

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. 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 making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 16. OFFICE OF THE OMBUDSMAN-CITIZENS' AIDE

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| R2-16-101 | Amend |
| R2-16-208 | Amend |
| R2-16-305 | Amend |
| R2-16-403 | Amend |
| R2-16-404 | Amend |
| R2-16-405 | Amend |
| R2-16-503 | Amend |
- 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. § 41-1376
Implementing statutes: A.R.S. Title 41, Chapter 8, Article 5
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 8 A.A.R. 2968, July 19, 2002 (expired)
Notice of Rulemaking Docket Opening: 10 A.A.R. 27, January 2, 2004
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Patrick Shannahan, Ombudsman-Citizens' Aide
Address: Arizona Ombudsman-Citizens' Aide
3737 N. 7th St., Suite 209
Phoenix, AZ 85014
Telephone: (602) 277-7292
Fax: (602) 277-7312
E-mail: ombuds@azoca.org
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
This rulemaking is in response to the Office's five-year review of rules approved by the Council on May 7, 2002. R2-16-101 contains definitions used throughout the Chapter. R2-16-208 explains how the Office returns a confidential document to a complainant. R2-16-305 explains procedures citizens use when filing a complaint with the Office. R2-16-403 through R2-16-405 explain procedures the Office uses to close cases and provide findings and recommendations to state agencies. R2-16-503 explains how the Office provides a final response to a complainant. The Office proposes to update and revise these rules for clarity and further amend the rules to reflect current Office practice.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
The agency did not rely on any study in this rulemaking.
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previ-**

ous 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 Office will benefit because the rules concerning the release of information to a complainant are more efficient and could potentially result in lower administrative costs for processing complaints. State agencies will not incur any additional costs. In fact, the changes make the rules more clear, consistent, and understandable, which could potentially save staff time. The rule changes do not place any additional burden on the public. They clarify when a complainant should expect to receive written material from the Office and when a complaint must be submitted in writing.

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: Patrick Shannahan, Ombudsman-Citizens' Aide
Address: Arizona Ombudsman-Citizens' Aide
3737 N. 7th St., Suite 209
Phoenix, AZ 85014
Telephone: (602) 277-7292
Fax: (602) 277-7312
E-mail: ombuds@azoca.org

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:

No oral proceeding is scheduled for this rulemaking. Written, faxed, or e-mail comments or a request for an oral proceeding may be made with the person listed in item #4, Monday through Friday, 8:00 a.m. until 4:30 p.m.

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

None

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

None

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 16. OFFICE OF THE OMBUDSMAN-CITIZENS' AIDE

ARTICLE 1. GENERAL PROVISIONS

Section
R2-16-101. Definitions

ARTICLE 2. HANDLING CONFIDENTIAL MATERIAL

Section
R2-16-208. Returning a Confidential Document to a Complainant

ARTICLE 3. RECEIVING AND PROCESSING COMPLAINTS

Section
R2-16-305. Filing Complaints

ARTICLE 4. CONDUCTING INVESTIGATIONS

Section
R2-16-403. Closing Cases
R2-16-404. Findings
R2-16-405. Recommendations

ARTICLE 5. ACTIONS AFTER AN INVESTIGATION

Section
R2-16-503. Advising the Complainant

ARTICLE 1. GENERAL PROVISIONS

R2-16-101. Definitions

1. "Complainant" means a person who files a complaint with the Office.
2. "Confidential information" means oral or written information, including a record, for which restricted access is required by Federal or Arizona law. Confidential information also includes identifying personal information a complainant or witness has requested not be disclosed.
3. "Document" means a paper or electronic: record, memorandum, form, book, letter, file, drawing, map, or plat.
4. "Hearing" means an investigative tool used to receive sworn testimony or to take a deposition. "Misconduct" has the same meaning as in A.R.S. § 23-619.01.
5. "Office" means the Office of the Ombudsman-Citizens' Aide.
6. "Ombudsman-citizens' aide" means the person appointed to the position of ombudsman-citizens' aide under the provisions of A.R.S. § 41-1373.
7. "Photograph" means a paper or electronic photographic representation, photographic file, motion picture, video tape, microfilm, or microphotograph.

ARTICLE 2. HANDLING CONFIDENTIAL MATERIAL

R2-16-208. Returning a Confidential Document to a Complainant

When requested the ~~The~~ Office shall return a confidential document received from a complainant only to the complainant, unless the complainant provides written authorization for release of the document to a third party or the Office determines that the document was not lawfully in the possession of the complainant.

ARTICLE 3. RECEIVING AND PROCESSING COMPLAINTS

R2-16-305. Filing Complaints

- A. A complaint against a state agency shall be filed with the Office in writing, in person, by telephone, by electronic facsimile, or by electronic mail.
- B. A complaint that alleges ~~breach of duty, misconduct, or discourtesy by an officer or by a state employee of an agency~~ shall be filed with the Office in writing and signed by the complainant.

ARTICLE 4. CONDUCTING INVESTIGATIONS

R2-16-403. Closing Cases

The Office may close a case for the following reasons:

1. Discontinued. The ombudsman-citizens' aide determines that an investigation should be terminated before the investigation is completed because:
 - a. Disclosure of the complainant's identity is necessary to enable full investigation and the complainant refuses to allow the disclosure,
 - b. Information or a record is requested from the complainant and the complainant fails to produce the information or record within the time specified by the Office,
 - c. The complainant withdraws the complaint,
 - d. The complaint relates to a matter that has become the subject of an administrative or judicial proceeding,
 - e. The Office forwards a complaint to an appropriate prosecutor because it involves possible criminal activity, or
 - f. The ombudsman-citizens' aide determines there is other good cause not to proceed with an investigation.
2. Closed - Not Substantiated. ~~The ombudsman-citizens' aide determines that the agency performed appropriately or is not able to substantiate that the agency performed inappropriately.~~ Following an investigation, the ombudsman-citizens' aide makes a finding of not substantiated.
3. Closed - Complaint Resolved (before preliminary report). Following an investigation, the ~~The~~ ombudsman-citizens' aide determines that the complaint has merit, either wholly or in part, and, before a preliminary report is issued, the agency agrees to provide a remedy that is acceptable to the agency and the ombudsman-citizens' aide.
4. Closed - Complaint Resolved (after preliminary report) Following an investigation, the ~~The~~ ombudsman-citizens' aide determines that the complaint has merit, wholly or in part, and, after a preliminary report is issued, the agency agrees to provide remedy that is acceptable to the agency and the ombudsman-citizens' aide.
5. Closed - Complaint Unresolved. Following an investigation the ~~The~~ ombudsman-citizens' aide determines that the complaint has merit, wholly or in part, and the agency does not accept the recommendations of the ombudsman-citizens' aide.
6. Other. A case is closed for a reason that does not meet one of the other criteria for closure.

