hours
R12-8-106.	Limited services on Christmas Day
R12-8-108.	Payment of fees
R12-8-111.	Camping
R12-8-112.	Campfires
R12-8-113.	Vehicles, speed limits and parking
R12-8-115.	Pets
R12-8-116.	Glass containers
R12-8-125.	Special use

ARTICLE 2. OPERATION OF THE BOARD

Section

R12-8-201.	Meetings
R12-8-202.	Organization of the Board
R12-8-204.	Procedures at meeting
R12-8-205.	Administration of the National Historic Preservation Program in Arizona <u>Repealed</u>
R12-8-206.	Administration of Arizona register of historic places <u>Repealed</u>
R12-8-207.	Policy regarding the granting of concessions <u>Board Concession Approval Policy</u>

ARTICLE 3. ~~CLASSIFICATION OF HISTORIC PROPERTY FOR PROPERTY TAX PURPOSES~~ STATE HISTORIC PRESERVATION OFFICE PROGRAMS

Section

<u>R12-8-301.</u>	<u>Definitions</u>
<u>R12-8-302.</u>	<u>Criteria for Evaluation</u>
<u>R12-8-303.</u>	<u>Processes of Registration</u>
R12-8-301 R12-8-304.	<u>Eligibility Factors for Determining Certification Eligibility</u>
R12-8-302 R12-8-305.	<u>Application for certifications Application of Eligibility for Reclassification</u>
R12-8-303 R12-8-306.	<u>Minimum maintenance/restoration standards</u>
R12-8-304 R12-8-307.	<u>Documentation requirements, reports, and inspections</u>

ARTICLE 1. GENERAL PROVISIONS

R12-8-101. Definitions

In this rule, unless the context otherwise requires:

1. "Board" means the Arizona State Parks Board.
2. "Cabana site" means a camp site with a shelter having two walls, a roof, and electricity available within the shelter.
3. "Camp or camping" means erecting a tent or shelter ~~or~~ arranging bedding, or both, for the purpose of ~~or in such a way as will permit~~ overnight use; or parking a trailer, camper, or other vehicle for the purpose of overnight occupancy.
4. "Camping unit or camp site" means a defined space within an area designated for camping.
5. "Concession" means a ~~grant~~ contract issued by the Board for the use of land or property to provide specified services or facilities to the public.
6. "Day use area" or "day use" means an area which is closed to camping or overnight use but open to the public during the hours established in rule R12-8-105.
7. "Director" means the Executive Director of the Arizona States Parks Board.
8. "Fee ~~a~~ Area" means any area for which a fee is charged for ~~the~~ use, occupancy or entrance ~~thereto~~.

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9. "Historic facility" means a facility ~~which has as its~~ for the primary purpose of ~~the preservation and interpretation of the facility's cultural resources including archaeological, prehistoric, and historic resources, and the interpretation thereof for the facility user.~~ the preservation and interpretation of the facility's cultural resources including archaeological, prehistoric, and historic resources,
10. "Hook-up site" means a camp site with ~~one or more of the following available for the~~ hook-up: for water, sewer, or electricity.
11. "Interpretive program" means a scheduled program at State Parks, excluding concession programs, ~~which involve involving state park State Park personnel for the purpose of to inform informing, educate educating, or interpret interpreting~~ resources for the public.
12. "Park officer" means any employee appointed by the Board as a Park Ranger Law Enforcement Officer with the authority and power of a Peace Officer under A.R.S. § 41-511.09.
13. "Park ranger" means an employee of the Board.
14. "Person" means an individual, corporation, firm, partnership, club or association.
15. "Recreational facility" means a facility ~~which has as its~~ for the primary purpose of ~~providing the provision of~~ active and passive recreational opportunities for the visiting public.
16. "Special program" means an activity sponsored by State Parks ~~which is~~ for the enjoyment of park visitors.
17. "Special use" means nonpublic activities such as weddings, organized group meetings, jog-a-thons, seminars, and commercial photography ~~which that~~ are outside of the park's activity design or which require exclusion of the general public from an area of the park.
18. "State Park System" or "State Park" means all land, water, and improvements ~~in state parks~~ State Parks, monuments, historical sites, ~~and state recreation areas,~~ and any other area administered by the State Parks Board.
19. "Wildlife" means all wild mammals, wild birds, ~~and the nests or eggs thereof,~~ reptiles, amphibians, mollusks, crustaceans and fish, including ~~their~~ eggs or spawn.

R12-8-102. Permission to enter or remain in a ~~state park~~ State Park

Permission to enter, remain upon, or use a ~~state park~~ State Park ~~is shall be~~ conditioned upon compliance with law, including these regulations. A person who violates any law while in a ~~state park~~ State Park shall leave the premises upon order of a Park Ranger or Peace Officer. The reator shall not be permitted to re-enter the park for a period of at least 72 hours.

R12-8-104. Hours of use; use; closure

- A. Camping units and undeveloped areas are open to public use at all hours. Historic sites are open to the public from 8:00 a.m. to 5:00 p.m. Day use areas are governed by R12-8-105.
- B. The Director or Park Manager, ~~in the interest of public safety or to protect public property,~~ may temporarily restrict the hours of public use or close to the public any ~~state park~~ State Park or portion of ~~it in the interest of public safety or to protect public property.~~ The Park Manager may ~~extend~~ modify the hours of use on a temporary basis to accommodate unusual or seasonal circumstances. Any exceptions will be posted at the park entrance.
- C. No person shall enter, remain upon, or use any ~~state park~~ State Park in violation of the restrictions governing its hours or use or an order for its closure.

R12-8-105. Day use areas/hours

Day use areas are open for public use from 8:00 a.m. until 10:00 p.m. The Director or Park Manager, ~~in the interest of public safety or to protect public property,~~ may restrict the hours of public use in the interest of public safety or to protect public property. The Park Manager may ~~extend~~ modify the hours of use to accommodate special events or seasonal or unusual variations in public use. Any exceptions will be posted at the park entrance.

R12-8-106. Limited services on Christmas Day

Park facilities are not manned on Christmas Day except in an emergency. On that day, museums, ~~and contact stations,~~ and visitor centers are closed. Other areas are open for public use as posted.

R12-8-108. Payment of fees

No person shall enter, remain upon, or use a designated fee area without paying the required fee or obtaining permission from a Park Ranger. Fees, ~~other than Annual Day Use Permits~~ unless exempted by Annual Entrance or 5-Visit permits, collected in any ~~State park~~ State Park do not authorize use of facilities in another ~~State park~~ State Park.

R12-8-111. Camping

- A. Camping is permitted only in a camping unit and is subject to the following conditions:
 1. No person may camp in a ~~state park~~ State Park for more than 15 days within a 30-day period unless authorized by the Park Manager except that a person may camp for an additional 14 days within a 45-day period during posted, designated long-term stay periods. This limitation does not apply to the those Board approved concession areas within the park system. ~~concession area of Lake Havasu State Park.~~ The long-term stay provision shall not apply to a visitor using the campsite camping unit as a principal place of residence while employed in the area.
 2. No occupied ~~campsite~~ camping unit may be left unattended overnight without written permission from a Park Ranger.

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3. The number of vehicles and persons occupying a camping unit shall not exceed the limits posted at the area entrance or camping unit.
- B. A camping unit is considered occupied after the appropriate use fee has been paid and the permittee has taken possession ~~of a camping unit by establishing a conspicuous presence by leaving personal property at the site.~~ No person shall occupy a camping unit in violation of instructions from a Park Ranger or when there is reason to believe that the unit is occupied by another camper.
- C. The occupants of a single vehicle may be allowed to register for more than one camping unit only if the number of occupants ~~their number~~ exceeds the posted occupancy limits for the facility.
- D. Fees for the use of a camping unit must be paid on a per day basis ~~daily~~. Payment authorizes use of the facility until 2:00 p.m. on the day of the following day permit expires.
- E. ~~Person~~ A person shall remove all personal property from a camping unit by 2:00 p.m. when abandoning the site or on the day of permit expiration.

R12-8-112. Campfires

- A. Outdoor fires may be ignited only at in designated camping units or day use areas. Fires must be confined to ~~a barbecue, fireplace or incinerator which is located at least 30 feet from any vegetation~~ designated grills, fire rings, or other such facilities as provided.
- B. No fire may be ignited or maintained when a high wind is blowing or when open burning has been prohibited by order of any Park Ranger.
- C. Every fire shall be attended and controlled at all times by a responsible person ~~who has the means of controlling it~~

R12-8-113. Vehicles, speed limits and parking

- A. ~~Motor vehicles~~ A motor vehicle, regardless of whether registered for highway use, may be driven only on maintained roadways, parking areas and in areas designated by signs for vehicle use.
- B. The operation of a motor vehicle is governed by the ~~applicable~~ provisions of the Uniform Act Regulating Traffic on Highways, Title 28, ~~Chapter 6~~, Arizona Revised Statutes. No person shall drive at a speed greater than is reasonable and prudent under the circumstances, conditions and actual and potential hazards then existing or in excess of posted limits.
- C. ~~No person may park a vehicle or leave it unattended except in an area designated by a sign as a~~ A motor vehicle may not be parked or left unattended except in a designated a parking area or parking zone. A Park Ranger may remove ~~or cause to be removed~~ to a place of safety any unattended vehicle illegally parked or illegally left standing upon any roadway or park area which may obstruct the normal movement of traffic or may impair the normal activities of the park.

R12-8-115. Pets

- A. Dogs, cats and other pets shall be kept under physical restraint while in a ~~state park~~. State Park Leashes shall not exceed six feet in length.
- B. The restraint requirement does not apply to dogs in areas open to hunting or ~~the conduct of~~ in field trials.
- C. No person shall take or admit any pet into a park building, cabana, ~~or developed beach, or other area that has been determined to be environmentally or ecologically sensitive.~~ except Exceptions are granted for certified assist animals trained to assist ~~sight or hearing~~ impaired individuals.

