

NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF EXEMPT RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY DEVELOPMENTAL DISABILITIES

PREAMBLE

1. Sections Affected

R6-6-2101
R6-6-2102
R6-6-2103
R6-6-2104
R6-6-2105
R6-6-2106
R6-6-2107
R6-6-2108
R6-6-2109
R6-6-2110
R6-6-2111
R6-6-2112
R6-6-2113
R6-6-2114
R6-6-2115

Rulemaking Action

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

Authorizing statute: A.R.S. § 41-1954(A)(1)(h)

Implementing statutes: A.R.S. §§ 36-557 and 36-2959

3. The effective date of the rules:

February 1, 2003

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

Not applicable

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

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Address: 1789 W. Jefferson, Site Code 837A
Phoenix, AZ 85007
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6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:

The rule has been initiated to provide the regulatory framework for implementation of a procurement process that will support the statewide purchase of services for individuals with developmental disabilities, as defined at A.R.S. § 36-557, and for the establishment of a rate setting process as defined in A.R.S. § 36-2959. The Department is exempt from the rulemaking process according to Laws 2002, Ch. 329, § 35.

The rule includes the following major components:

1. The development of a Qualified Vendor application process, evaluation of the applications and agreements for the delivery of statewide community developmental disability services resulting in a list of Qualified Vendors from which to purchase services.
2. Creation of a list of Qualified Vendors based on applications received that meet the criteria defined in Section R6-6-2104 of these rules.
3. Establishing, reviewing, and updating reimbursement rates for the purchase of services for persons with developmental disabilities in the Arizona long-term care system and the state only program.
4. Purchasing of community developmental disability services from provider organizations, Professional Independent Providers and Individual Independent Providers that have submitted a Qualified Vendor application, have become qualified as a vendor and have signed a Qualified Vendor Agreement or an Individual Service Agreement with the Division.
5. Reimbursement of Qualified Vendors for the provision of community developmental disability services based on published rates or negotiated rates.
6. Issuing authorizations to Qualified Vendors who have been selected to provide the service for a specific consumer.
7. Establishment of a process for the consumer or the consumer's representative to select a provider from a list of Qualified Vendors or Individual Independent Providers.
8. Maintaining an open and continuous process of accepting applications to become a Qualified Vendor.
9. Legal and contractual remedies related to this procurement process.

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

While no specific study regarding this procurement process exists to the knowledge of the Division, the Division Design Team recommendations and Consensus Principles developed in concert with providers of service and family members of consumers were reviewed during the development process to ensure the procurement system developed was consistent with the recommendations and principles.

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

The rule does not diminish a previous grant of authority of a political subdivision of this state.

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

Economic Impact: The procurement system defined by A.R.S. § 36-557 has been designed to streamline the procurement process for the state and for providers of service. The Qualified Vendor list will represent an ongoing register of providers and individuals qualified to provide certain community developmental disability services. Providers will be able to express their interest in expanding their services and will be able to expand to other areas of the state without completing a new Request for Proposals process.

The establishment of a standard rate schedule for the purchase of community developmental disability services will create a "level playing field" for service providers. Most services will be delivered based on a standard rate that removes the rate as an evaluation factor from negotiations and in the selection process. Agreements will not be awarded based on an individual provider's negotiation skills – agreements will be awarded based on the ability of the provider to deliver the needed service. Selection of the provider will be based on the provider's ability to meet the needs of individual consumers.

Reviewing and updating of reimbursement rates through a formal rate development review process will provide the documentation to support rate changes as the economic situation changes, based on the availability of funding.

The application process and selection process will be implemented using technology thus increasing the timeliness of notices and consistency of responses to the notices. Organizations not yet able to conduct business using technology will be provided paper / mailed copies of the information.

Small Business Impact: Small business will benefit from the ease of the application process and from the provider selection process that will allow consumers and families to choose from all available providers able to deliver the service needed. Additionally, small businesses and individual providers will be able to be listed as Qualified Vendors and will receive notices automatically about individual consumers who are looking for a specific type of provider affording small business the same opportunities as large businesses with staff to market and promote their organizations.

Consumer Impact: Consumers and their representatives will be provided the opportunity to, through the use of a list serv and Division web site, request specific services and be provided with a list of those providers who respond stat-

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ing they can provide the needed service(s), in the geographic area desired and in the time-frame desired from which to choose.

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

Because these rules are exempt from formal rulemaking procedures, a Notice of Proposed Rulemaking was not filed with the Secretary of State. However, a draft of the rules was distributed for public review on September 30, 2002. Two Public Hearings were held in October (Flagstaff on October 15 and Phoenix on October 16). Written comments were accepted through October 31, 2002. Changes made as a result of the public comment include:

1. Clarification of definitions;
2. Streamlining of the provider selection process to simplify the provider response to a request for services;
3. Clarification of the requirements to become a Qualified Vendor; and
4. Inclusion of an objective process, random assignment, to be used if the Division selects providers when the consumer or family fail to select.

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

To view comments from public hearings or comments submitted in writing regarding the rules, and the Department's response to them, contact:

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

Not applicable

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

Not applicable

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

This rule was not previously made as an emergency rule.