R2-16-404. Findings

The Office shall refer to one of the following findings in an investigative report:

1. ~~Justified~~ Substantiated - The investigation establishes that the administrative act did occur and the complainant's crit-

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- icism of the administrative act is valid.
- 2. Partially ~~justified~~substantiated -
 - a. In a complaint having multiple allegations, the investigation establishes that at least one allegation is ~~justified~~substantiated and at least one allegation is not ~~justified~~substantiated or indeterminate, or
 - b. The investigation establishes there is shared fault between the complainant and agency.
- 3. Not ~~justified~~substantiated - The investigation establishes that:
 - a. The administrative act did not occur; or
 - b. The administrative act occurred, but the complainant's criticism of the administrative act is not valid.
- 4. Indeterminate. The investigation does not provide sufficient evidence for the Office to determine conclusively:
 - a. Whether the administrative act occurred; or
 - b. If the administrative act occurred, whether the complainant's criticism of the administrative act is valid.

R2-16-405. Recommendations

- A. In accordance with A.R.S. §§ 41-1376 and 41-1379, the Office shall recommend a resolution to a complaint when a completed investigation results in a finding of ~~"justified" or "partially justified,"~~ "substantiated" or "partially substantiated."
- B. The Office shall not recommend a specific employee disciplinary action to be imposed.

ARTICLE 5. INCORPORATING AGENCY RESPONSES INTO REPORTS AND RECOMMENDATIONS

R2-16-503. Advising the Complainant

- A. The Office shall provide a final response to the complainant. If requested by the complainant, the response shall be in writing.
 - ~~1. If a complaint is resolved through formal procedures, the Office shall respond in writing.~~
 - ~~2. If a complaint is resolved through informal procedures, the Office shall respond by either telephone or in writing.~~
- B. Before releasing a final report to any person not authorized to receive confidential information, the Office shall purge the report of any confidential information.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 40. DEPARTMENT OF VETERANS' SERVICES

PREAMBLE

1. Sections Affected

R4-40-101
R4-40-201
R4-40-301
R4-40-302
R4-40-303
R4-40-304
R4-40-305
R4-40-306
R4-40-401
R4-40-402
R4-40-403
R4-40-404
R4-40-501
R4-40-502
R4-40-601
R4-40-701
R4-40-702
R4-40-703
R4-40-801
Article 9
R4-40-901
R4-40-902

Rulemaking Action

Amend
Amend
Amend
Amend
Repeal
Amend
Repeal
Repeal
Repeal
Repeal
Repeal
Repeal
Repeal
Repeal
Amend
Repeal
Amend
Amend
Repeal
Repeal
Amend
New Article
New Section
New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule

is implementing (specific):

Authorizing statute: A.R.S. § 41-603

Implementing statute: A.R.S. § 41-603.01

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

Notice of Rulemaking Docket Opening: 9 A.A.R. 3383, August 8, 2003

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

Name: Gabriel Forsberg

Address: Arizona State Veteran Home
4141 N. Third Street
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Fax: (602) 255-1038

E-mail: gforsberg@azvets.com

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

The Arizona Veterans' Service Commission rules were originally drafted in 1995 and adopted January 2, 1996. In August 1999, the Arizona Veterans' Service Commission became the Department of Veterans' Services. The change from a commission to a department required a restructuring at the highest level of the agency. Under the commission, the agency was governed by a five-member commission appointed by and answerable to the governor. This commission was required to hire a director who reported to the commission, and to set policy.

Amended in August 1999, A.R.S. §§ 41-601 through 41-604 provided for:

- The Veterans' Service Commission to become a department,
- The commission was increased to seven members to act in an advisory role,
- The director reported directly to and was appointed by the governor.

The rules must now be changed to reflect the change in the name of veterans' services throughout the rules and to amend those portions dealing with appeal processes because the director no longer reports to the commission.

Changes in the rules are desirable to update procedures to conform with changes in the long-term, skilled care industry. Additionally, changes are desirable to streamline procedures that have been found to be cumbersome, unnecessarily time consuming, or outdated.

The Department is also in the process of drafting new rules that set clear definitions and policies. The Department has been soliciting input from staff and interested members of the public on proposed rule changes. The new rules will provide consistency, reflect current practice standards, and conform to current rulemaking format style requirements.

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

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 anticipated that the private sector, including small businesses, and political subdivisions will not be economically impacted as the proposed rule language changes are intended to align and clarify the existing rules to current practice. The agency anticipates that there will be a minor cost savings realized through decreased recordkeeping, reporting, and approval responsibilities at the Arizona State Veteran Home (ASVH).

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

Name: Gabriel Forsberg

Address: Arizona State Veteran Home
4141 N. Third Street
Phoenix, AZ 85012

Telephone: (602) 263-1805

Fax: (602) 255-1038

Notices of Proposed Rulemaking

E-mail: gforsberg@azvets.com

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

No oral proceeding is scheduled for this rulemaking. Written, faxed, e-mail comments, or requests for an oral proceeding may be made by contacting the analyst listed in item #4 between 9:00 a.m. and 6:00 p.m., Monday through Friday. If an oral proceeding is not requested, the public comment period shall continue for 30 days from this notice's publication date. This rulemaking's public record will close at 6:00 p.m. on April 19, 2004.

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

None

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

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 40. ARIZONA DEPARTMENT OF VETERANS' SERVICE COMMISSION SERVICES

(Authority: A.R.S. § ~~32-2704~~ 41-601 et seq.)