R12-8-116. Glass containers

No person shall ~~have in their possession~~ possess glass or ceramic food or beverage containers of any type in a ~~state park~~ State Park area designated as a public beach, ~~or swimming area, or other area as posted.~~

R12-8-125. Special use

- A. Special uses, such as organized sporting events, pageants and assemblies, ~~regardless of whether staged for profit and regardless of whether the public is invited,~~ may shall be conducted only by with a special use permit.
- B. The Director may reserve a portions of a State Park fee area ~~state park fee areas~~ for approved special events use. An application shall be submitted by a responsible sponsor at least 15 days in advance of the date requested for the special use ~~event~~. It shall include all relevant information required by the Director to establish that the proposed special use will be is consistent with the purposes of the ~~state park~~ State Park and will not constitute a threat to public safety or unduly inconvenience normal park activities.
- C. The Director may impose conditions on the conduct of any special use which that are necessary ~~in the Director's judgment~~ to protect the area and to maintain its availability as a ~~state park~~ State Park. The Director may require, ~~in appropriate cases,~~ that a sponsor post a deposit against damage and clean-up expense, carry special insurance and provide adequate medical, sanitary and security services. If the special use is staged for profit, the Director may require the sponsor to enter into an agreement with the Board for a negotiated percentage of gross receipts, not to exceed 20 percent.
- D. A decision by the Director concerning any special use may be appealed to the Parks Board.

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ARTICLE 2. OPERATION OF THE BOARD

R12-8-201. Meetings

- A. There shall be a minimum of one meeting of the Arizona State Parks Board during each calendar year quarter.
- B. The time and place of the meetings shall be designated seven days prior to the meeting date by either:
 - 1. The Chairman verbally informing the Director or,
 - 2. Any four members informing the Director in writing, except that in the case of an ~~actual~~ emergency, the Director may be verbally informed.
- C. The Director, upon being informed of the time and place of a meeting shall:
 - 1. Inform each member of the time and place of the meeting at least five days prior to the meeting date.
 - 2. Prepare a written agenda consisting of the time and place of the meeting and an outline of the business to be considered which shall be verbally accepted by the Chairman or the members who set the meeting prior to distribution.
 - 3. ~~File the finalized agenda with the Secretary of State of the state of Arizona, T~~ransmit the agenda to each Board Member; and post the agenda in the administrative headquarters of the Board and at the headquarters area of each operational park at least two days prior to the meeting date.
 - 4. Prepare ~~such~~ explanatory material ~~as he deems desirable~~ concerning the business contained on the agenda and transmit such material to each Board Member.
- D. In the case of an ~~actual~~ emergency, the time requirements of subsections (B) and (C) above may be adjusted ~~as is~~ appropriate to the circumstances.

R12-8-202. Organization of the Board

- A. Selection of officers
 - 1. At the first meeting following ~~December~~ January 1st of each year, the members present shall select by majority vote a Chairman; and a Vice Chairman, and a Secretary to act or serve in such capacity through the first meeting following ~~December~~ January 1st of the year following.
 - 2. In the event of a vacancy in ~~any one~~ either of the ~~three~~ 2 offices of the Board, the members present at the first meeting following the occurrence of the vacancy shall select a member by majority vote to fill the unexpired term of ~~such~~ the officer.
 - 3. In the event of the absence of the Chairman; and Vice Chairman, and Secretary from a meeting of the Board ~~set held~~ in accordance with these rules, a Presiding Officer shall be selected by majority vote of the members present.
- B. Duties of the officers shall be as follows:
 - 1. The Chairman shall preside over all meetings and functions of the Board.
 - 2. The Vice Chairman shall take over all the duties of the Chairman in the event of the Chairman's absence from the state, or absence from a meeting ~~set held~~ in accordance with these rules, or at the Chairman's direction.
 - 3. ~~The Secretary shall record all proceedings and transactions of the Board and perform such other duties as the Board may from time to time require, and in the event of the absence of the Chairman, and Vice Chairman from a meeting, shall act as Chairman at the meeting and shall appoint an acting Secretary from the members present to carry out duties of that office for that meeting.~~
 - 4 3. The Presiding Officer shall act as Chairman at the meeting during which the Presiding Officer is selected, ~~and shall appoint an acting Secretary to carry on the functions of that office for the meeting.~~

R12-8-204. Procedures at meetings

- ~~A. No business other than that contained in the agenda for a meeting shall be conducted at such meetings except by consent of the Chairman or action of the Board.~~
- ~~B. Oral communications to the Board at a meeting by persons non members thereof shall be subject to consent of the Chairman or action of the Board.~~
- ~~C. A majority of the membership of the Board shall constitute a quorum for the transaction of business at any meeting but a number less than a quorum may adjourn from time to time.~~
- ~~D. All actions of the Board at meetings shall be by majority vote of the membership present for the transaction of business.~~
- E. The rules laid down in Roberts Rules of Order as summarized in Parliamentary Law at a Glance (on file in the office of the Secretary of State) revised edition, copyright 1949 by E. C. Utter, when not in conflict with the provisions of this Article 2, are hereby adopted as the rules of procedure for the government of the Board when in session. The Roberts Rules of Order is hereby incorporated by reference and on file with the Secretary of State. The incorporation by reference contains no future additions or amendments.

R12-8-205. ~~Administration of the National Historic Preservation Program in Arizona~~ Repealed

- ~~A. All federal actions that are identified by the State Historic Preservation Officer to have an adverse effect on cultural resources shall be submitted to the Board for review prior to dissemination of the opinion. The Board shall also review the proposed mitigation of an adverse effect prior to the State Historic Preservation Officer entering into a Memorandum of~~

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Agreement with the Advisory Council on Historic Preservation and the Federal Agency Official. The Director is authorized to act on behalf of the Board when time precludes Board review.

- ~~B.~~ The Board shall annually establish the application deadline for projects requesting fund support through the National Historic Preservation Program.
- ~~C.~~ The Board shall approve, prior to submission to the federal Government all planning/survey, acquisition and development grant-in-aid projects which request funding through the National Historic Preservation Program. The Director is authorized to execute all contracts necessary to complete all Board approved project applications.
- ~~D.~~ The Director is authorized to approve amendments to Historic Preservation Fund projects in scope and in fund support not to exceed 20% of the originally approved amount of any individual grant. Any amendment which exceeds the 20% limitation requires Board approval.

R12-8-206. Administration of Arizona register of historic places Repealed

~~A.~~ Purpose of register. The Arizona register of historic places shall be a list of Arizona's historic properties worthy of preservation and serve as an official record of Arizona's historic districts, sites, buildings, structures and objects of national, state and/or local significance in the fields of history, architecture, archaeology, engineering, and culture. The register is for use as a planning tool by federal, state and local governments, private groups and citizens.

~~B.~~ Criteria for evaluation

- ~~1.~~ Criteria for evaluation of potential Arizona register properties generally encompass the quality of significance in Arizona history, architecture, archaeology, engineering and culture. Such qualities may be present in districts, sites, buildings, structure and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and also:
 - ~~a.~~ Are associated with events that have made a significant contribution to the broad patterns of history; or
 - ~~b.~~ Are associated with the lives of historically significant persons; or
 - ~~c.~~ Are the embodiment of a distinctive characteristic(s) of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
 - ~~d.~~ Yield or may be likely to yield, information important in prehistory or history.
- ~~2.~~ Properties that have achieved significance within the past 50 years shall not be considered eligible for the Arizona register unless they are integral parts of districts that meet the criteria or demonstrate exceptional importance as individual properties.

~~C.~~ Processes of registration

- ~~1.~~ The State Historic Preservation Officer shall serve as the keeper of the Arizona register.
- ~~2.~~ Prior to the listing of any property on the Arizona register, the owner(s) of such property or, in the case of a nominated historic district, all of the owners in the district and other interested parties shall be given at least 30 days prior notification by the State Historic Preservation Officer of the nomination's review by the historic sites review committee in order to provide an opportunity to comment on the nomination of such property or district.
- ~~3.~~ Prior to listing any properties on the Arizona register, the historic sites review committee (A.R.S. § 41-1352(D)) shall review nomination forms and documentation and any comments concerning the property's significance or eligibility and make recommendations on eligibility. The historic sites review committee shall also review refusals of nominations upon request.
- ~~4.~~ The State Historic Preservation Officer, based on available information, will make the determination whether or not to place the nominated property on the Arizona register.

R12-8-207. Policy regarding the granting of concessions Board Concession Approval Policy

~~A.~~ The State Parks Board may enter into agreement with a private or public agencies or persons entity for the operation and development of concessions facilities in areas under the jurisdiction of the State Parks Board subject to the following conditions:

- ~~1.~~ An A Board-approved master plan or amendment thereto, including any amendments or other Board action, for development and operation of the park in which the concession is to be located, reflects the type of proposed concession activity.
- ~~2.~~ The proposed concession activity is consistent with the purposes of the Arizona State Parks Board as defined by statute.
- ~~3.~~ The State Parks Board has determined determines that there is a present need for the proposed type of concession operation and that the proposed concession activity is in the best interest of the state.
- ~~4.~~ The Board issues a A formal request for eoneession proposals has been issued by the State Parks Board.
- ~~5.~~ The State Parks Board has determined determines that the concession operator which is selected is most-qualified to meet advantageous to the state according to the criteria identified in the request for proposals.