15. The full text of the rules follows:

TITLE 6. ECONOMIC SECURITY

**CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY
DEVELOPMENTAL DISABILITIES**

ARTICLE 21. ~~RESERVED~~ DIVISION PROCUREMENT AND RATE SETTING – QUALIFIED VENDORS

Section

- R6-6-2101. Definitions
- R6-6-2102. Applicability
- R6-6-2103. Qualified Vendor Application Process
- R6-6-2104. Criteria for Qualified Vendor Agreements
- R6-6-2105. Qualified Vendor Agreement
- R6-6-2106. List Serv
- R6-6-2107. Selecting a Provider – Individual Consumers
- R6-6-2108. Emergency Procurement
- R6-6-2109. Consumer Choice
- R6-6-2110. Authorization to Provide Services
- R6-6-2111. Cancellation of the Qualified Vendor Agreement
- R6-6-2112. Cancellation of Requests and Notices
- R6-6-2113. Transition to the Qualified Vendor Process
- R6-6-2114. Rate Setting
- R6-6-2115. Legal and Contractual Remedies

ARTICLE 21. ~~RESERVED~~ DIVISION PROCUREMENT AND RATE SETTING – QUALIFIED VENDORS

R6-6-2101. Definitions

The following definitions apply to this Article:

1. “Agreement file” means the public, documented record of procurement transactions that is maintained by and available at the Division contracts management office.
2. “AHCCCS” means the Arizona Health Care Cost Containment System as established by A.R.S. § 36-2901 et seq.
3. “Application” means the Qualified Vendor application, including any amendments, supplements, or updates submitted by the applicant.
4. “Assistant Director” means the Assistant Director of the Department of Economic Security, Division of Developmental Disabilities.
5. “Authorization” means the approval by the Division or its designee identifying the type and number of units of service a Qualified Vendor is authorized to provide to a specific consumer.
6. “Community developmental disability services” means any service or support the Division is authorized to purchase under A.R.S. § 36-557 on behalf of individuals with developmental disabilities and their families or guardians.
7. “Conflict of interest” means that a Qualified Vendor applicant, a Qualified Vendor, or an officer or employee of a Qualified Vendor applicant or Qualified Vendor has a relative as defined in A.R.S. § 38-502 who is an employee of the Division with direct or indirect responsibility for purchasing, authorizing, monitoring or evaluating community developmental disability services or vendors.
8. “Consumer” means an individual authorized to receive community developmental disability services from the Division.
9. “Consumer and family choice” means the consumer’s or consumer’s representative’s expressed preference to receive services from a specific provider.
10. “Contract list” means a roster of agencies, organizations, and professional independent providers who, on January 1, 2003 have a valid contract or agreement with the Division to provide community developmental disability services.
11. “Day” means calendar day unless otherwise specified.
12. “Department” means the Arizona Department of Economic Security.
13. “Department procurement officer” means the person, or his or her designee, authorized by the Department to make written determinations with respect to purchasing processes or agreements authorized under A.R.S. § 36-557.
14. “Division” means the Division of Developmental Disabilities of the Department of Economic Security.
15. “Division web site” means the Division of Developmental Disabilities internet web site.
16. “Emergency need” means a situation that requires an immediate change in services, in service providers, or in both services and service providers, and is necessary for the health or safety of the consumer.
17. “Independent assessment” means a review by a third party of an authorization decision.
18. “Independent rate model” means a methodology for rate development that includes the definition of the cost components and assumptions used in the development of a reimbursement rate.
19. “Individual Independent Provider” means a person who is qualified to provide service, has a provider identification number and an individual service agreement with the Division to provide services to developmentally disabled individuals.
20. “Individual service agreement” means the legally binding contract between the Division and an individual independent provider to provide community developmental disability services.
21. “Individual support plan” or “ISP” means a written statement of services to be provided to an individual with developmental disabilities including habilitation goals and objectives and a listing of the services, if any, the consumer is authorized to receive. The ISP incorporates and replaces the Individual Program Plan, the placement evaluation, the individualized service program plan and the service program plan used in A.R.S. § 36-557, and for the purposes of these rules incorporates the Individual Family Service Plan (IFSP) as defined in Section 809.1 of the Division of Developmental Disabilities Policy and Procedures Manual.
22. “Individual support plan team” or “ISP Team” means a group of persons including the consumer, the consumer’s representative, and other persons selected by the consumer, assembled by the Division and coordinated by the consumer’s support coordinator in compliance with A.R.S. §§ 36-551 and 36-560 to develop the consumer’s individual support plan.
23. “Itemized service budget” means a description of the cost of services and includes documentation that results in a defined unit rate.
24. “List serv” means an electronic mailing list maintained by the Division for purposes of sending information via electronic mail to a predefined directory of intended recipients.
25. “Negotiated rate” means the amount per unit of service a provider will be paid for services rendered based on successful negotiation of a price with the Division.
26. “Network development plan” means the annual plan developed by the Division that identifies the services and supports anticipated to be needed by consumers throughout the state.