ARTICLE 1. DEFINITIONS

Section

R4-40-101. Definitions

ARTICLE 2. ELIGIBILITY

Section

R4-40-201. General Provisions

ARTICLE 3. APPLICATION AND ADMISSION PROCESS

Section

R4-40-301. Application

R4-40-302. Application Process

R4-40-303. ~~Preadmission Requirements~~ Repealed

R4-40-304. Admission Process

R4-40-305. ~~Applicant Grievance, Hearing, and Appeal Process~~ Repealed

R4-40-306. ~~Rehearing or Review of Commission's Decisions~~ Repealed

ARTICLE 4. STANDARDS OF CARE REPEALED

Section

R4-40-401. ~~Care and Treatment~~ Repealed

R4-40-402. ~~General Provisions~~ Repealed

R4-40-403. ~~Level of Care~~ Repealed

R4-40-404. ~~Level of Care or Eligibility Changes~~ Repealed

ARTICLE 5. RESIDENT SUPPORT

Section

R4-40-501. Billing

R4-40-502. ~~Payment Process~~ Repealed

ARTICLE 6. RESIDENT RESPONSIBILITIES AND CONDUCT

Section

R4-40-601. General Provisions

ARTICLE 7. INVOLUNTARY RESIDENT DISCHARGE, GRIEVANCE, HEARING, AND APPEAL PROCESS

Section

R4-40-701. Resident Discharge

R4-40-702. ~~Resident Grievance, Hearing, and Appeal Process~~ Repealed

R4-40-703. ~~Rehearing or Review of Commission's Decisions~~ Repealed

ARTICLE 8. RESIDENT TRUST FUND

Section
R4-40-801. General Provisions

ARTICLE 9. APPEAL PROCESS

Section
R4-40-901. General Provisions
R4-40-902. Rehearing or Review of Decision

ARTICLE 1. DEFINITIONS

R4-40-101. Definitions

- A.** “Administrator” means the ~~individual~~ appointed administrative officer of the Arizona State Veteran Home licensed by the Board of Examiners of Nursing Care Institution Administrators and Adult Care Home Managers ~~who is the chief administrative officer of ASVH.~~
- B.** “Admission agreement” means the document signed by an applicant or the applicant’s legal representative ~~that provides the permission for the applicant to receive treatment, defines the rights and responsibilities the applicant will have as a resident, and sets forth the standard of care and support the applicant will receive as a resident~~ that outlines the responsibilities of the applicant, the applicant’s legal representative and the ASVH.
- C.** “Admissions committee” means the administrator, director of nursing, veterans’ service officer, social work supervisor, and business manager of ASVH ~~who together determine eligibility for admission and designate a level of care for each resident according to R4-40-403.~~
- D.** “ALTCS” means Arizona Long-term Care System defined in A.R.S. § 36-2931 et seq.
- E.** “Applicant” means ~~an individual who submits a written ASVH admission application~~ a veteran, spouse, or surviving spouse who submits a written application for admission to the ASVH.
- F.** “Assistant Administrator” means the individual who acts as the administrator in the administrator’s absence and performs other tasks as assigned by the administrator.
- G.** “ASVH” means the Arizona State Veterans Veteran Home, licensed pursuant to A.R.S. § 36-401 et seq. and the rules promulgated thereunder and recognized by the VA according to 38 CFR 17.165 (September 1, 1992, edition and no later editions or amendments) which is incorporated by reference and on file with the Secretary of State.
- H.** “Bedfast” means confined to bed or able to be out of bed for no more than 15 minutes at a time.
- I.** “Business manager” means the individual who is responsible for managing ASVH’s finances.
- J.** “Care plan” means a written plan of care and treatment developed by the social worker, nursing staff, and physician that states:
1. The resident’s health problems and functional status;
 2. The treatment goals for the resident;
 3. The actions necessary to reach the goals; and
 4. The ASVH staff who is responsible for implementing each aspect of the plan.
- K.** “Commission” means the Arizona Veterans’ Service Commission.
- L.** “Customized medical equipment and supplies” means those adapted to a resident’s particular needs.
- M.** “Daily charge rate” is each resident’s cost of care at ASVH for each 24-hour period, beginning at midnight.
- N.** “Daily living activities” means bathing, dressing, using the toilet, eating, transferring in and out of a bed or chair, using a wheelchair, and ambulation with or without the assistance of medical devices.
- O.** “Dangerous to self or others” means likely to cause serious physical harm to a resident or nonresident.
- P.** “Director” means the Director of the Arizona Department of Veterans’ Services.
- Q.** “Director of nursing” means a registered nurse licensed to practice in Arizona who is responsible for the ~~direction~~ management and supervision of ASVH nursing care for all ASVH residents services.
- R.** “Disruptive behavior” means a resident’s actions that interfere with the daily activities of others, including loud arguing, verbal or physical threats, assault, and theft.
- S.** “Grievance” means a complaint initiated in accordance with R4-40-305 or R4-40-702.
- T.** “Legal representative” means an individual or entity designated by an applicant, a resident, or a court of competent jurisdiction to act as a power of attorney, guardian, or conservator of an applicant or resident, and who directs the care or management of an incapacitated applicant or resident and who provides documentation to ASVH to verify the legal representative status to make legal, financial, and medical decisions on behalf of the applicant or resident.
- U.** “Medicare” means the health insurance program for the aged and disabled under Title XVIII of the Social Security Act.
- V.** “Nursing services” means services as described in A.R.S. § 36-401(A)(28) ~~36-401(A)(34)~~ and A.A.C. R9-10-905 ~~R9-10-906~~.
- W.** “Occupational therapy” means therapy as described in A.R.S. § 32-3401(5).
- X.** “PASARR” means a preadmission screening and annual resident review that is conducted pursuant to A.R.S. § 36-2936.
- Y.** “Physical therapy” means therapy as described in A.R.S. § 32-2001(A)(7) et seq.