~~B.~~ Notice The Board shall publish notice of request for proposals for a concession shall be in the manner prescribed by statute for contracts for professional services executed by state agencies in a single newspaper or multiple newspapers

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within this state with an accumulated general circulation of at least 50,000 subscribers for two publications which are not less than six nor more than ten days apart. The second publication shall not be less than two weeks before the request for proposals due date. At least one of the newspapers must be circulated within the affected governmental jurisdiction. In addition, the State Parks Board shall give provide notice of a request for proposals at the last known address to each person who has, within the last three years, expressed in writing an interest in operating a concession of the particular nature being noticed.

- C. A copy of this rule shall be provided to all persons who submit concession proposals without prior issuance by the State Parks Board of a formal request for proposals for a concession.
- D. The State Parks Board may, at its discretion, exempt existing concession renewals, consignment agreements, and vending agreements, and agreements with nonprofit organizations and local historical societies from the procedures contained in this rule.

**ARTICLE 3. ~~CLASSIFICATION OF HISTORIC PROPERTY FOR PROPERTY TAX PURPOSES STATE~~
HISTORIC PRESERVATION OFFICE PROGRAMS**

R12-8-301. Definitions

In this rule, unless the context otherwise requires:

- 1. "State Historic Preservation Officer" or "Officer" means a full-time employee of the board with professional competence and expertise in the field of historic preservation as the "State Historic Preservation Officer" to administer the state historic preservation program.
- 2. "Arizona Register of Historic Places", "Arizona Register" or "Register" means a list of Arizona's Historic Properties worthy of preservation and serves as an official record of Arizona's historic districts, sites, buildings, structures and objects of national, state, or local significance in the fields of history, architecture, archaeology, engineering, or culture.
- 3. "Subject Property" means real property that is being nominated for Historical Property Status.
- 4. "Historic Sites Review Committee" or "HSRC" means a committee, appointed by the State Historic Preservation Officer, established to serve as a standing committee of the Historical Advisory Commission. (A.R.S. § 41-1352)
- 5. "Historic Property" means buildings, sites, districts, objects, or structures evaluated as Historically significant.

R12-8-302. Criteria for Evaluation

- A. Before listing a subject property in the Register, the following criteria for evaluating the subject property must be applied:
 - 1. The property must convey its significance in one or more of the following contexts: Arizona history, architecture, archaeology, engineering, or culture;
 - 2. The property must be classified as one of the following property types: district, site, building, structure, or object;
 - 3. The property must possess integrity of location, design, setting, materials, workmanship, feeling, or association; and
 - 4. The property must:
 - a. Be associated with an event that have made a significant contribution to the broad patterns of history; or
 - b. Be associated with the lives of a person significant in our past; or
 - c. Be the embodiment of a distinctive characteristic of a type, period, or method of construction, or that represents the work of a master, that possess high artistic value, or that represents significant and distinguishable entity whose components may lack individual distinction; or
 - d. That has yielded or may be likely to yield, information important in prehistory or history.
- B. Any subject property that has achieved significance within the past 50 years shall not be considered eligible for the Register unless it is an integral contributing element of a districts that meets the criteria in R12-8-601(A) or demonstrates exceptional individual importance.

R12-8-303. Processes of registration

- A. The State Historic Preservation Officer shall serve as the keeper of the Register.
- B. Before listing a Subject Property on the Register, the following are required:
 - 1. The Historic Property Inventory (HPI) application must be completed.
 - 2. The Recommendation of Eligibility form must be completed by the Officer after receiving the HPI.
 - 3. The Officer shall give the qualifying owner at least 30 calendar days prior notification of the nomination's review by the HSRC.
- C. The HSRC shall:
 - 1. Review a nomination form, documentation, and any comments concerning the Subject Property's significance and integrity.
 - 2. Make recommendations to the Officer; and
 - 3. Review a refusal of a nomination upon request.
- D. The Officer shall make the determination to place the nominated property on the Register in accordance with information provided in R12-8-601(A).

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E. The owner of a potentially Historic Property refused nomination may petition the HSRC Chair in writing. The petition may be filed with the Chair 60 calendar days before the next scheduled meeting.

~~R12-8-301~~ R12-8-304. Eligibility Factors for Determining Certification Eligibility

~~A. Any property certified by the State Historic Preservation Officer for property tax purposes must be real property that is listed in the National Register of Historic Places as an individual nomination or as part of an historic district which is listed in the National Register of Historic Places. If within an historic district, it must be determined by the State Historic Preservation Officer to contribute to the character of the district. Before the Officer certifies an Historic Property as eligible for a change in classification under the property tax classification, the following factors shall be present. Subject Property shall be listed in the National Register of Historic Places:~~

1. Individually; or
2. As part of a historic district. If within a historic district, the Officer shall determine whether or not the Subject Property contributes to the character of the historic district.

~~B. No property shall be certified as historic property on which any business or enterprise is conducted with the intent of earning a profit. After the Officer has determined a property eligible for reclassification, an Historic Property shall be certified as Non-Commercial or Commercial, as defined in ARS 42-12101.~~

~~C. The following are exclusions from eligibility:~~

~~C. 1. No property shall be certified by the State Historic Preservation Officer which includes within its legal description buildings, structures, improvements, or land areas which do not contribute to the historical character of the property as defined in R12-8-401 and can be excluded by the modification of the legal description. In the event that the legal description in an application includes such elements or areas, it shall be the responsibility of the applicant to modify the legal description upon notification by the State Historic Preservation Officer.~~

2. Historic Property that does not meet the minimum maintenance standards, as described in R12-8-703 shall not be certified by the Officer.

~~D. The State Historic Preservation Officer, in addition to other reasons established by law, the Officer may disqualify a property which has been certified as historic property for property tax purposes if the owner of such property does not comply with these rules and regulations of the Arizona State Parks Board designated "Article 3 -- Classification of Historic Property for Property Tax Purposes". Historic Property that does not meet the minimum maintenance standard as described in R-12-8-703 shall not be certified by the Officer.~~

E. Certification shall continue through any change of ownership, provided that the new owner submits required reports and affirms comprehension of the program requirements in writing.

F. Historic Property shall not be decertified without proof by certified mail, return receipt requested, that the current owner, on record with the appropriate County Assessor's Office, has received notice in writing.

~~R12-8-302~~ R12-8-305. Application for certification Application of Eligibility for Reclassification

~~If space is not provided on the forms for application issued by the appropriate County Assessor, the following information shall be submitted to the County Assessor with the application:~~

A. The Board shall approve the Verification of Eligibility application for use in certifying the eligibility of property for classification as Commercial or Non-Commercial Historic Property. Either application may be obtained from the County Assessor's Office where the Subject Property is located.

B. For Non-Commercial Historic Property, the application shall be submitted to the County Assessor in which the Subject Property is located, and shall contain the following information:

1. Complete name and address of the owner. Address of the Subject Property
2. Legal Description and address of the subject property.
3. Name of National Register District in which the property is located, if applicable. Property Classification
4. Brief description of: Name of Owner
5. Historic Property Name as Listed on the National Register of Historic Places
6. Date of original construction
7. Description of any exterior changes to the building since being listed on the National Register of Historic Places
8. Images of the historic property which must meet the specifications approved by the State Parks Board. Specifications are available to the public by contacting the State Historic Preservation Office.
 - a. The significance of the subject property.
 - b. The current use of the subject property.
 - e. Any recent additions, alterations or improvements.
5. Two eight by ten black and white photographs of the property. Each photograph shall be labeled on the back in soft pencil with the name and address of the property, owner's name, direction of the photograph, and date of the photograph.
6. The owner's written consent for the viewing of the property by the State Historic Preservation Officer or representative at any reasonable time.

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C. Commercial Historic Property

1. An application for Commercial Historic Property shall be submitted to the County Assessor, in which the property is located, and shall contain the following information:
 - a. Address of the property
 - b. Legal Description of the property
 - c. Property classification
 - d. Name of owner
 - e. Historic property name as Listed on the National Register of Historic Places
 - f. Date of original construction
 - g. Description of any exterior changes to the building since being listed on the National Register of Historic Places
 - h. Images of the Historic Property which must meet the specifications approved by the State Parks Board. Specifications are available to the public by contacting the State Historic Preservation Office.
 - i. The owner's written consent for the viewing of the property by the Officer or representative at any reasonable time.
2. An applicant for Commercial Historic Property shall submit Rehabilitation Construction Documents (plans and specifications) to the appropriate County Assessor's Office. Upon the Assessor's verification of the application, the Assessor shall submit the application and the rehabilitation construction documents to the Officer.

- D.** If a Historic Property Inventory Form is not already on file with the State Historic Preservation Office, the applicant shall complete the Inventory Form and submit it along with the Verification of Eligibility application. The Inventory Form is referenced in R12-8-603.