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27. “Non-identifying information” means a description that does not provide information that could lead the recipient of the information to recognize a consumer.
28. “Notice of Intent to File a Protest and Request for Problem Solving” means a written document, signed by the protester and submitted to the Division to protest a procurement process or decision under this Article that requests informal problem solving actions be taken by the Division.
29. “Notice of Protest” means a written document signed by the protestor submitted to the Department procurement officer to protest a procurement process or decision under this Article.
30. “Open and continuous process” means that responses to a Request for Qualified Vendor Applications may be submitted by an applicant to the Division at any time during the time period the Request is posted to the Division web site.
31. “Personal financial statement” means documentation of the applicant’s financial status for the past three years as represented by copies of federal income tax statements, an accountant’s statement of assets and liabilities or other similar documentation of financial status.
32. “Professional Independent Provider” means a person who is licensed or certified under Title 32, Arizona Revised Statutes, who provides services for consumers as a Qualified Vendor and is not an employee or subcontractor of a provider agency.
33. “Program plan” means a response to a requirement specified in the Qualified Vendor application that identifies the services to be provided and the service specific methodology to be followed by the applicant.
34. “Provider” means a Qualified Vendor or an Individual Independent Provider.
35. “Provider organization” means a corporation, professional corporation, partnership, limited liability company, or joint venture that is or applies to be a Qualified Vendor.
36. “Published rate” means the payment amount per unit of service established by the Division for the purchase of a community developmental disability service.
37. “Qualified Vendor” means a provider of community developmental disability services that has applied for Qualified Vendor status, meets the criteria for Qualified Vendor status, and has entered into a Qualified Vendor Agreement with the Division.
38. “Qualified Vendor Agreement” means the legal, binding document between the Division and a Qualified Vendor describing the services the Qualified Vendor is qualified to provide and the terms and conditions governing the relationship between the Division and the Qualified Vendor including any amendments, attachments, schedules, or exhibits.
39. “Qualified vendor list” means the roster of vendors who have entered into Qualified Vendor Agreements with the Division.
40. “Quality management plan” means the procedures used to monitor service and system performance and to define and implement actions that will result in service and system improvements.
41. “Request for Qualified Vendor Applications” means a notice issued by the Division requesting vendors to apply to be Qualified Vendors for the delivery of community developmental disability services.
42. “Vendor Call for Services” means a notice from the Division inviting Qualified Vendors and individual independent providers to submit a response indicating their availability to provide services for a specific consumer or specific group of consumers, based on the requirements defined in the consumer’s ISP.
43. “Vendor Call Response” means a response to a Vendor Call for Services that indicates the provider’s availability to provide the requested service or services and describes how the provider proposes to meet the special accommodations needed for a specific consumer or specific group of consumers, based on the consumer’s ISP.
44. “Title XIX” means that section of the federal Social Security Act that authorizes the provision of Medicaid services including acute care and long-term care services.

R6-6-2102. Applicability

A. This Article shall apply to services purchased by the Division under the authority of A.R.S. § 36-557 and to reimbursement rates established by the Division under the authority of A.R.S. § 36-2959. This Article does not apply to services purchased by the Division under the Arizona Procurement Code, A.R.S. Title 41, Chapter 23.

B. Under this Article, the Division may:

1. Enter into Qualified Vendor Agreements for the delivery of statewide community developmental disability services;
2. Amend Qualified Vendor Agreements in accordance with these rules;
3. Establish, review, and update reimbursement rates for the purchase of services for persons with developmental disabilities in the Arizona long-term care system and the state only program;
4. Purchase community developmental disability services from provider organizations, Professional Independent Providers and Individual Independent Providers who have submitted a Qualified Vendor application, have become qualified as a vendor and have signed a Qualified Vendor Agreement or an Individual Service Agreement with the Division;
5. Create a list of Qualified Vendors based on applications received that meet the criteria defined at R6-6-2104;

6. Reimburse a Qualified Vendor for the provision of community developmental disability services based on published rates or negotiated rates:
 - a. The Division shall determine if the reimbursement methodology will be published rate or negotiated rate for each service purchased.
 - b. The Division shall use only one reimbursement methodology per service.
7. Issue an authorization to a Qualified Vendor who has been selected to provide the service for a specific consumer;
8. Establish a process for the consumer or the consumer's representative to select a provider from a list of Qualified Vendors or Individual Independent Providers; and
9. Maintain an open and continuous process of accepting applications to become a Qualified Vendor.
- C. A Professional Independent Provider shall become a Qualified Vendor in order to provide community developmental disability services for the Division.
- D. An Individual Independent Provider may become a Qualified Vendor but is not required to become a Qualified Vendor in order to provide community developmental disability services under an agreement with the Division.