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- ~~Y.~~ "Physician" means a person licensed pursuant to under A.R.S. § 32-1401 et seq., ~~or~~ A.R.S. § 32-1800 et seq., or a VA physician appointed under authority of 38 U.S.C. 7402.
- ~~Z.~~ "Psychosocial behavior" means a person's social relations, conduct, and manners based on mental and psychological factors, including level of consciousness, judgment, orientation, perception disturbances, and concerns.
- ~~AA.~~ "Resident" is means an individual who has been admitted to ASVH.
- ~~BB.~~ "Resident support charge room and board" means the dollar amount ~~that is billed every calendar month to a resident or legal representative for the resident's care.~~
- ~~CC.~~ "Respiratory care" means the practice of respiratory care as described in A.R.S. § 32-3501(5).
- ~~DD.~~ "Skilled nursing care" means ~~nursing and health related services that foster rehabilitation of a person who needs assistance with daily living activities, provided at a nursing facility licensed pursuant to A.R.S. § 36-401 et seq. and the rules promulgated thereunder those services that must, under State law, be performed by a licensed nurse.~~
- ~~EE.~~ "Social worker" means a person certified pursuant to A.R.S. § 32-3291 et seq.
- ~~FF.~~ "Speech therapy" means medically prescribed diagnosis and treatment provided by a speech therapist who has been granted a certificate of clinical competence by the American Speech and Hearing Association.
- ~~GG.~~ "Spouse" means an individual who ~~entered into~~ currently has a valid marriage contract that is valid in Arizona with a veteran at least 1 year before the veteran was admitted to ASVH.
- ~~HH.~~ "Surviving spouse" means an individual who ~~had entered into a valid marriage contract that is valid in Arizona with a veteran at least 1 year before at the time of the veteran's death.~~
- ~~H.~~ "Therapeutic leave days" means the time that a resident is absent from ASVH, as ordered by the resident's physician, to live on a trial or therapeutic basis in a home setting.
- ~~JJ.~~ "Third party reimbursement" means that part or all of a resident's daily charge rate and other expenses are paid by a 3rd party payor.
- ~~KK.~~ "Third-party payor" means any individual, entity, or program that is or may be liable to make 3rd party reimbursements, including a health insurance carrier, health maintenance organization, managed care entity, or organized health care delivery system including the following:
- ~~1. An ALTCS contract provider for a resident who is certified as eligible for ALTCS services pursuant to A.A.C. R9-28-401 et seq.;~~
 - ~~2. Per diem payments from the VA pursuant to 38 CFR 17.166(e), The United States Department of Veterans Affairs (VA) under 38 CFR, Chapter I, Part 51;~~
 - ~~3. Medicare;~~
 - ~~4. Health or long-term care insurance company; or~~
Long-term care insurance company.
- ~~LL.~~ "Transitional living training" means a planned program that assists residents to adapt to in-home conditions by developing independent living and self-care skills.
- ~~MM.~~ "VA" means the United States Department of ~~Veterans' Veterans Affairs.~~
- ~~NN.~~ "Veteran" means an individual who:
- ~~served~~ Served in the active United States Army, Navy, Marine Corps, Air Force, or Coast Guard and who was not dishonorably discharged or released under conditions other than dishonorable, and;
 - ~~Served an individual who served~~ in the merchant marine between December 7, 1941 and July 25, 1947; or
 - ~~Met other requirements specified under 38 CFR 3.7~~ as a civil service crew resident between December 7, 1941, and August 15, 1945.
- ~~OO.~~ "Veterans service officer" means an individual who is accredited with the VA and who provides technical assistance for veterans' benefits and files claims for those benefits on behalf of a veteran or an eligible resident of the veteran's family.

ARTICLE 2. ELIGIBILITY GENERAL PROVISIONS

R4-40-201. Eligibility General Provisions

- A. An applicant is eligible for admission to ASVH if the applicant is ~~a veteran, spouse, or surviving spouse who meets the requirements set forth in Article 3, and:~~
- ~~1. Has been an Arizona resident for at least 1 year before the date of application~~ A veteran,
 - ~~2. Requires skilled nursing care as determined by a physician, and~~ A spouse, or
 - ~~3. Is not dangerous to self or others as determined by a physician.~~ A surviving spouse and
 - ~~4. Meets the requirements specified in this Section and Article 3.~~
- B. The number of ASVH residents who are spouses and surviving spouses ~~admitted to ASVH shall not be more than 25% exceed 25 percent~~ of the total number of residents at ASVH as prescribed in 38 CFR 17.173(b)(1) (September 1, 1992, edition and no later editions or amendments) incorporated by reference and on file with the Secretary of State.
- C. Veterans for whom the VA has approved reimbursement to live in a State Veterans home, in accordance with 38 CFR 17.165 and 17.166 (September 1, 1992, edition and no later editions or amendments) incorporated by reference and on file with the Secretary of State, shall be admitted to ASVH before other applicants whose applications or admission is pend-

- ~~ing. The applicant shall provide a written recommendation from a physician to be in a skilled nursing care environment.~~
- D.** The applicant must require the services currently available at the ASVH and the applicant's needs shall not exceed the facility's current ability to provide services at the time of application.

ARTICLE 3. APPLICATION AND ADMISSION PROCESS

R4-40-301. Application

- A.** ~~Applicants~~ An applicant shall apply for admission to ASVH on the form provided by ASVH by submitting a completed ASVH application to the admissions coordinator. When ~~If both a veteran and the veteran's spouse are applying for admission, they both shall file separate applications. Applications may be obtained from the Commission, VA, or ASVH.~~
- B.** ~~The applicant shall provide the following information on the admission application. In addition to the ASVH applicant form required under subsection (A), an applicant or representative shall submit the following:~~
- ~~1. The applicant's name, street address, mailing address, and telephone number~~ Information regarding the applicant's ability to participate in daily living activities and the applicant's psychosocial behavior. The information may be provided through either of the following:
 - a. A functional questionnaire form provided by ASVH that is completed by the resident or family member or
 - b. The equivalent medical information provided by a health care provider;
 - ~~2. The next of kin or legal representative's name, street address, mailing address, and telephone number~~ A completed applicant's financial information statement on a form provided by ASVH;
 - ~~3. The applicant's place and date of birth~~ A completed physician's statement by the applicant's physician on a form provided by ASVH or equivalent medical information;
 - ~~4. The applicant's and veteran's social security numbers~~ A copy of the veteran's discharge document from the United States military, that may include either Form DD214, Form DD215, the Statement of Service issued by the National Personnel Records Center, or equivalent separation-of-service document;
 - ~~5. The applicant's marital status and gender~~ If requested by the director of nursing, copies of medical records that assist in determining the level of care required by the applicant. Medical records may include physician's records, nurses' notes, test results, and medication records; and
 - ~~6. The applicant's or veteran's military service information;~~ Evidence of freedom from infectious pulmonary tuberculosis as specified by A.A.C. R9-10-906(6).
 - ~~7. The applicant's health insurance and other 3rd party payor information;~~
 - ~~8. The applicant's assessment of the applicant's ability to participate in daily living activities and the applicant's psychosocial behavior;~~
 - ~~9. The applicant's current financial resources;~~
 - ~~10. The applicant's medical history, current medical status, a signed statement that the applicant requires the level of skilled nursing care in accordance with R4-40-403, and that the applicant is not dangerous to self or others. The applicant shall have the applicant's physician provide this information directly to ASVH; and~~
 - ~~11. The applicant's or legal representative's signature.~~
- C.** ~~The applicant shall submit the following to the admissions committee with the admission application:~~
- ~~1. A copy of the veteran's discharge document from the United States military, that may include either Form DD214, Form DD215, the Statement of Service issued by the National Personnel Records Center, or equivalent separation-of-service document;~~
 - ~~2. A certified copy of the applicant's marriage certificate if the applicant is a spouse or a surviving spouse;~~
 - ~~3. A certified copy of the applicant's birth certificate; and~~
 - ~~4. A certified copy of the veteran's death certificate if the applicant is a surviving spouse.~~

R4-40-302. Application Process

- A.** ~~Within 10 days after the applicant has filed a complete application with ASVH, the admissions committee shall review the application and determine whether to admit the applicant. The committee shall admit applicants on a 1st come basis, based on the date that the complete application is filed, except for applicants given admission preference pursuant to R4-40-201(C). The admissions coordinator shall determine if the applicant is eligible for admission to ASVH under R4-40-201 by:~~
1. Reviewing the application;
 2. Obtaining an on-site medical assessment, if requested by the director of nursing;
 3. Obtaining approval from the director of nursing; and
 4. Consulting with the business manager.
- B.** ~~After determining that an applicant shall be admitted, the admissions committee shall designate a level of care for the applicant pursuant to R4-40-403.~~
- B.** The admissions coordinator shall notify the applicant of the decision within 30 calendar days of receiving a completed application.
- C.** ~~If the admissions committee is unable to determine the level of care from the application information, the applicant shall~~

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comply with a PASARR so that the committee may determine the appropriate level of care.