~~R12-8-303~~ **R12-8-306. Minimum maintenance/restoration standards**

- A.** ~~The owner of a certified Commercial or Non-Commercial historic-Historic property-Property shall maintain the property so as to preserve the historical integrity of the features, materials, appearance, workmanship, and environment-, according to the following standards:~~
1. At a minimum, the Historic Property shall be protected against accelerated deterioration due to:
 - a. Vandalism;
 - b. Structural failure;
 - c. Climatic weathering including the affects of water infiltration;
 - d. Biological affects due to insects, animals or plants;
 - e. Fire; or
 - f. Flooding;
 2. Minimum maintenance for a building shall include the following:
 - a. Keeping the building secure;
 - b. Maintaining or sensitively covering the windows and doors;
 - c. Maintaining security fencing if applicable;
 - d. Maintaining roofs and drainage systems;
 - e. Minimizing damage from insects, birds or animals; and
 - f. Maintaining landscaping to reduce fire potential
- B.** ~~Any certified historic property which is condemned by local authorities shall be subject to disqualification by the State Historic Preservation Officer. The Officer shall disqualify any certified Historic Property that has been condemned by a local authority.~~
- C.** ~~Any maintenance rehabilitation or restoration treatment other than normal housekeeping activities shall be submitted to the State Historic Preservation Officer in both written and graphic form with appropriate support information for review prior to project implementation. The State Historic Preservation Officer may respond within 30 days of the date of submittal of the material with a statement of changes or modifications required prior to approval. If no statement is issued within said time, the treatment shall be deemed approved. Before implementation of any rehabilitation measure and the Officer's review, the owner shall submit both a written and graphic proposal (Construction Documents) for the proposed rehabilitation project to the Officer. The Officer has 30 calendar days from receipt of the proposal in which to comment on the appropriateness of the project in relationship to The Secretary of the Interior's Standards for Rehabilitation. If no statement is issued within 30 days time, the treatment shall be considered approved by the Officer.~~
- D.** ~~A follow-up Rreview by the State Historic Preservation Officer will shall be done to assure that the planned treatments for rehabilitation of the historic-Historic buildings Property is in accordance with the guidelines established in by the U.S. Government Cyclical Maintenance for Historic Buildings, available from the U.S. Government Printing Office and the Department of the Interior, The National Park Service; publication entitled, The Secretary of the Interior's Standards for Historic Preservation Projects and The Secretary of the Interior's Standards for Rehabilitation, available from the National Park Service Technical Preservation Services Division-, the State Historic Preservation Office or the U.S. Government Printing Office. A copy of all three documents are hereby incorporated by reference and on filed with the~~

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Office of the Secretary of State. ~~The incorporation by reference contains no future editions or amendments. and are herein incorporated by reference.~~

- E. The owner shall assure that any treatment ~~rehabilitation is carried out~~ completed by submission of images no later than 30 calendar days after completion of the rehabilitation project. in accordance with the standards established by the ~~State Historic Preservation Officer~~ as provided in subsection (D) of this rule.
- F. If a ~~question~~ conflict occurs between the requirements of the ~~State Historic Preservation Officer~~ or the representatives and the local building officials or any applicable laws, a meeting of the appropriate representatives shall be called by the owner to discuss the question and reach an equitable solution.

R12-8-304 R12-8-307. Documentation requirements, reports, and inspection

- A. ~~Reports. In addition to other reports which the State Historic Preservation Officer may request as authorized by law, prior to April first of each year, the~~ The owner of a certified ~~historic~~ Historic ~~property~~ Property shall submit the following information for the ~~prior requested~~ year's activity to the ~~State Historic Preservation Officer~~:
1. Confirmation of current Historic Property ownership.
 - ~~2.~~ A statement signed by the owner indicating that the Historic ~~property~~ Property has been operated and maintained in accordance with the laws; and rules applicable to the classification of the historic property for property tax purposes.
 2. A written description and before and after photographs of any maintenance, rehabilitation or restoration ~~carried out during the period.~~
 3. Additional reports necessary for the documentation requirements. Reports and inspection may be requested by the Officer.
- B. ~~Inspection. The owner of a classified historic~~ Historic ~~property~~ Property shall permit the ~~State Historic Preservation Officer~~ or representative the right to inspect compliance with 12 A.A.C. 8. ~~as desired by the State Historic Preservation Officer, classified historic properties.~~ The ~~State Historic Preservation Officer~~ shall notify the owner prior to inspection.

NOTICE OF PROPOSED RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE

TRANSACTION PRIVILEGE AND USE TAX SECTION

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| Article 9 | Amend |
| R15-5-901 | Amend |
| R15-5-902 | Amend |
| R15-5-903 | Re-number |
| R15-5-904 | Amend |
| R15-5-905 | Amend |
| R15-5-906 | Repeal |
| R15-5-908 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. §§ 42-1005 and 42-5003
Implementing statute: A.R.S. §§ 42-5072
- 3. List of all previous notices appearing in the Register addressing the proposed rules:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 3233, September 17, 1999
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Ernest Powell, Supervisor
Address: Tax Research and Analysis Section
Arizona Department of Revenue
1600 W. Monroe
Phoenix, AZ 85007

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Telephone: (602) 542-4672

Fax: (602) 542-4680

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

The rules provide guidance in the application of transaction privilege tax to persons engaged in business under the mining classification. As a result of changes in statute and the Department's 5-year review of Article 9, the Department is proposing to amend the rules to conform to current statutes and rulemaking guidelines.

When these rules were written, metal and non-metal mining were both part of the mining classification. However, since that time the mining classification was amended to include only non-metal mining. Metal mining is now taxed under severance tax (A.R.S. § 42-5202). Therefore, all of the rules in this Article are amended to remove anything that applies to metal mining. Severance tax is not part of this rule package.

R15-5-903 contains definitions that apply to all of Article 9; therefore, the Department proposes to renumber R15-5-903 to R15-5-901. In addition, the Department proposes to amend the rule to provide references to the statutory definitions, remove references to metal mining, and remove the definition of "mineral products," which is no longer needed.

R15-5-902 is intended to provide general information regarding taxation under the mining classification. The Department proposes to amend the rule to use active voice and to conform to the requirements of the Governor's Regulatory Review Council. Also, the Department is proposing to repeal R15-5-906 and incorporate the issue it addressed into a new subsection (C). This is being proposed so that all the basic information regarding the taxation of non-metal is in one rule.

The Department proposes to amend R15-5-904 to remove everything that relates to metal mining. In addition, the balance of the rule is amended to use active voice and to conform to the requirements of the Governor's Regulatory Review Council.

The Department proposes to amend R15-5-905 to use the active voice and to conform to the requirements of the Governor's Regulatory Review Council. In addition, subsection (B)(2)(a) was amended to change "common carrier freight actually paid" to "actual freight paid as provided in R15-5-908."

R15-5-908 currently requires that freight costs must actually be paid to a third party carrier to be deductible from the tax base. Deliveries in the seller's own conveyance do not qualify for deduction. The Department proposes to amend the rule to provide that all actual freight costs incurred by a mining business in connection with a sale that are included in the sales price may be deducted if the actual freight costs incurred is separately stated in the billing to the customer. If the mining business does not separately state the actual freight costs incurred in the billing to its customer then only the freight costs paid to a third party would be deductible. The Department also proposes to amend the rule to use the active voice and to conform to the requirements of the Governor's Regulatory Review Council.

6. Reference to any study that the agency proposes to rely on and its evaluation of or justification for proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

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

Not applicable

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

It is expected that the benefits of the rules will be greater than the costs. The amendment of these rules will benefit the public by making the rules conform to current statute and rulemaking guidelines, which will make the rules more accurate as well as clearer and easier to understand. In addition, the amendment of R15-5-908 will benefit mining businesses by allowing them to deduct certain freight costs even if the mining business uses its own conveyance. These rules only provide guidance in the application of the statute; the statute imposes the tax and establishes any deductions. The Department will incur the costs associated with the rulemaking process. Taxpayers are not expected to incur any expense in the amendment of these rules.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Ernest Powell, Supervisor

Address: Tax Research and Analysis Section

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Arizona Department of Revenue
1600 W. Monroe
Phoenix, AZ 85007

Telephone: (602) 542-4672

Fax: (602) 542-4680

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Department has not scheduled any oral proceedings. Written comments on the proposed rules or preliminary economic, small business, and consumer impact statements may be submitted to the person listed above. Pursuant to A.R.S. § 41-1023(C), the Department will schedule oral proceedings if 1 or more individuals file written requests for oral proceedings within 30 days after the publication of this Notice.

A person may submit written comments regarding the proposed rules by submitting the comments no later than 5:00 p.m., May 15, 2000, to the person above.

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

Not applicable

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

None

13. The full text of the rules follows:

TITLE 15. REVENUE

**CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION
ARTICLE 9. ~~SALES TAX~~—MINING CLASSIFICATION**

Section

~~R15-5-903.~~R15-5-901. ~~Repealed~~ Definitions
R15-5-902. General
R15-5-903. ~~Definitions~~ Renumbered
R15-5-904. Manufacturing or Processing Service Charges
R15-5-905. Products Shipped Out ~~shipped out of Arizona state~~
R15-5-906. ~~Retail sale of processed products~~ Repealed
R15-5-908. Actual Freight Paid ~~Cost of freight~~

ARTICLE 9. ~~SALES TAX~~—MINING CLASSIFICATION

~~R15-5-903.~~R15-5-901. ~~Repealed~~ Definitions

In addition to the definitions provided in A.R.S. § 42-5001, the following definitions apply to this Article:

- ~~A.~~ 1. "Mining" means the operations involving the extraction of nonmetalliferous mineral products ~~ores, minerals, and mineral deposits~~ from beneath or at the surface of the earth for commercial use and includes underground, surface, and open-pit operations.
2. "Nonmetalliferous mineral product" has the same meaning as prescribed in A.R.S. § 42-5072.
- ~~B.~~ "Mineral products" include all substances which can be extracted from the earth. Examples include: metals, gravel, shale, clay, building stone, oil, helium, and natural gas.