R6-6-2103. Qualified Vendor Application Process

- A. The Division shall post the following information on the Division web site:
 1. All Requests for Qualified Vendor Applications;
 2. A description of the Division's anticipated service needs;
 3. The Qualified Vendor application form or forms, if any, including a description of the information and documents that must be submitted by an applicant to complete the application, and any assurances, representations or warranties that must be made by an applicant;
 4. Instructions for completing the application as described in subsection (D);
 5. The Qualified Vendor Agreement, including all terms and conditions, amendments, schedules and attachments; and
 6. Any other information reasonably necessary to advise an applicant of application requirements, as deemed necessary by the Division to evaluate the applications.
- B. The Division may send written or electronic notice of the Request for Qualified Vendor Applications to all providers on the Division's contract list, Qualified Vendor List and any party not on the contract list who has notified the Division business office in writing that it wishes to receive notification.
- C. Providers and other interested parties are responsible for making themselves aware of the opportunities posted to the Division web site.
- D. The Division shall include the following instructions and information as part of the Request for Qualified Vendor Applications:
 1. The acceptable methods for transmitting the application to the Division, such as e-mail, fax, or mail delivery;
 2. The due date, if any, for applications to be considered by the Division;
 3. The street address, mailing address, e-mail address and facsimile number of the Division office to which applications are to be sent;
 4. The term of the Qualified Vendor Agreement and the renewal options as established by the Division;
 5. A description of the service or services for which Qualified Vendors are requested, including the covered populations, the service need by geographic area, service specifications, a delivery or performance schedule and any other information that the Division finds necessary or appropriate;
 6. Whether the payment for each service will be a negotiated rate or a published rate;
 7. The published rate tables as appropriate to the services requested in the Request for Qualified Vendor Applications;
 8. A description of the factors to be used in the evaluation of the application;
 9. The location and method for obtaining documents that are incorporated by reference in the Request for Qualified Vendor Applications including, as applicable, the Division internet address;
 10. The requirement that the applicant acknowledge receipt of all amendments to the Request for Qualified Vendor Applications issued by the Division; and
 11. A description of the minimum information that an applicant must submit.
- E. The Division shall advise each Qualified Vendor applicant in writing whether the application is complete within 30 days of receipt of the application and shall identify the information or documentation that is missing or incomplete in the application.
 1. The Division may conduct discussions with applicants to provide information about the completeness of the application.
 2. The Division shall specify the time-frame in which the applicant must provide the missing information.
 3. The Division shall deny the application if the applicant does not provide the additional information within the time-frame defined by the Division.
- F. The Division shall notify a Qualified Vendor applicant in writing whether the applicant has been accepted as a Qualified Vendor within 60 days of receipt of a complete application.
- G. For negotiated rate agreements, the Division may extend the 60 day time-frame defined at R6-6-2103(F).
- H. The Division shall evaluate applications for Qualified Vendor Agreements based upon the criteria defined at R6-6-2104.

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- I.** The Division shall accord all applicants the same opportunity for discussion of the application completeness and revision to the application information.

R6-6-2104. Criteria for Qualified Vendor Agreements

- A.** To obtain a Qualified Vendor Agreement, an applicant shall submit a complete application to the Division that includes:
1. Identification of the services the applicant proposes to provide;
 2. Identification of current location or locations at which service, administrative, or monitoring activities are conducted;
 3. A description of staff qualifications if requested by the Division in the Request for Qualified Vendor Applications;
 4. Corporate structure demonstrating ownership and corporate affiliations, if applicable;
 5. A program plan to be included in the Directory of Qualified Vendors in a format prescribed by the Division;
 6. Documentation that the applicant holds the appropriate current Arizona license or certification to provide developmental disability services and that the license or certification is in good standing with the licensing or certification organization;
 7. A description of the applicant's quality management plan;
 8. A declaration of any potential conflict of interest with any Division employee;
 9. Assurances required by the Division as part of the application and documentation to support such assurances, if specifically requested by the Division in the Request for Qualified Vendor Applications;
 10. Certification that the submission of the application does not involve collusion or other anti-competitive practice; and
 11. Documentation of financial stability, including:
 - a. For a Qualified Vendor Agreement for services requiring a negotiated rate, the applicant shall submit a program budget and a proposed rate. The program budget information shall include:
 - i. An itemized service budget in a format prescribed by the Division;
 - ii. An income statement or statement of revenue by fund source for the applicant's current fiscal year to date and for each of the previous three fiscal years;
 - iii. A statement of expenditures by fund source for the applicant's current fiscal year to date and for each of the previous three fiscal years; and
 - iv. An audited financial statement or a financial audit for the prior fiscal year, if available.
 - b. For a Qualified Vendor Agreement for services that have a published rate, the applicant shall submit their financial audit for the prior year or an audited financial statement including revenues and expenditures for the prior year.
 - c. Applicants who do not have a financial audit or financial statement shall submit a personal financial statement of the Director or Chief Executive Officer or if a corporation, the corporate business plan.
 - d. A newly formed corporation shall submit the corporate business plan and personal financial statements of the Director or Chief Executive Officer.
 - e. Additional financial information may be required by the Request for Qualified Vendor Applications.
- B.** The Division shall consider the following factors in determining if an applicant is a Qualified Vendor and eligible to enter into a Qualified Vendor Agreement:
1. Ability of the applicant to meet the need for services based on performance, including compliance with licensing and certification requirements; program monitoring, agreement monitoring, or contract monitoring reports; and corporate or individual experience providing community developmental disability services or similar services in Arizona and in other states;
 2. Whether the applicant has met the requirements of the Qualified Vendor application process;
 3. Whether the application is consistent with the Division's network development plan or other documentation of projected service need;
 4. Financial stability of the applicant as demonstrated by the financial information provided in the application;
 5. The rate proposal for a negotiated rate agreement; and
 6. Any other criteria deemed relevant by the Division and included as part of the Request for Qualified Vendor Applications.
- C.** The Division shall document the results of its evaluation of the applications in the Division agreement file.