- ~~D.~~ The administrator shall notify the applicant, in writing, within 20 days after the applicant files a complete application of the committee's decision whether to admit the applicant. In that notice, the administrator also shall notify those applicants who have been approved for admission of their designated level of care.
- ~~E.~~ Within 10 days of the mailing date of the notice from the administrator, an applicant may submit documentation to the administrator that another level of care is more appropriate. The administrator shall make the final determination of what level of care is appropriate and provide written notice of that level to the applicant within 10 days after the applicant has filed documentation to the administrator that another level of care is more appropriate.
- ~~F.C.~~ If there is no availability for the designated level of care an appropriate bed is not available at the time of admission approval, the applicant's name shall be placed on a waiting list in order by date of approval for that level on a 1st-come basis, based on the date the applicant filed a complete application. If space is available, or when space becomes available, the applicant shall be admitted to ASVH.
- ~~G.~~ Applicants may not be admitted without providing updated information if more than 6 months have passed since the applicant's complete application was filed:
 - ~~1.~~ If an applicant's admission is pending and the applicant's application was filed more than 6 months before the scheduled date of admission, the admissions committee shall re-review the application to determine whether the applicant can currently function at the previously designated level of care.
 - ~~2.~~ The applicant shall then be admitted to the currently appropriate level of care if space is available. If space is not available, the applicant's name shall be placed on the waiting list as stated in subsection (F).

R4-40-303. Preadmission Requirements Repealed

- ~~A.~~ Before admission, an admission agreement, including the applicant's daily charge rate, shall be executed by the applicant or legal representative and ASVH.
- ~~B.~~ Before admission, the applicant or legal representative shall notify ASVH of any changes in the information provided during the application.
- ~~C.~~ If the applicant's level of care requirements may have changed, based on information provided by the applicant or legal representative, the applicant shall complete a PASARR.

R4-40-304. Admission Process

- ~~A.~~ The administrator admissions coordinator or designee shall notify the applicant or legal representative, ~~in writing~~, of the date and time that the applicant ~~is to~~ may be admitted to ASVH.
- ~~B.~~ Upon arrival at the facility, The the applicant or legal representative shall submit to an admission interview with the administrator, during which the administrator shall review and abide by the following with the applicant or legal representative:
 - 1. Resident responsibilities and conduct;
 - 2. Resident support charge room and board, billing, and payment; and
 - 3. The admission agreement.
- ~~C.~~ The resident or legal representative shall submit a completed and signed admission agreement.

R4-40-305. Applicant Grievance, Hearing, and Appeal Process Repealed

- ~~A.~~ An applicant or legal representative who believes that any of the provisions of Articles 2 or 3 have not been applied or have been unfairly applied may file a written grievance with the administrator by mailing or hand delivering the grievance to the administrator. The grievance shall set forth the facts that form the basis of the grievance and the requested action by ASVH.
- ~~B.~~ Within 10 days after the grievance is filed, the administrator shall contact the applicant or legal representative, by telephone or in writing, and attempt to satisfy the concerns raised in the grievance. If the grievance is satisfied, the administrator shall send a letter to the applicant or legal representative, within 20 days after the grievance is filed, documenting the satisfaction and obtain the applicant's or legal representative's signature on the letter acknowledging the satisfaction. This letter shall be kept with the grievance.
- ~~C.~~ If the grievance cannot be informally satisfied, the administrator shall notify the applicant or legal representative, in writing within 30 days after the grievance is filed, of the administrator's decision regarding the grievance.
- ~~D.~~ The applicant or legal representative may file an appeal of the administrator's decision with the Commission, in writing, within 10 days of the mailing date of the administrator's decision.
- ~~E.~~ If the Commission receives a timely filed appeal of the administrator's decision, the Commission shall file a Notice of Hearing pursuant to A.R.S. § 41-1061. At the hearing, the applicant shall be the moving party and have the burden of proof. The hearing shall be conducted pursuant to A.R.S. § 41-1061 et seq.
- ~~F.~~ The Commission shall provide written notice of its decision to the applicant or legal representative within 30 days after the hearing.

R4-40-306. Rehearing or Review of Commission's Decisions Repealed

- ~~A.~~ A party to an action before the Commission who is aggrieved by the Commission's decision may file with the Commission, not later than 20 days after the service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefore. A decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at the party's last known address.
- ~~B.~~ A motion for rehearing or review may be amended at any time before it is ruled upon by the Commission. A response may be filed within 10 days after a motion or amended motion has been filed by any other party. The Commission may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- ~~C.~~ A rehearing or review of the decision may be granted, in whole or part, for any of the following causes materially affecting the moving party's rights:
 - ~~1.~~ Irregularity in the administrative proceedings by the Commission or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
 - ~~2.~~ Misconduct of the Commission or the prevailing party;
 - ~~3.~~ Accident or surprise that could not have been prevented by ordinary prudence;
 - ~~4.~~ Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
 - ~~5.~~ Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing; or
 - ~~6.~~ That the decision is not justified by the evidence or is contrary to law.
- ~~D.~~ The Commission may affirm or modify the decision or grant a rehearing or review to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing or review shall specify the ground or grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters so specified.
- ~~E.~~ Not later than 10 days after a decision is rendered, the Commission may, on its own initiative, order a rehearing or review of its decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Commission may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds therefore.
- ~~F.~~ When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 10 days after the motion has been filed, serve opposing affidavits. This period may be extended for an additional period not exceeding 20 days by the Commission for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
- ~~G.~~ Once a Commission decision is final, an aggrieved party may file an application for judicial review of the decision within the time limits permitted for applications for judicial review of final agency decisions pursuant to A.R.S. § 12-901 et seq.