R15-5-902. General

~~The tax is imposed on the gross income derived from the business of mining within the State.~~

- ~~A.~~ 1. A person engaged in the business of mining is subject to tax under the mining classification on the gross proceeds of sales or gross income received from the sale of a nonmetalliferous mineral product to a purchaser that resells the product in the ordinary course of business. Sales to retailers or others for resale are taxable under this classification. For example, sales to manufacturers or processors of mineral products, when the material is incorporated or fabricated into a manufactured or processed item are subject to the tax under this classification.
- ~~B.~~ 2. A person engaged in the business of mining is not subject to tax under the mining classification on the gross proceeds of sales or gross income received from the sale of a nonmetalliferous mineral product to a person engaged in business

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~~classified under the prime contracting classification if the nonmetalliferous mineral product is to be incorporated into a structure or project as part of the business. Sales to licensed contractors of products to be incorporated into a structure are fully exempt. However, sales to licensed contractors of products for their own use are taxable as retail sales (see Article 18).~~

~~C. A person engaged in the business of mining is subject to tax under the retail classification on the gross income received from the sale of a nonmetalliferous mineral product to a final consumer.~~

~~D.3. A person engaged in the business of mining shall not deduct from the tax base amounts paid as royalties. Royalties paid are not deductible.~~

R15-5-903. Renumbered

R15-5-904. Manufacturing or Processing Service Charges

~~A. A person engaged in the business of mining is subject to tax on the gross proceeds of sales or gross income from custom smelting of ores, refining of petroleum products, producing the production of a combination of nonmetalliferous mineral products, as well as other manufacturing or processing service charges derived from contracts with the owner of the products, is subject to tax.~~

~~B. Persons engaged in smelting of mineral products who purchase the product are taxable on the difference between the purchase price and the selling price of the processed material, representing the value added by the smelting process.~~

~~C. A person who mines and processes the nonmetalliferous mineral products is subject to tax on the gross proceeds of sales or gross income from the sale of the first marketable product. For example, a person who mines clay and processes the material into bricks is taxable on the gross proceeds of sales or gross income from the sale of the bricks.~~

R15-5-905. Products shipped out of Arizona State

~~A. For purposes of this Rule, the term "product" shall mean those items enumerated in A.R.S. § 42-1313~~

~~B. A person engaged in the business of mining that ships a nonmetalliferous mineral product is taxable on the market value of the product when it enters interstate commerce. When any product is transported out-of-state without making a sale within this State-Arizona, shall include in the tax base the market value of the nonmetalliferous mineral product material before it enters interstate commerce is the taxable base.~~

~~B. Unless otherwise provided in subsection (D), the taxpayer shall calculate in calculating the market value of a nonmetalliferous mineral product shipped out-of-state in the following manner, the taxpayer shall:~~

- ~~1. Establish the total selling price of the product at the time of the sale outside this State-Arizona.~~
- ~~2. The taxpayer having established the total selling price as provided in Paragraph 1. above, may deduct from the total selling price, costs incurred out-of-state that which increase the value of the product. These costs include, but are not limited to:~~
 - ~~a. The cost of common carrier actual freight actually paid, as provided in R15-5-908, to the point of sale outside this State-Arizona;~~
 - ~~b. The refining or processing cost incurred if it occurs prior to the first sale; and,~~
 - ~~c. The cost of sales commissions, if paid or accrued, in connection with making the sale.~~

~~C. The market value of the product shipped out-of-state shall not include the cost of processing if the processor has paid the Arizona Transaction Privilege Tax transaction privilege tax on the gross proceeds of sales or gross income derived from the processing. (See R15-5-904)~~

~~D. With the prior written approval of the Department, the taxpayer may compute the market value of nonmetalliferous mineral products shipped out-of-state in any manner which accurately reflects the value of such material the nonmetalliferous mineral product at the point it enters interstate commerce if the taxpayer gives prior written notification to the Department and the Department approves the computation method.~~

R15-5-906. Retail sale of processed products Repealed

~~Income derived from sales of mineral products to final consumers is taxable under the retail classification (Article 18), and not under this classification.~~

R15-5-908. Actual Freight Paid Cost of freight

~~When the sale price includes a charge for freight, from the place of production to the place of delivery, such charge is deductible. The cost of freight must be actually incurred by the seller and paid to a carrier. Delivery of products in the seller's own conveyance does not qualify for this deduction.~~

~~A. A mining business may deduct from the tax base under the mining classification actual freight costs incurred in connection with the sale that is included in the sales price if the actual freight costs incurred is separately stated in the billing to its customer.~~

~~B. A mining business that does not separately state the actual freight costs incurred in the billing to its customer may still deduct the actual freight costs paid to a third party provided the mining business keeps its books and records to show separately the actual freight paid to the third party.~~

- C.** A taxpayer shall not deduct the cost incurred by the taxpayer prior to a sale for freight from the mining or production location to the sales location.

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R18-2-101 | Amend |
| R18-2-333 | Amend |
| R18-2-901 | Amend |
| R18-2-1101 | Amend |
| Appendix 2 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing and implementing statutes: A.R.S. §§ 49-104(A)(11), 49-404(A) and 49-425(A)

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

Notice of Rulemaking Docket Opening: 6 A.A.R. 1180, March 31, 2000

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

Name: Mark Lewandowski or Martha Seaman, Rule Development Section

Address: ADEQ
3033 N. Central
Phoenix, AZ 85012-2809

Telephone: (602) 207-2230 or (602) 207-2222 (Any ADEQ number may be reached in-state by dialing 1-800-234-5677, and asking for that extension.)

Fax: (602) 207-2251

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

The Arizona Department of Environmental Quality (ADEQ) is proposing new and updated incorporations by reference of the following federal regulations in state rules: New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), Acid Rain, and other parts of 40 CFR. The federal regulations would be incorporated as of July 1, 1999. In addition, ADEQ is proposing to amend the definition of volatile organic compounds (VOC) to exclude the compound t-butyl acetate, as proposed by the U.S. Environmental Protection Agency (EPA).

NSPS and NESHAP regulations. Federal regulations already incorporated by reference from 40 CFR Parts 60, 61, and 63 are proposed to be updated from July 1, 1998, to July 1, 1999, in R18-2-901 and R18-2-1101. As explained further below, ADEQ is also proposing to incorporate by reference new subparts in Part 63, adopted as of July 1, 1999.

Acid Rain. Federal regulations already incorporated by reference from 40 CFR Part 72, 74, 75 and 76 are proposed to be updated from July 1, 1998, to July 1, 1999, in R18-2-333. ADEQ is obligated under state and federal law to incorporate federal acid rain requirements in the acid rain permits that it issues. (R18-2-306(A)(2); 40 CFR 70.6(a)(1))

Miscellaneous Incorporations by Reference in Appendix 2. In a previous rulemaking, a general incorporation by reference at R18-2-102(3) was deleted and relocated in Appendix 2. The provisions in Appendix 2 are proposed to be updated from July 1, 1998, to July 1, 1999.

ADEQ's intention in updating these incorporations by reference is to continue and update its delegated authority from EPA to implement and enforce the NSPS, NESHAP, and acid rain programs in Arizona.

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Below are descriptions of federal subparts proposed to be newly incorporated, taken from EPA's Notices of Final Rulemaking, and in chronological order:

NESHAP

Part 63, Subpart GGG - National Emission Standards for Pharmaceuticals Production [Added at 63 FR 50280, 09/21/1998] This action promulgated NESHAP to reduce air emissions of HAP from existing and new facilities that manufacture pharmaceutical products. The EPA intended that this promulgated rule would have a common technology basis with another rule promulgated on the same date under the Clean Water Act (CWA), to allow coordinated and cost effective compliance planning by the industry. The standards implement section 112 of the Clean Air Act (CAA) as amended in 1990. The standards apply to major source facilities which produce pharmaceutical products.

Part 63, Subpart III - National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production [Added at 63 FR 53980, 10/07/1998] This action promulgated NESHAP for new and existing plant sites that manufacture flexible polyurethane foam. The standards were estimated to reduce HAP emissions from all existing sources of flexible polyurethane foam manufacturing by over 12,500 megagrams/year (Mg/yr). This represents a 70% reduction from baseline.

Part 63, Subpart XXX - National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese [Added at 64 FR 27450, 05/20/1999] This action finalized NESHAP for ferroalloys production: ferromanganese and silicomanganese. The rule was proposed under the title of "national emission standards for hazardous air pollutants for ferroalloys production." The EPA changed the title of the final rule to reflect the specific ferroalloy produced (ferromanganese and silicomanganese) at the only existing source to be regulated. The EPA also deleted the proposed applicability to ferrochromium production with this action and withdrew the proposed rule for ferronickel production facilities.

Part 63, Subpart PPP - National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production [Added at 64 FR 29420, 06/01/1999] This rule promulgated NESHAP for new and existing plant sites that manufacture polyether polyols. The HAP emitted by the facilities covered by this rule include ethylene oxide, propylene oxide, hexane, toluene, and incidental emissions of several other HAP. Some of these pollutants are considered to be probable human carcinogens when inhaled, and all can cause toxic effects following exposure. The rule was estimated to reduce emissions of these pollutants by 1,810 Mg/yr (2,000 tons per year (tpy)). Because all of the pollutants are also volatile organic compounds (VOC), which are precursors to ambient ozone, the promulgated rule will also aid in the reduction of tropospheric ozone.

Part 63, Subpart DDD - National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production [Added at 64 FR 29490, 06/01/1999] This action promulgated NESHAP for new and existing sources in mineral wool production facilities. HAPs emitted by the facilities covered by this rule include carbonyl sulfide (COS), nine hazardous metals, formaldehyde, and phenol. Exposure to these HAPs may be associated with adverse carcinogenic, respiratory, nervous system, dermal, developmental, and/or reproductive health effects. The EPA estimated that the final rule will reduce nationwide emissions of HAPs from these facilities by 46 Mg/yr (51 tpy). In addition, emissions of particulate matter (PM) will be reduced by approximately 186 Mg/yr (205 tpy).