R6-6-2105. Qualified Vendor Agreement

- A.** The Division shall enter into Qualified Vendor Agreements with an applicant that:
1. Meets the requirements defined of R6-6-2104,
 2. Accepts the published rate or agreed upon negotiated rate, and
 3. Accepts the terms and conditions of the Qualified Vendor Agreement as defined by the Division in the Request for Qualified Vendor Applications and any amendments to the Request for Qualified Vendor Applications.
- B.** The Division shall enter into only one Qualified Vendor Agreement per applicant, which may be amended as needed.
- C.** A Qualified Vendor shall update the assurances, financial information, and conflict of interest statement when there is a change or at the request of the Division.

- D. A Qualified Vendor may update the Qualified Vendor's program plan at any time to reflect a change in services, methodology or locations of service delivery, for inclusion in the Qualified Vendor Directory. The Division shall review all changes submitted by the Qualified Vendor for consistency with the Qualified Vendor Agreement.
- E. A Qualified Vendor may submit an amended application to request that additional services be added to the Qualified Vendor Agreement at any time a service is posted to the Division web page as an open and continuous Request for Qualified Vendor Applications. The Division shall respond to a request for an amendment to Qualified Vendor Agreements based on the criteria defined at R6-6-2103 and R6-6-2104.
- F. Prior to the effective date of the Qualified Vendor Agreement, the Division shall not disclose any information identified by the applicant as confidential business information or proprietary information without first notifying the applicant in writing and allowing the applicant opportunity to respond or protest the planned disclosure.

R6-6-2106. List Serv

- A. The Division shall maintain a list serv as one means of providing information and notices to providers of service and interested parties.
- B. The Division shall include on the Division list serv the contact information for all Qualified Vendors.
- C. The Division list serve contact information for Qualified Vendors shall include:
 - 1. Name of the Qualified Vendor.
 - 2. Name of the contact person for each Qualified Vendor.
 - 3. Telephone number, and
 - 4. E-mail address.
- D. A Qualified Vendor shall be responsible for notifying the Division business office of any change in the contact information.

R6-6-2107. Selecting a Provider – Individual Consumers

- A. A consumer or the consumer's representative shall select providers of service from the Qualified Vendor Directory and Individual Independent Provider list or by requesting that the Division post to its web site a Vendor Call for Services.
- B. The Department shall provide a consumer or the consumer's representative with an opportunity to select a provider at any time that:
 - 1. A consumer who is new to the service system is seeking a provider.
 - 2. There is a change in provider requested in the ISP at the time of the annual ISP review.
 - 3. The consumer's needs change and the current provider or providers are no longer able to meet the consumer's needs.
 - 4. The consumer or the consumer's representative requests a change pursuant to R6-6-2109(C), or
 - 5. The current provider is unable or unwilling to continue to meet the needs of the consumer.
- C. The Division shall confirm that the program plan for the provider selected from the Qualified Vendor Directory or Independent Individual Provider list will meet the needs of the consumer as defined in the consumer's ISP.
- D. For providers to be selected through the Vendor Call for Services process, the Division shall post a Vendor Call for Services to the Division's web site that includes a list of the service needs of a consumer based on the consumer's ISP, identification of any special accommodations needed by the consumer or specific group of consumers and the consumer's desired time-frame for delivery of the services.
- E. The Division shall notify Qualified Vendors and Individual Independent Providers via the list serv when the consumer or the consumer's representative have requested that the Vendor Call for Services process be used to identify potential providers and the Vendor Call for Services has been posted to the Division's web site.
- F. The Division shall include only individual consumer non-identifying information in the Vendor Call for Services.
- G. A Qualified Vendor shall submit to the Division, within the time-frame indicated in the Vendor Call for Services, a Vendor Call Response indicating the Qualified Vendor's availability to provide the needed service or services, a description of how the Qualified Vendor would meet the special accommodations described in the Vendor Call for Services, and any other information described in the Vendor Call for Services to select a provider of service.
- H. The Division shall review and evaluate the Vendor Call Responses and identify those responses that meet the needs described in the consumer's ISP.
- I. The Division shall notify the responding Qualified Vendors within 14 days after the due date for Vendor Call Responses as to whether the response meets the needs of the consumer.
- J. The Division shall provide the consumer and the consumer's representative with a list of those providers that, based on the Vendor Call Response submitted, can meet the needs of the consumer.
- K. The consumer or the consumer's representative shall select any Qualified Vendors from the list provided by the Division or may select an Individual Independent Provider.
- L. If a consumer or the consumer's representative refuses or fails to select a Qualified Vendor from the list, the Division shall make the selection based on a random automatic assignment methodology. The Division shall include the following criteria in the automatic assignment process:
 - 1. Continuity of care.
 - 2. Least disruption to established daily routines of the consumer, and