ARTICLE 4. STANDARDS OF CARE REPEALED

R4-40-401. Care and Treatment Repealed

- ~~A.~~ Within 10 days of a resident's admission, the resident's care plan shall be developed based on the resident's physician's treatment orders and the resident's physical, social, and psychosocial needs. The care plan shall be in writing and include:
 - ~~1.~~ Health problems and the diagnosis or diagnoses;
 - ~~2.~~ Medical status measurements including vital signs, weight, height, and any laboratory findings;
 - ~~3.~~ Sensory impairments and communication status;
 - ~~4.~~ Physical function, including range of motion, balance, coordination, and daily living activities;
 - ~~5.~~ Nutritional status, including nutritional deficiencies, food preferences, intake and output problems, and food allergies;
 - ~~6.~~ Social and psychosocial status, including cultural or religious constraints, outside contacts, use of free time, interaction with other residents, and behavioral problems;
 - ~~7.~~ Rehabilitation potential; and
 - ~~8.~~ Discharge potential, including status of independent physical function, availability of family support, and financial resources.
- ~~B.~~ Each resident's progress toward care goals shall be evaluated, in writing, at least every 90 days, including:
 - ~~1.~~ Whether each goal was achieved, partially achieved, or unachieved;
 - ~~2.~~ The reasons for any goal being partially achieved or unachieved; and
 - ~~3.~~ New health problems and new or revised goals identified, if any.
- ~~C.~~ ASVH staff shall immediately notify the resident's physician, in writing, of any change in the resident's condition that may require a level of care change.
- ~~D.~~ The certified or licensed health care professionals at ASVH shall provide care and treatment to each resident pursuant to the laws, rules, and standards in their professions.
- ~~E.~~ The following minimum care shall be provided to each resident, as specifically set forth in each resident's care plan:

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1. Speech therapy, physical therapy, occupational therapy, respiratory care, and transitional living training;
 2. Services and treatments that foster the rehabilitation of the resident to the highest level of functioning;
 3. Physical exercise to maintain or improve muscle tone, joint function, and mobility;
 4. Freedom from bruises, injuries, bedsores, and infections on the skin;
 5. Sufficient fluids to maintain hydration;
 6. Nutrition planned by a dietitian to achieve or maintain an ideal weight range based on age, height, gender, activity, food allergies, and medications;
 7. Sensory stimulation to compensate for sensory loss;
 8. Mental stimulation to maintain or improve intellectual function;
 9. Individual attention and social interaction to maintain identity and self-worth;
 10. Encouragement and assistance in preserving family and friends support systems.
- F.** The ASVH nursing staff shall provide the following minimum care to each resident:
1. Care of mouth, teeth, skin, nails, hair, feet, and perineal area daily;
 2. Tub baths, showers, or bed baths as needed, but at least twice weekly unless otherwise documented in the resident's care plan;
 3. Checks at least every 2 hours of incontinent residents to keep them clean, dry, and free from odor;
 4. Shampoos, shaves, and haircuts to maintain a clean and neat appearance;
 5. Clothing cleaned and maintained in good condition;
 6. Soiled personal clothing stored in closed containers;
 7. Bed linen, including mattress pad, sheets large enough to tuck under the mattress, pillow case, bedspread, and blanket to ensure warmth, changed as often as necessary to assure cleanliness but at least twice a week, and, in the case of bedfast residents, changed at least daily;
 8. Towel and washcloth, which is available at resident's bedside or in the bathroom in a manner that identifies which towel and washcloth belongs to which resident, changed as often as necessary to assure cleanliness but at least twice a week; and
 9. Comb, supplies for dental or mouth care, drinking glass, pitcher, and soap maintained in a manner that prevents use by more than 1 resident.

R4-40-402. General Provisions Repealed

- A.** Residents shall purchase any needed customized medical equipment and supplies.
- B.** Single occupancy rooms shall only be for residents with medical conditions requiring isolation, as ordered by the resident's physician.
- C.** A resident's bed shall be held for no more than 4 days without the resident paying a daily charge rate when the resident is admitted to a hospital, another health or medical facility, or on therapeutic leave as ordered by the resident's physician. If the resident does not pay the charges incurred, the resident may lose that space and be placed on the waiting list pursuant to R4-40-302(F).

R4-40-403. Level of Care Repealed

- A.** The amount of skilled nursing care time required to provide resident care shall be considered in determining the appropriate level of care. Consideration shall include:
1. The ability of the resident to get in and out of bed and ambulate;
 2. The ability of the resident to perform activities of daily living;
 3. The ability of the resident to communicate and interact in the resident's environment;
 4. The ability of the resident to control bowel and bladder functions, and
 5. The complexity of prescribed medication and treatments.
- B.** Personal care level. The personal care level is appropriate only for persons who require minimum assistance with activities of daily living. A personal care resident exhibits the following characteristics:
1. Is able to ambulate independently with or without the use of assistive devices such as a cane, walker, or wheelchair;
 2. Requires no more than stand-by assistance to transfer from bed, chair, or toilet;
 3. Does not need restraints to control a behavioral or medical problem;
 4. Requires minimum assistance with bathing, dressing, and grooming;
 5. Is able to eat independently, although assistance may be needed in preparing food before eating;
 6. Is continent of bowel and bladder or requires minimum assistance in the care of an indwelling catheter or colostomy;
 7. Is able to socially interact, although there may be episodes of confusion, memory defects, impaired judgment, or agitation; minimum staff intervention is required; or
 8. Receives routine medications or treatment requiring general staff monitoring.
- C.** Class 1 care level. The Class 1 care level is appropriate only for residents who require moderate assistance with activities of daily living. A Class 1 care resident exhibits 1 or more of the following characteristics:
1. Needs the assistance of 1 or more than 1 staff person to transfer from bed, chair, or toilet;

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2. Needs assistance in walking but is able to self-propel a wheelchair;
 3. Requires moderate assistance in bathing, grooming, dressing, and feeding;
 4. May need restraints for personal safety;
 5. Is periodically incontinent of bowel and bladder or requires care of an indwelling catheter or colostomy;
 6. Demonstrates socially acceptable behavior but may have periodic emotional or mental disturbances, including combativeness, that can be controlled by moderate staff intervention; or
 7. Receives routine medications and treatments requiring general staff monitoring.
- D.** ~~Class 3 Care Level. Class 3 care level is appropriate for the residents who require maximum assistance with activities of living. A Class 3 care resident exhibits 1 or more of the following characteristics:~~
1. ~~Needs the assistance of more than 1 staff person to transfer from bed, chair, or toilet or is bedfast.~~
 2. ~~Needs maximum assistance in walking and moving from 1 location to another;~~
 3. ~~Requires maximum assistance in bathing, dressing, grooming, and feeding;~~
 4. ~~Is totally incontinent of bowel and bladder;~~
 5. ~~Is disoriented, confused, combative, withdrawn, or depressed; frequent staff intervention is required; or behavior may be socially unacceptable; or~~
 6. ~~Requires complex medications or treatments requiring close monitoring.~~
- E.** ~~When the resident's level of care borders between 2 levels of care or when the required level of care fluctuates, the Director of Nursing shall confer with the resident's physician to determine appropriate placement. The decision shall be documented in the resident's medical record.~~