Part 63, Subpart TTT - National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting [Added at 64 FR 30194, 06/04/1999] This action promulgated NESHAP for new and existing primary lead smelters pursuant to section 112 of the Clean Air Act as amended in November 1990. Primary lead smelters have been identified by the EPA as significant emitters of lead compounds, and other metal HAPs including arsenic, antimony, and cadmium. Exposure to lead compounds may result in adverse effects on the blood, central nervous system and kidneys. Chronic exposure to arsenic is associated with skin, bladder, liver and lung cancer and other developmental and reproductive effects. This NESHAP requires all primary lead smelters to meet emission standards that reflect the application of maximum achievable control technology (MACT).

Part 63, Subpart AA - National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants [Added at 64 FR 31358, 06/10/1999]

Part 63, Subpart BB - National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants [Added at 64 FR 31358, 06/10/1999]

These actions promulgated NESHAP for new and existing major sources in phosphoric acid manufacturing and phosphate fertilizers production plants (SIC 2874). HAPs emitted by the facilities covered by the rules include hydrogen fluoride (HF); arsenic, beryllium, cadmium, chromium, manganese, mercury, and nickel (HAP metals); and methyl isobutyl ketone. Human exposure to the HAP constituents in these emissions may be associated with adverse carcinogenic, respiratory, nervous system, dermal, developmental, and/or reproductive health effects. Implementation of the

rules will achieve an emission reduction of HF estimated at 315 Mg/yr (345 tpy). The standards will reduce 940 Mg/yr (1035 tpy) of total fluorides and particulate matter containing heavy metals which are regulated pollutants under the Clean Air Act as amended.

Part 63, Subpart LLL - National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry [Added at 64 FR 31898, 06/14/1999] This action promulgated NESHAP for new and existing sources in the portland cement manufacturing industry. The action also added Method 320 for the measurement of vapor phase organic and inorganic emissions by extractive Fourier Transform Infrared (FTIR) spectroscopy and Method 321 for the measurement of gaseous hydrogen chloride emissions from portland cement kilns by FTIR spectroscopy to appendix A of part 63. Some of the HAPs released from portland cement manufacturing facilities include, but are not limited to, acetaldehyde, arsenic, benzene, cadmium, chromium, chlorobenzene, dibenzofurans, formaldehyde, hexane, hydrogen chloride, lead, manganese, mercury, naphthalene, nickel, phenol, polycyclic organic matter, selenium, styrene, 2,3,7,8-tetrachlorodibenzo-p-dioxin, toluene, and xylenes. Exposure to these HAPs can cause reversible or irreversible health effects including carcinogenic, respiratory, nervous system, developmental, reproductive and/or dermal health effects. The EPA estimated that the final rule will reduce nationwide emissions of HAPs from portland cement manufacturing facilities by approximately 82 Mg/yr (90 tpy), and particulate matter (PM) by approximately 4,700 Mg/yr (5,200 tpy). The final rule requires portland cement manufacturing plants to meet emission standards reflecting the application of the maximum achievable control technology (MACT).

Part 63, Subpart NNN - National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing [Added at 64 FR 31695, 06/14/1999] This action promulgated NESHAP for new and existing sources in wool fiberglass manufacturing facilities. The action also added Method 316 and Method 318 for the measurement of formaldehyde from wool fiberglass manufacturing lines to appendix A of part 63.

Part 63, Subpart HH - National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities [Added at 64 FR 32610, 06/17/1999]

Part 63, Subpart HHH - National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities [Added at 64 FR 32610, 06/17/1999]

These actions promulgated NESHAP to limit emissions of HAP from oil and natural gas production and natural gas transmission and storage facilities. These final rules implement section 112 of the Clean Air Act and are based on the Administrator's determination that oil and natural gas production and natural gas transmission and storage facilities emit HAP identified on the EPA's list of 188 HAPs.

Part 63, Subpart CCC - National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants [Added at 64 FR 33202, 06/22/1999] This action promulgated NESHAP for hydrochloric acid process steel pickling facilities and hydrochloric acid regeneration plants pursuant to section 112 of the Clean Air Act. Major source facilities subject to the rule emit hydrochloric acid (HCl), a HAP. Chronic exposure to HCl has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute inhalation exposure to HCl may cause hoarseness, inflammation and ulceration of the respiratory tract, chest pain, and pulmonary edema. Hydrochloric acid regeneration plants also emit chlorine (Cl₂), which is also a HAP. Acute exposure to high levels of Cl₂ results in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, Cl₂ is a potent irritant to the eyes, the upper respiratory tract, and lungs. The final rule requires new or existing pickling lines that use hydrochloric acid as the primary pickling solution, hydrochloric acid regeneration plants, and acid storage tanks to meet emission standards reflecting application of the maximum achievable control technology (MACT). Implementation of the rule is expected to reduce HAP emissions by more than 2,200 Mg/yr (2,500 tpy) from current levels.

Part 63, Subpart MMM - National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production [Added at 64 FR 33550, 06/23/1999] This action promulgated NESHAP for the pesticide active ingredient (PAI) production source category under section 112 of the Clean Air Act as amended. The intent of the standards is to reduce emissions of HAP from existing and new facilities that manufacture organic PAI used in herbicides, insecticides, and fungicides. The standards protect human health and the environment by reducing HAP emissions to the level corresponding to the maximum achievable control technology (MACT) through the use of pollution prevention measures and control strategies. The major HAP emitted by facilities covered by this rule include toluene, methanol, methyl chloride, and hydrogen chloride (HCl). All of these pollutants can cause reversible or irreversible toxic effects following exposure. The rule is estimated to reduce total HAP emissions from existing facilities by 2,500 Mg/yr (2,755 tpy), a reduction of 65% from the baseline emission level. Because many of these pollutants are also VOC, which are precursors to ambient ozone, the rule will aid in the reduction of tropospheric ozone.

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EPA's July 16, 1992, source category list included an agricultural chemicals industry group that contained 10 source categories. This rule grouped these 10 agricultural chemicals source categories into one source category, renamed the source category, and added additional chemical production processes to the source category.

Part 63, Subpart SS - National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process [Added at 64 FR 34854, 06/29/1999]

Part 63, Subpart TT - National Emission Standards for Equipment Leaks - Control Level 1 [Added at 64 FR 34854, 06/29/1999]

Part 63, Subpart UU - National Emission Standards for Equipment Leaks - Control Level 2 Standards [Added at 64 FR 34854, 06/29/1999]

Part 63, Subpart WW - National Emission Standards for Storage Vessels (Tanks) - Control Level 2 [Added at 64 FR 34854, 06/29/1999]

Part 63, Subpart YY - National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards [Added at 64 FR 34854, 06/29/1999]

These actions promulgated a consolidated rulemaking proposal published on October 14, 1998. The rule established the "generic MACT standards" program for setting NESHAP under section 112 of the Clean Air Act for certain small source categories consisting of five or fewer major sources. As part of the generic MACT program, EPA established an alternative methodology for making control technology MACT determinations for appropriate small categories by referring to previous MACT standards that have been promulgated for similar sources in other categories. The consolidated rulemaking package included promulgated MACT standards developed within the generic MACT framework for four specific source categories included on EPA's list of categories for which NESHAP are required: acetal resins production, acrylic and modacrylic fiber production, hydrogen fluoride production, and polycarbonate(s) production. The package also promulgated general control requirements for certain types of emission points for HAP, which will be referenced, as appropriate, in MACT requirements for individual source categories. The general control requirements are set forth in new promulgated subparts and are applicable to storage vessels containing organic materials, process vents emitting organic vapors, and leaks from equipment components. In addition, EPA promulgated a separate subpart of requirements for closed vent systems, control devices, recovery devices and routing emissions to fuel gas systems or a process. EPA withdrew proposed process wastewater provisions from the promulgated rule, taking final action separately on those provisions on November 22, 1999.

VOC Definition. ADEQ is proposing to revise its definition of VOC at R18-2-101(126) to exclude the compound t-butyl acetate, as proposed by EPA in the September 30, 1999, Federal Register. EPA found that the compound has negligible contribution to ground-level ozone formation. ADEQ has received a petition for rulemaking to exempt this compound, referencing the federal proposal.

ADEQ is proposing this change before final action by EPA for the following reasons: the EPA proposed rule is likely to be final very soon (in April or May of 2000), it deals with a single compound, and given past federal VOC rulemakings, it is likely to be promulgated as proposed. If EPA does not promulgate its VOC rule as proposed in the September 30, 1999 Federal Register, ADEQ will terminate this rulemaking with respect to R18-2-101.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

None

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

Not applicable

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

IDENTIFICATION OF PROPOSED RULEMAKING

NSPS/NESHAP/Acid Rain 1999: 18 A.A.C. 2, Articles 1, 3, 9 and 11; Appendix 2, Sections R18-2-101, R18-2-333, R18-2-901, R18-2-1101, Appendix 2.

Summary

ADEQ believes that the proposed change to the "VOC" definition in R18-2-101 will decrease monitoring, record-keeping, and reporting burdens on businesses, and that ADEQ is not required to prepare an economic impact statement for this portion of the rule under A.R.S. § 41-1055(D)(3).

Costs

There are no additional costs to the regulated community when a state agency incorporates an already effective federal standard verbatim. The costs of compliance have already occurred, and were considered when the federal regulation was proposed and adopted. These rules impose no additional costs on the regulated community, small businesses, political subdivisions, or members of the public.

Costs to ADEQ are those that may accrue for implementation and enforcement of the new standards. Although there may be some small incremental costs due to this rulemaking, ADEQ does not intend to hire any additional employees to implement or enforce these rules.

Benefits

Benefits accrue to the regulated community when a state agency incorporates a federal regulation in order to become the primary implementer of the regulation, because the state agency is closer to those being regulated and therefore is generally easier to reach and to work with to resolve differences, compared with the U.S. EPA, whose regional office is in San Francisco. Local implementation also reduces travel and communication costs.