3. Least disruption to the consumer's receipt of other services and supports.
- M.** Before a final selection, the Division may require Qualified Vendors to meet with the consumer or the consumer's representative. The Division shall provide a minimum of 48 hours notice when scheduling the meeting.
- N.** A Qualified Vendor may withdraw its response to a Vendor Call for Services anytime prior to the consumer, the consumer's representative or the Division selecting a Qualified Vendor.
- O.** Once a consumer, the consumer's representative or the Division has selected a Qualified Vendor, the Qualified Vendor may not refuse to provide the authorized services for the consumer based on the difficulty of supports needed by the consumer.
- P.** If the Qualified Vendor determines, subsequent to its selection, that it cannot meet the consumer's needs, the Qualified Vendor may request an informal review by the Division.
 1. The party requesting a review shall submit a written request to the Division District Program Manager.
 2. The Division District Program Manager shall review the facts and provide the final decision in writing to the Qualified Vendor within 21 days of the request for a review from the Qualified Vendor.
 3. If the District Program Manager rejects the Vendor's request, the District Program Manager shall provide the Qualified Vendor with the reason for the decision.
 4. A Qualified Vendor who disagrees with the decision of the Division District Program Manager may file a grievance as provided by R6-6-1801 et seq. and R6-6-2001 et seq.

R6-6-2108. Emergency Procurement

- A.** The Division may obtain services on an emergency basis when it determines there is an immediate and serious need for services that cannot be met through the procurement process defined in this Article and the procurement is necessary for the preservation or protection of property or the health or safety of any person.
- B.** The Division shall limit an emergency procurement to those services necessary to meet the emergency need.
- C.** When the Division has determined that an emergency need exists, the Division shall:
 1. Post to the Division web site an emergency Vendor Call for Services with an abbreviated time-frame for response from Qualified Vendors and send a notice through the list serv to Qualified Vendors;
 2. If the Assistant Director determines that posting an emergency Vendor Call for Services is not in the best interest of the consumer, or that based upon the urgency of the need any competition would be impracticable, contact one or more Qualified Vendors to obtain a Vendor Call Response in order to identify a provider to meet the emergency need;
or
 3. If no Qualified Vendor is available, contact providers not on the Qualified Vendor list to request a Vendor Call Response in order to identify a provider to meet the emergency need.
- D.** The consumer, the consumer's representative or the Division shall select a Qualified Vendor based on matching the Vendor Call Response to the needs of the consumer as defined in the ISP.

R6-6-2109. Consumer Choice

- A.** In support of a consumer-responsive service delivery system, the Division shall provide a consumer or the consumer's representative the opportunity to express and document their interest in utilizing services from a specific Qualified Vendor through the ISP process.
- B.** At the annual review of the ISP, the consumer or the consumer's representative may express a preference to utilize a different Qualified Vendor, without explanation. The Division shall accommodate the request to the extent appropriate and practical, as determined solely by the Division.
- C.** If the consumer or the consumer's representative expresses a preference to utilize a different Qualified Vendor between annual reviews of the ISP, the consumer or the consumer's representative must state in writing or must report to the support coordinator, for incorporation into ISP notes, the rationale for changing providers and a description of the opportunities given to the current Qualified Vendor to address the consumer's concerns.
- D.** The Division shall accommodate the requested change if the consumer and the current Qualified Vendor are unable to resolve the consumer's concerns, the change is reasonable, and another Qualified Vendor, through the Vendor Call for Services process, or Individual Independent Provider indicates that it is available to provide services for the consumer.

R6-6-2110. Authorization to Provide Services

- A.** The Division shall issue authorizations to the Qualified Vendors selected by the consumer, the consumer's representative or the Division to provide the needed services.
- B.** The Division shall pay a Qualified Vendor based on the rates established in the Qualified Vendor Agreement and the units of service documented on the invoices submitted for valid authorizations issued for individual consumers.
- C.** The Division shall modify authorizations based on changes in the needs of consumers as documented in the ISP by the ISP Team and as applicable, approved by the Division.
- D.** The Division shall not provide reimbursement for services that have not been authorized except in an emergency situation, as determined by the Division.

- E.** A Qualified Vendor may provide short-term emergency services and, if the services are approved by the Division, the Division shall pay for the short-term emergency services.
1. The Qualified Vendor shall notify the Division of the emergency situation within one working day of implementing the emergency services.
 2. The Division shall only approve payment for emergency services for up to five days.
 3. The Division shall review the consumer's needs through the ISP process and document as appropriate the revised authorization level.
- F.** A Qualified Vendors providing service may request an informal review by the Division of the number of units of service or type of services authorized for a specific consumer by submitting a written request for review to the Division District Program Manager.
1. The District Program Manager:
 - a. Shall conduct a review of the authorized units of service and issue a determination within 10 days of receipt of the request for review; or
 - b. May, at the sole discretion of the Division, arrange for an independent assessment of the service authorization by an external party selected from a list of independent assessors approved by the Division. The independent assessor shall review the service authorization and provide a written assessment to the District Program Manager within 30 days of the request for an assessment.
 2. The District Program Manager shall issue a decision including the reasons for the decision within 10 days of receiving the independent assessment.
 3. The District Program Manager's decision is final and is not subject to administrative review.