R4-40-404. Level of Care or Eligibility Changes Repealed

- A.** ~~If a resident no longer requires skilled nursing care, or becomes dangerous to self or others, as determined by a physician, the administrator shall discharge the resident from ASVH pursuant to R4-40-701.~~
- B.** ~~A resident requiring a level of care change shall be transferred to the appropriate level of care as soon as space is available.~~
- C.** ~~ASVH shall place residents requiring a level of care change in available space until space at the appropriate level of care is available.~~
- D.** ~~If a resident needs a level of care, as determined by the resident's physician, that ASVH does not offer, the resident's physician shall refer the resident to a VA medical center or another medical facility equipped to meet the resident's needs. The resident is responsible for paying any charges incurred at the other medical facility and the daily charge rate at ASVH after 4 days absence as stated in R4-40-402(C).~~

ARTICLE 5. RESIDENT SUPPORT

R4-40-501. Billing

- A.** ~~Each resident or the resident's legal representative shall pay ASVH the daily charge rate for all services, treatments, and customized medical equipment and supplies provided to the resident that are not paid to ASVH for all services, equipment or supplies not paid by a 3rd party third party payor.~~
- B.** ~~A monthly resident support charge bill shall be sent to the resident or the legal representative at least 10 days before the payment due date by the 10th of each month and is due upon receipt. The bill shall state the total payment due for the upcoming month plus any past due amount and any services, treatments, and custom medical equipment and supplies not included in the daily charge rate, less any anticipated 3rd party third-party reimbursements, credits, or refunds. Following:~~
 1. Resident room and board for the upcoming month;
 2. Any past-due amount; and
 3. Any services, treatment, supplies, and custom medical equipment not included in the resident room and board.
- C.** ~~ASVH's business manager shall credit a resident's account within 30 days of verifying that a credit or refund is due. If a resident is discharged, the business manager shall submit the amount of any refund or credit to the former resident or legal representative within 30 days of the resident's discharge. If a resident is deceased, the business manager shall submit the amount of any refund or credit to the executor or administrator of the resident's estate or legal representative within 30 days of verifying that an amount is due. If a refund or credit to the resident's account is due, the business manager shall issue the refund or credit within 30 days of the termination of care provided by ASVH.~~

R4-40-502. Payment Process Repealed

- A.** ~~The resident shall pay the resident support charge 1 month in advance, by the 1st business day of each month.~~
- B.** ~~If payment is not received by ASVH within 30 days of the due date, ASVH may discharge a resident pursuant to R4-40-701.~~

ARTICLE 6. RESIDENT RESPONSIBILITIES AND CONDUCT

R4-40-601. General Provisions

- A.** The resident or legal representative shall:

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1. Report any change in the resident's financial resources, or all ~~3rd party~~ third-party payors' responsibilities for paying the resident's care and treatment;
 2. ~~Provide accurate and complete information about the resident's medical history, including previous illnesses, hospitalizations, and medications, and current physical, psychological, and mental condition;~~
 3. Report ~~changes~~ any change in the resident's physical, psychological, or mental condition observed while outside ASVH to the resident's physician nursing staff or the Director of Nursing director of nursing;
 4. Participate in care planning, cooperate with the carrying out of the care plan, and participate in the evaluation of the care plan;
 5. Be considerate of the rights of other residents and treat other residents, staff, and visitors with dignity and respect;
 6. Avoid disruptive behavior;
 - 7.3. ~~Respect the property of other residents, staff, and ASVH. A resident or legal representative may be held~~ Be financially responsible for any property damaged or destroyed by the resident; and
 8. Keep scheduled appointments with ASVH staff and if unable to do so, notify the staff;
 9. Maintain personal hygiene, clothing, and living area in a clean and neat condition, to the extent possible based on physical and mental capabilities;
 10. Carry Medicare Part B insurance, if eligible;
 11. Maintain all records regarding the resident's finances and provide all information required by ASVH to compute the resident's support charge; and
 - 12.4. If a resident has a conservator, the conservator shall submit a copy of the annual conservatorship report to ASVH.
- B. The resident shall not:
1. ~~Use or possess~~ Consume an alcoholic beverage or illegal substances on ASVH premises beverage outside a designated area and without a physician's order,
 2. ~~Possess firearms or weapons~~ Use or possess a firearm on ASVH premises;
 3. Smoke in an ASVH building; ~~or~~
 4. ~~Use or possess an illegal drug or substance on ASVH premises; or~~
 - 4.5. ~~Engage in disruptive behavior~~ Take any action that poses a risk to the health, safety, and welfare of self or others at the ASVH.

ARTICLE 7. INVOLUNTARY RESIDENT DISCHARGE, GRIEVANCE, HEARING, AND APPEAL PROCESS

R4-40-701. Involuntary Resident Discharge

- A. The administrator may discharge a resident for:
1. Loss of eligibility ~~to reside at ASVH pursuant to specified in R4-40-201,~~
 2. Failure to pay ~~the resident support charge pursuant to bill specified in R4-40-502,~~
 3. Failure to comply with resident responsibilities ~~pursuant to specified in R4-40-601.~~
- B. ~~Before ordering the discharge of~~ discharging a resident, the administrator ~~or designee shall have a staff member meet confer with the resident or legal representative about the alleged grounds~~ reason for discharge. ~~The staff member administrator or designee shall submit a written report to the administrator detailing the outcome of the meeting document the contact or attempts to contact the legal representative.~~
- ~~C.~~ If the report concludes that the alleged grounds for discharge no longer warrant discharge, the matter shall be closed.
- ~~D.C.~~ If the report concludes, and the administrator agrees, that the grounds for discharge are substantiated and warrant the resident's discharge, the administrator shall notify the resident or legal representative, in writing, at least 30 days before the effective date of discharge of the reasons for and effective date of the discharge. When a resident is a danger to self or others or an immediate transfer or discharge is required by the resident's urgent care medical needs, the 30 days written notice is waived and the resident may be immediately discharged. A written notice by the Director, Arizona Veterans' Service Commission, to a resident or legal representative may be made as soon as practicable but at least 10 days prior to a resident's transfer or discharge when:
1. The safety of individuals in the facility would be endangered;
 2. The health of individuals in the facility would be endangered;
 3. The resident's health improves sufficiently to allow a more immediate transfer or discharge; or
 4. An immediate transfer or discharge is required by the resident's urgent care medical needs.
- D. Appeal rights under A.R.S. Title 41, Chapter 6, Article 10 and Article 9 of this Chapter shall be provided to a resident or legal representative within 30 days of the involuntary discharge.
- E. A resident who has been discharged ~~shall may~~ be readmitted to ASVH ~~only when the admissions committee determines that the grounds for the discharge are not likely to recur.~~ The resident's application for readmission shall be in accordance comply with the applicable portions of R4-40-201, R4-40-301, R4-40-302, R4-40-303, and R4-40-304.