Health benefits accrue to the general public whenever enforcement of environmental laws takes place. Adverse health effects from air pollution result in a number of economic and social consequences, including:

1. Medical costs. These include personal out-of-pocket expenses of the affected individual (or family), plus costs paid by insurance or Medicare, for example.
2. Work loss. This includes lost personal income, plus lost productivity whether the individual is compensated for the time or not. For example, some individuals may perceive no income loss because they receive sick pay, but sick pay is a cost of business and reflects lost productivity.
3. Increased costs for chores and caregiving. These include special caregiving and services that are not reflected in medical costs. These costs may occur because some health effects reduce the affected individual's ability to undertake some or all normal chores, and he or she may require caregiving.
4. Other social and economic costs. These include restrictions on or reduced enjoyment of leisure activities, discomfort or inconvenience, pain and suffering, anxiety about the future, and concern and inconvenience to family members and others.

Conclusion

In conclusion, the incremental costs associated with this rule are generally low, and apply solely to ADEQ, while the air quality benefits are generally high. In addition, there are benefits to industry from being regulated by a geographically nearer government entity. There are no adverse economic impacts on political subdivisions. There are no adverse economic impacts on private businesses, their revenues or expenditures. The fact that no new employment is expected to occur has been discussed above, in the context of the impact on state agencies. There are no adverse economic impacts on small businesses, although some regulatory benefits will accrue to them. There are no economic impacts for consumers; benefits to private persons as members of the general public are discussed above in terms of enforcement. There will be no direct impact on state revenues. There are no other, less costly alternatives for achieving the goals of this rulemaking. The rules are no less stringent and no more stringent than the federal regulations on each subject.

Rule impact reduction on small businesses. A.R.S. § 41-1035 requires ADEQ to reduce the impact of a rule on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives (see below) for the rulemaking. The five listed methods are:

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
4. Establish performance standards for small businesses to replace design or operational standards in the rule.
5. Exempt small businesses from any or all requirements of the rule.

The statutory objectives which are the basis of the rulemaking. The general statutory objectives that are the basis of this rulemaking are contained in the statutory authority cited in number 2 of this preamble. The specific objectives are as follows:

1. Implement rules necessary for EPA delegation of Clean Air Act § 111 (NSPS) program to Arizona.
2. Implement rules necessary for EPA § 112(l) program delegation to Arizona (NESHAP).
3. Implement rules necessary for acid rain program delegation to ADEQ.

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ADEQ has determined that there is a beneficial impact on small businesses in transferring implementation of these rules to ADEQ. In addition, for all of these objectives, ADEQ is required to adopt the federal rules without reducing stringency. ADEQ, therefore, finds that it is not legal or feasible to adopt any of the five listed methods to reduce the impact of these rules on small businesses. Finally, where federal rules impact small businesses, EPA is required by both the Regulatory Flexibility Act and the Small Business Regulatory Enforcement and Fairness Act to make certain adjustments in its own rulemakings.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Mila Hill, Economist, Rule Development Section
Address: ADEQ
3033 N. Central
Phoenix, AZ 85012-2809
Telephone: (602) 207-4435 (Any extension may be reached in-state by dialing 1-800-234-5677, and asking for that extension)
Fax: (602) 207-2251

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:

Date: May 16, 2000
Time: 10:00 a.m.
Location: Arizona Department of Environmental Quality, Room 1709, 3033 N. Central, Phoenix, AZ
(Please call 602-207-4795 for special accommodations pursuant to the Americans with Disabilities Act.)
Nature: Public hearing on the proposed rules, with opportunity for formal comments on the record. The close of written comment is May 19, 2000.

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

Not applicable

12. Incorporations by reference and their locations in the rules:

<u>New incorporations by reference (subparts or larger)</u>	<u>Location</u>
40 CFR 63, subparts AA, BB, HH, SS, TT, UU, WW, YY, CCC, DDD, GGG, HHH, III, LLL, MMM, NNN, PPP, TTT, XXX	R18-2-1101(B)
<u>Incorporations by reference updated from 7/1/98 to 7/1/99 (may include new sections)</u>	<u>Location</u>
40 CFR 72, 74, 75 and 76	R18-2-333(A)
40 CFR 60, listed subparts and accompanying appendices	R18-2-901(A)
40 CFR 61, listed subparts and accompanying appendices	R18-2-1101(A)
40 CFR 63, listed subparts and accompanying appendices	R18-2-1101(B)
Currently Cited Appendices to 40 CFR Parts 51, 60, 61, 63, 75	Appendix 2
40 CFR 50	Appendix 2
40 CFR 50, Appendices A through K	Appendix 2
40 CFR 52, Appendices D and E;	Appendix 2
40 CFR 58	Appendix 2
40 CFR 58, all appendices	Appendix 2

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR POLLUTION CONTROL

ARTICLE 1. GENERAL

Section
R18-2-101. Definitions

ARTICLE 3. PERMITS AND PERMIT REVISIONS

Section
R18-2-333. Acid Rain

ARTICLE 9. NEW SOURCE PERFORMANCE STANDARDS

Section
R18-2-901. Standards of Performance for New Stationary Sources

ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS

Section
R18-2-1101. National Emission Standards for Hazardous Air Pollutants (NESHAPs)

APPENDIX 2. TEST METHODS AND PROTOCOLS

ARTICLE 1. GENERAL

R18-2-101. Definitions

In addition to the definitions prescribed in A.R.S. §§ 49-101, 49-401.01, 49-421, 49-471, and 49-541, in this Chapter, unless otherwise specified:

1. No change.
2. No change.
3. No change.
4. No change.
5. No change.
6. No change.
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- 30. No change.
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- 118.No change.
- 119.No change.
- 120.No change.
- 121.No change.
- 122.No change.
- 123.No change.
- 124.No change.
- 125. “Volatile organic compounds (VOC)” means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions. This includes any such organic compound other than the following:
 - a. Methane;
 - b. Ethane;
 - c. Methylene chloride (dichloromethane);
 - d. 1,1,1-trichloroethane (methyl chloroform);
 - e. 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);
 - f. Trichlorofluoromethane (CFC-11);
 - g. Dichlorodifluoromethane (CFC-12);
 - h. Chlorodifluoromethane (HCFC-22);
 - i. Trifluoromethane (HFC-23);
 - j. 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114);
 - k. Chloropentafluoroethane (CFC-115);
 - l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
 - m. 1,1,1,2-tetrafluoroethane (HFC-134a);
 - n. 1,1-dichloro 1-fluoroethane (HCFC-141b);
 - o. 1-chloro 1,1-difluoroethane (HCFC-142b);
 - p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
 - q. Pentafluoroethane (HFC-125);
 - r. 1,1,2,2-tetrafluoroethane (HFC-134);
 - s. 1,1,1-trifluoroethane (HFC-143a);
 - t. 1,1-difluoroethane (HFC-152a);

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- u. Parachlorobenzotrifluoride (PCBTF);
 - v. Cyclic, branched, or linear completely methylated siloxanes;
 - w. Acetone;
 - x. Perchloroethylene (tetrachloroethylene);
 - y. 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
 - z. 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
 - aa. 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
 - bb. Difluoromethane (HFC-32);
 - cc. Ethylfluoride (HFC-161);
 - dd. 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
 - ee. 1,1,2,2,3-pentafluoropropane (HFC-245ca);
 - ff. 1,1,2,3,3-pentafluoropropane (HFC-245ea);
 - gg. 1,1,1,2,3-pentafluoropropane (HFC-245eb);
 - hh. 1,1,1,3,3-pentafluoropropane (HFC-245fa);
 - ii. 1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
 - jj. 1,1,1,3,3-pentafluorobutane (HFC-365mfc);
 - kk. Chlorofluoromethane (HCFC-31);
 - ll. 1 chloro-1-fluoroethane (HCFC-151a);
 - mm. 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
 - nn. 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃);
 - oo. 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OCH₃);
 - pp. 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅);
 - qq. 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OC₂H₅);
 - rr. Methyl acetate; and
 - ss. ~~Perfluorocarbon~~ T-butyl acetate and perfluorocarbon compounds that fall into these classes:
 - i. Cyclic, branched, or linear, completely fluorinated alkanes.
 - ii. Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
 - iii. Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; or
 - iv. Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.
- 126.No change.

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-333. Acid Rain

- A. 40 CFR 72, 74, 75 and 76 and all accompanying appendices, adopted as of July 1, ~~1998~~1999, (and no future amendments) are incorporated by reference. These standards are on file with the Office of the Secretary of State and the Department and shall be applied by the Department.
- B. When used in 40 CFR 72, 74, 75 or 76, "Permitting Authority" means the Arizona Department of Environmental Quality and "Administrator" means the Administrator of the United States Environmental Protection Agency.
- C. If the provisions or requirements of the regulations incorporated in this Section conflict with any of the remaining portions of this Title, the regulations incorporated in this Section shall apply and take precedence.

ARTICLE 9. NEW SOURCE PERFORMANCE STANDARDS

R18-2-901. Standards of Performance for New Stationary Sources

Except as provided in R18-2-902 through R18-2-905, the following subparts of 40 CFR 60, New Source Performance Standards (NSPS), and all accompanying appendices, adopted as of July 1, ~~1998~~1999, ~~or the specific date provided below~~, and no future editions or amendments, are incorporated by reference. These standards are on file with the Office of the Secretary of State and the Department and shall be applied by the Department.