R6-6-2111. Cancellation of the Qualified Vendor Agreement

The Division shall cancel a Qualified Vendor Agreement and shall remove a provider from the Qualified Vendor List for any of the following reasons:

1. Upon request of the vendor.
2. When the Qualified Vendor Agreement has expired.
3. When a vendor no longer meets the criteria defined in the Request for Qualified Vendor Applications.
4. For non-compliance with the Qualified Vendor Agreement requirements.
5. For failure to maintain a valid license, AHCCCS registration or Division certification, as appropriate, or
6. As determined by the Division after the Vendor has been given notice and opportunity to be heard in accordance with R6-6-2115.

R6-6-2112. Cancellation of Requests and Notices

A. The Assistant Director may cancel a Request for Qualified Vendor Applications or a Vendor Call for Services in whole or in part if the Assistant Director determines that the cancellation is in the state's best interest based on the following factors:

1. The availability of funding.
2. The inability to come to agreement with applicants.
3. A change in the need for services.
4. The potential for loss of federal funds.
5. A change in federal or state requirements that affect the service specified in the Request for Qualified Vendor Applications or Qualified Vendor Agreement, or
6. Collusion or anti-competitive practices on the part of an applicant or Qualified Vendor.

B. The Division shall document the reasons for the cancellation or rejection in the Division Agreement file.

R6-6-2113. Transition to the Qualified Vendor Process

A. Prior to July 1, 2003, the Division shall review the ISPs for all consumers receiving community developmental disability services and shall review the Qualified Vendor Agreements to determine if the current provider is a Qualified Vendor and can meet the consumers' needs based on the consumer's ISP and the services described in the Qualified Vendor Agreement.

B. The current provider of service shall provide written assurances to the Division in a manner prescribed by the Division confirming that the consumer's needs, as described in the ISP, are being met.

C. The Division shall issue an authorization effective July 1, 2003 to the current provider if it is determined that the program plan matches the consumer needs as defined in the ISP, the current provider is a Qualified Vendor and the current provider provides written assurance that the consumer's needs, as described in the ISP, are being met.

D. The Division shall post to its web site a Vendor Call for Services and notify Qualified Vendors via list serv if it determines that the current provider cannot continue to meet the needs of the consumer based on the ISP, that the current provider is not a Qualified Vendor, or the current provider does not provide written assurance that the consumer's needs, as described in the ISP, are being met.

R6-6-2114. Rate Setting

- A.** The Division may establish a rate structure for community disability development services, including the rate structure for provider organizations, professional independent providers and individual independent providers. Each fiscal year, the Division shall review the reimbursement rates for Arizona long-term care services and state only programs and may update the rate structure.
1. The Division shall contract with an independent consulting firm for an annual review of the adequacy and appropriateness of reimbursement rates to providers of community developmental disability services.
 2. The Division shall complete a study of reimbursement rates for each community developmental disability service contracted for by the Division no less than once every five years.
 3. The Division may require, and Qualified Vendors and Individual Independent Providers shall provide, financial data to the Division in the form and format prescribed by the Division to assist in the annual review. The Division shall seek provider recommendations regarding the form and format.
 4. The Division shall annually establish a schedule that identifies which community developmental disability services will be reviewed for adequacy and appropriateness, and which community developmental disability services will be included in the rate reimbursement study.
 5. The Department shall determine if the independent consulting firm shall perform one or more of the following activities to measure the adequacy and appropriateness of the reimbursement rates:
 - a. Review the Department's current rate structure.
 - b. Conduct a provider cost survey.
 - c. Compare the Department's rates to rates for similar services used by other state agencies, and
 - d. Develop independent rate models for community developmental disabilities services.
 6. The Assistant Director may consider evidence of the adequacy and appropriateness of the Division's reimbursement rates gathered from R6-6-2114(5)(a) through (d), the rate study, or other relevant data sources to determine whether a new rate needs to be created or an existing rate needs to be revised.
 7. After considering the evidence in the adequacy and appropriateness review, the Assistant Director may establish a rate change for each service reviewed, based on the availability of funds.
 8. After considering the evidence in the study of reimbursement rates and independent rate models, the Assistant Director may propose a new rate.
 9. The Division shall provide public notice if rates for a community developmental disability service are to be established or revised. The Division shall include in the notice the proposed rate or rate change, the effective date of the rate change, where those rates shall be available for review and, if a rate for a service is being established for the first time, any phase-in schedule for the rate change.
 10. The Division may provide a public comment period regarding the rate change.
 11. The Assistant Director shall review any public comments received about the proposed rate, rate change or phase-in schedule, existing service history or current purchase of service information about the rates and any other information and may make adjustments to the proposed rate, rate change or phase-in schedule prior to finalizing the rate and the phase-in schedule.
 12. The Division shall provide public notice of the final rates and phase-in schedule.
 13. The Division shall adjust rates in accordance with legislatively mandated and appropriated increases or decreases.
 14. The Division shall maintain rate schedules for providers of community developmental disability services at the central office of the Division for reference use during customary business hours.
- B.** When the rate for a service is established for the first time, the Assistant Director may implement the rate through a phase-in schedule not to exceed three years in duration.
1. When current rates are below the newly established rate, the Division may phase in the implementation of the new rates as follows:
 - a. In the first and second year of the new rate, providers may receive an incremental increase of the difference between their prior rate and the new rate;
 - b. In the third year, the providers shall receive the full rate.
 2. When current rates are above the newly established rate, the Division may phase in the implementation of the new rates as follows:
 - a. In the first and second year of the new rate, providers may receive an incremental rate decrease from their prior rate to the new rate;
 - b. In the third year, the providers shall receive the new rate.
- C.** For a negotiated rate agreement, the Division may:
1. Hold discussions with any or all applicants regarding their offers; and
 2. Issue one or more written requests for a best and final offer to responsive applicants, which shall set forth the date, time, and place for the submission of the best and final offer. If the applicant does not submit a notice of withdrawal or a best and final offer in response to the Division's request, the Division shall use the applicant's most recent offer as the best and final offer.

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D. The Division shall include in a negotiated rate agreement the effective date of the negotiated rate.

R6-6-2115. Legal and Contractual Remedies

- A.** An applicant may protest the posting of a Request for Qualified Vendor Applications by filing a written Notice of Protest with the Department procurement officer.
- B.** An applicant or Qualified Vendor may protest the denial of a Qualified Vendor application in its entirety, or for one or more services included in the application, by filing a written Notice of Intent to File a Protest and Request for Problem Solving with the Division Assistant Director or a Notice of Protest with the Department procurement officer.
- C.** If the protestor does not request problem solving, the protestor shall file a Notice of Protest with the Department procurement officer.
- D.** The protestor shall include the following information in the Notice of Intent to File a Protest and Request for Problem Solving or in the Notice of Protest:
- 1.** Name, address, and telephone number of the protester.
 - 2.** Signature of the protestor or its representative.
 - 3.** Identification of the adverse action by the Division that is in dispute.
 - 4.** A statement of the legal and factual grounds of the intended protest including copies of any relevant documents, and
 - 5.** The relief requested.
- E.** The protestor shall file the Notice of Intent to File a Protest and Request for Problem Solving with the Division or the Notice of Protest with the Department procurement officer within 21 days of the date after the protestor receives notice of the adverse action.
- F.** The Notice of Intent to File a Protest and Request for Problem Solving is deemed filed when the Division receives the written document.
- G.** The Notice of Protest is deemed filed when the Department procurement officer receives the written document.
- H.** If a Notice of Protest is filed before the award of Qualified Vendor Agreements, the Division may enter into Qualified Vendor Agreements unless the Department procurement officer makes a written determination that there is reasonable probability that the protest will be sustained and that delay is consistent with the best interests of the state.
- I.** Within 30 days of the filing the Notice of Intent to File a Protest and Request for Problem Solving, the Assistant Director shall reach resolution or determine that resolution cannot be reached.
- J.** If resolution is reached and documented, the protestor shall not be entitled to pursue further legal remedies.
- K.** If resolution cannot be reached, the Assistant Director shall issue written verification to the protestor that the matter was not resolved. To pursue further review, the protestor shall file a Notice of Protest with the Department procurement officer, within 30 days of the issuance of verification.
- L.** The protestor shall include in the Notice of Protest a copy of the original Intent to File a Protest and Request for Problem Solving documentation and of the verification from the Assistant Director.
- M.** If the Department procurement officer sustains the protest in whole or part, and determines that the Request for Qualified Vendor Applications, proposed Qualified Vendor Agreement, or Qualified Vendor Agreement denial does not comply with applicable statutes and rules, the Department procurement officer shall implement an appropriate remedy as prescribed in subsection (O) of this rule.
- N.** In determining the appropriate remedy, the Department procurement officer shall consider the following:
- 1.** Circumstances surrounding the procurement or proposed procurement.
 - 2.** The seriousness of the procurement deficiency.
 - 3.** The degree of prejudice to other interested parties.
 - 4.** The degree of prejudice to the integrity of the procurement system.
 - 5.** The good faith of the parties.
 - 6.** The extent of performance.
 - 7.** The costs to the state.
 - 8.** The urgency of the procurement, and
 - 9.** The impact of the relief on the Department's mission.
- O.** The Department procurement officer may consider the following actions, alone or in combination, as an appropriate remedy:
- 1.** Decline to exercise an option to renew under the Qualified Vendor Agreement.
 - 2.** Terminate the Qualified Vendor Agreement.
 - 3.** Reissue the Request for Qualified Vendor Applications.
 - 4.** Issue a new Request for Qualified Vendor Applications.
 - 5.** Include the Qualified Vendor in the list of respondents to a Vendor Call for Services.
 - 6.** Award a Qualified Vendor Agreement as provided in these procurement rules, or
 - 7.** Any other remedial action that is reasonable and appropriate under the circumstances.
- P.** Within 45 days of receipt of the Notice of Protest, the Department procurement officer shall send a written decision to the protestor by certified mail, return receipt requested, or by any other method that provides evidence of receipt and shall

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send a copy of the decision to the Division. The Department procurement officer shall explain the reasons for the conclusions reached in the decision.

- Q.** Upon receipt of the decision from the Department procurement officer, the protester may file an appeal with the Department's Office of Appeals as authorized in A.R.S. §§ 41-1991, 41-1992(A) through (C), and 41-1993(A).
- R.** Upon receipt of the decision from the Department Office of Appeals, the protester may seek relief through the Superior Court as provided in A.R.S. § 12-901 et seq.