- 1. Subpart A - General Provisions.
- 2. Subpart D - Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971.
- 3. Subpart Da - Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.
- 4. Subpart Db - Industrial-Commercial-Institutional Steam Generating Units.
- 5. Subpart Dc - Small Industrial-Commercial-Institutional Steam Generating Units.
- 6. Subpart E - Incinerators.
- 7. Subpart Ea - Municipal Waste Combustors for which Construction is Commenced after December 20, 1989 and on or before September 20, 1994.
- 8. Subpart Eb - Municipal Waste Combustors for which Construction is Commenced after September 20, 1994.

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9. Subpart F - Portland Cement Plants.
10. Subpart G - Nitric Acid Plants.
11. Subpart H - Sulfuric Acid Plants.
12. Subpart I - Hot Mix Asphalt Facilities.
13. Subpart J - Petroleum Refineries.
14. Subpart K - Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.
15. Subpart Ka - Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.
16. Subpart Kb - Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984.
17. Subpart L - Secondary Lead Smelters.
18. Subpart M - Secondary Brass and Bronze Ingot Production Plants.
19. Subpart N - Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.
20. Subpart Na - Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.
21. Subpart O - Sewage Treatment Plants.
22. Subpart P - Primary Copper Smelters.
23. Subpart Q - Primary Zinc Smelters.
24. Subpart R - Primary Lead Smelters.
25. Subpart S - Primary Aluminum Reduction Plants.
26. Subpart T - Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.
27. Subpart U - Phosphate Fertilizer Industry: Superphosphoric Acid Plants.
28. Subpart V - Phosphate Fertilizer Industry: Diammonium Phosphate Plants.
29. Subpart W - Phosphate Fertilizer Industry: Triple Superphosphate Plants.
30. Subpart X - Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.
31. Subpart Y - Coal Preparation Plants.
32. Subpart Z - Ferroalloy Production Facilities.
33. Subpart AA - Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983.
34. Subpart AAa - Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.
35. Subpart BB - Kraft Pulp Mills.
36. Subpart CC - Glass Manufacturing Plants.
37. Subpart DD - Grain Elevators.
38. Subpart EE - Surface Coating of Metal Furniture.
39. Subpart GG - Stationary Gas Turbines.
40. Subpart HH - Lime Manufacturing Plants.
41. Subpart KK - Lead-Acid Battery Manufacturing Plants.
42. Subpart LL - Metallic Mineral Processing Plants.
43. Subpart MM - Automobile and Light Duty Truck Surface Coating Operations.
44. Subpart NN - Phosphate Rock Plants.
45. Subpart PP - Ammonium Sulfate Manufacture.
46. Subpart QQ - Graphic Arts Industry: Publication Rotogravure Printing.
47. Subpart RR - Pressure Sensitive Tape and Label Surface Coating Operations.
48. Subpart SS - Industrial Surface Coating: Large Appliances.
49. Subpart TT - Metal Coil Surface Coating.
50. Subpart UU - Asphalt Processing and Asphalt Roofing Manufacture.
51. Subpart VV - Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.
52. Subpart WW - Beverage Can Surface Coating Industry.
53. Subpart XX - Bulk Gasoline Terminals.
54. Subpart AAA - New Residential Wood Heaters.
55. Subpart BBB - Rubber Tire Manufacturing Industry.
56. Subpart DDD - Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.
57. Subpart FFF - Flexible Vinyl and Urethane Coating and Printing.
58. Subpart GGG - Equipment Leaks of VOC in Petroleum Refineries.
59. Subpart HHH - Synthetic Fiber Production Facilities.

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60. Subpart III - Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.
61. Subpart JJJ - Petroleum Dry Cleaners.
62. Subpart KKK - Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.
63. Subpart LLL - Onshore Natural Gas Processing; SO₂ Emissions.
64. Subpart NNN - Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.
65. Subpart OOO - Nonmetallic Mineral Processing Plants.
66. Subpart PPP - Wool Fiberglass Insulation Manufacturing Plants.
67. Subpart QQQ - VOC Emissions From Petroleum Refinery Wastewater Systems.
68. Subpart RRR - Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.
69. Subpart SSS - Magnetic Tape Coating Facilities.
70. Subpart TTT - Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.
71. Subpart UUU - Calciners and Dryers in Mineral Industries.
72. Subpart VVV - Polymeric Coating of Supporting Substrates Facilities.
73. Subpart WWW - Municipal Solid Waste Landfills. ~~Incorporation includes amendments adopted as of August 17, 1998.~~

ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS

R18-2-1101. National Emission Standards for Hazardous Air Pollutants (NESHAPs)

- A.** Except as provided in R18-2-1102, the following subparts of 40 CFR 61, National Emission Standards for Hazardous Air Pollutants (NESHAPs), and all accompanying appendices, adopted as of July 1, ~~1998~~1999, and no future editions or amendments, are incorporated by reference. These standards are on file with the Office of the Secretary of State and the Department and shall be applied by the Department.
 1. Subpart A - General Provisions.
 2. Subpart C - Beryllium.
 3. Subpart D - Beryllium Rocket Motor Firing.
 4. Subpart E - Mercury.
 5. Subpart F - Vinyl Chloride.
 6. Subpart J - Equipment Leaks (Fugitive Emission Sources) of Benzene.
 7. Subpart L - Benzene Emissions from Coke By-Product Recovery Plants.
 8. Subpart M - Asbestos.
 9. Subpart N - Inorganic Arsenic Emissions from Glass Manufacturing Plants.
 10. Subpart O - Inorganic Arsenic Emissions from Primary Copper Smelters.
 11. Subpart P - Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production.
 12. Subpart V - Equipment Leaks (Fugitive Emission Sources).
 13. Subpart Y - Benzene Emissions From Benzene Storage Vessels.
 14. Subpart BB - Benzene Emissions from Benzene Transfer Operations.
 15. Subpart FF - Benzene Waste Operations.
- B.** Except as provided in R18-2-1102, the following subparts of 40 CFR 63, NESHAPs for Source Categories, and all accompanying appendices, adopted as of July 1, ~~1998~~1999, and no future editions or amendments, are incorporated by reference. These standards are on file with the Office of the Secretary of State and the Department and shall be applied by the Department.
 1. Subpart A - General Provisions.
 2. Subpart B - Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j).
 3. Subpart D - Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants.
 4. Subpart F - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
 5. Subpart G - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
 6. Subpart H - National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
 7. Subpart I - National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
 8. Subpart L - National Emission Standards for Coke Oven Batteries.
 9. Subpart M - National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.

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10. Subpart N - National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
11. Subpart O - Ethylene Oxide Emissions Standards for Sterilization Facilities.
12. Subpart Q - National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
13. Subpart R - National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
14. Subpart S - National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry.
15. Subpart T - National Emission Standards for Halogenated Solvent Cleaning.
16. Subpart U - National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.
17. Subpart W - National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production.
18. Subpart X - National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting.
19. Subpart AA - National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants.
20. Subpart BB - National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants.
- ~~19~~21.Subpart CC - National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.
- ~~20~~22.Subpart DD - National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.
- ~~24~~23.Subpart EE - National Emission Standards for Magnetic Tape Manufacturing Operations.
- ~~22~~24.Subpart GG - National Emission Standards for Aerospace Manufacturing and Rework Facilities.
25. Subpart HH - National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities.
- ~~23~~26.Subpart JJ - National Emission Standards for Wood Furniture Manufacturing Operations.
- ~~24~~27.Subpart KK - National Emission Standards for the Printing and Publishing Industry.
- ~~25~~28.Subpart LL - National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants.
- ~~26~~29.Subpart OO - National Emission Standards for Tanks--Level 1.
- ~~27~~30.Subpart PP - National Emission Standards for Containers.
- ~~28~~31.Subpart QQ - National Emission Standards for Surface Impoundments.
- ~~29~~32.Subpart RR - National Emission Standards for Individual Drain Systems.
33. Subpart SS - National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.
34. Subpart TT - National Emission Standards for Equipment Leaks - Control Level 1.
35. Subpart UU - National Emission Standards for Equipment Leaks - Control Level 2 Standards.
- ~~30~~36.Subpart VV - National Emission Standards for Oil-Water Separators and Organic-Water Separators.
37. Subpart WW - National Emission Standards for Storage Vessels (Tanks) - Control Level 2.
38. Subpart YY - National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards.
39. Subpart CCC - National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants.
40. Subpart DDD - National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.
- ~~34~~41.Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.
42. Subpart GGG - National Emission Standards for Pharmaceuticals Production.
43. Subpart HHH - National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities.
44. Subpart III - National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.
- ~~32~~45.Subpart JJJ - National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins.
46. Subpart LLL - National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry.
47. Subpart MMM - National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.
48. Subpart NNN - National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.
49. Subpart PPP - National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production.
50. Subpart TTT - National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.
51. Subpart XXX - National Emission Standards for Hazardous Air Pollutants for Ferrous Alloys Production: Ferromanganese and Silicomanganese.

APPENDIX 2. TEST METHODS AND PROTOCOLS

The following test methods and protocols are approved for use as directed by the Department under this Chapter. These standards are incorporated by reference as of July 1, ~~1998~~1999 (and no future editions or amendments), except for incorporation dates specifically provided. These standards are on file with the Department and the Office of the Secretary of State, and are also available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington D.C. 20402-9328.

1. 40 CFR 50;
2. 40 CFR 50, Appendices A through K;
3. 40 CFR Part 51, Appendix M, Appendix S, Section IV, Appendix W;
4. 40 CFR 52, Appendices D and E;
5. 40 CFR 58;
6. 40 CFR 58, all appendices;
7. 40 CFR Part 60, all appendices.
8. 40 CFR Part 61, all appendices.
9. 40 CFR Part 63, all appendices.
10. 40 CFR Part 75, all appendices.
11. The Department's "Arizona Testing Manual for Air Pollutant Emissions," (March, 1992).