R4-40-702. Resident Grievance, Hearing, and Appeal Process Repealed

- ~~A.~~ A resident or legal representative who believes that any of the provisions of Articles 4, 5, 6, 7, or 8 have not been applied or have been unfairly applied may file a written grievance with the administrator by mailing or hand delivering the grievance

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ance to the administrator. A grievance shall contain a statement of the grievance and the requested action:

1. A grievance filed regarding a resident's discharge shall be filed within 10 days of the mailing date of the notice that states the effective date of the discharge; and
 2. A grievance filed pursuant to subsection (A)(1) stays the effective date of the resident's discharge until the grievance is satisfied, the administrator makes a decision regarding the grievance, or the matter is a final administrative decision pursuant to A.R.S. § 12-901(2), whichever is later.
- B.** Within 5 days of the grievance being filed, the administrator shall assign a social worker to discuss the grievance with the resident or legal representative. Within 10 days of the grievance being filed with the administrator, the social worker shall investigate the matter, meet with the resident or legal representative, and attempt to resolve the grievance.
- C.** If the grievance is satisfied, the administrator shall send a letter to the resident or legal representative, within 20 days of the grievance being filed, documenting the satisfaction. The administrator shall obtain the resident's or legal representative's signature on the letter acknowledging the satisfaction and keep this letter with the grievance.
1. If the satisfaction is that the resident no longer disputes being discharged, the resident shall be discharged on a date agreed to in the letter of satisfaction between the administrator and the resident or legal representative, not to exceed 10 days from the date of the satisfaction letter.
 2. If the satisfaction is that the discharge is no longer warranted, the letter of satisfaction shall state the reasons therefore and the pending discharge matter shall be closed.
- D.** If the grievance cannot be informally satisfied, the administrator shall notify the resident or legal representative, in writing within 30 days of the grievance being filed, of the administrator's decision regarding the grievance.
- E.** The resident or legal representative may file an appeal of the administrator's decision as set forth in R4-40-305(D). If an appeal is filed, the Commission shall proceed and a hearing shall be held as set forth in R4-40-305(E) and (F).

R4-40-703. Rehearing or Review of Commission's Decisions Repealed

~~A rehearing or review of a Commission decision shall be in accordance with R4-40-306.~~

ARTICLE 8. RESIDENT TRUST FUND

R4-40-801. General Provisions

- A.** If a resident or legal representative ~~has requests that ASVH manage the resident's finances, a written authorization shall be executed by ASVH's business manager and the resident or legal representative shall complete and sign a resident trust fund agreement provided by ASVH.~~
1. ~~The resident or legal representative's written consent may be withdrawn at any time.~~
 2. ~~ASVH's managing of a resident's finances shall not be a condition of admission to or continued residence at ASVH.~~
- B.** ~~ASVH shall maintain an interest-bearing account with a federally insured bank for each resident for whom ASVH manages finances resident trust funds. The resident trust funds shall be managed according to 41 CFR 483.10(c).~~
1. ~~The administrator or business manager shall keep written receipts of each resident's deposits, withdrawals, and expenditures.~~
 2. ~~The administrator or business manager shall provide the resident or legal representative with a monthly statement accurately reflecting deposits, withdrawals, disbursements, interest, and current balances.~~
 3. ~~Residents' finances and funds shall be kept separate from each others' and from ASVH's.~~
 4. ~~All funds that have been entrusted to ASVH, less any amount owed for resident support or costs of care, shall be returned to the resident or legal representative within 30 days of the resident's discharge or the demand from the resident or legal representative, whichever is sooner. The administrators or business manager shall obtain a signed receipt from the resident or legal representative acknowledging that the resident's funds have been properly returned.~~
 5. ~~Within 30 days of a resident's death, all funds, less any amount owed for resident support or costs of care, and a resident's valuables that have been entrusted to ASVH shall be returned to the legal representative or to the executor or administrator of the resident's estate.~~

ARTICLE 9. APPEAL PROCESS

R4-40-901. Hearings

- A.** Within 30 days after receiving a notice of a denial of eligibility for admission or an involuntary discharge, the applicant or resident may file a notice of appeal under A.R.S. § 41-1092.03 with the ASVH administrator. The notice shall identify the applicant or resident, the applicant's or resident's address, the agency and the action being appealed, and a concise statement of the reason for the appeal
- B.** The hearing shall be conducted by the Office of Administrative Hearings as specified in A.R.S. Title 41, Chapter 6, Article 10.

R4-40-902. Rehearing or Review of Decision

- A.** Under A.R.S. § 41-1092.09, the ASVH Director may grant a rehearing or review of decision.
- B.** Rehearing or review of decision are granted for any one of the following reasons which materially affect the requesting

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party's rights:

1. Irregularity in the proceedings of a hearing that deprived the requesting party of a fair hearing;
 2. Misconduct of the judge;
 3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 4. The decision is the result of passion or prejudice; or
 5. The decision is not supported by the evidence or is contrary to law.
- C. Within 30 days after a decision is rendered, the Director may, on the Director's own initiative, order a rehearing or review of a decision for any reason for which a rehearing on motion of a party might have been granted. The order granting the rehearing shall specify the grounds for the review of the decision.

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R7-2-708 | Repeal |
- 2. The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 15-203(A)
Implementing statute: A.R.S. § 15-203(A)(20) and (23)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 10 A.A.R. 1033, March 19, 2004 (in this issue)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|--|
| Name: | Christy Farley
Executive Director, State Board of Education |
| Address: | 1535 West Jefferson, Room 418
Phoenix, AZ 85007 |
| Telephone: | (602) 542-5057 |
| Fax: | (602) 542-3046 |
| E-mail: | cfarley@ade.az.gov |
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
The State Board of Education is proposing elimination of the default proceeding in the administrative hearing process administered by the State Board of Education Professional Practices Advisory Committee upon failure of an individual to appear at a hearing or review.

The default hearing currently in place does not provide any additional safeguards for certificate-holders, and the State Board has found that it serves as an obstacle in providing timely disposition of administrative hearing decisions. The State Board of Education Investigative Unit exhausts all means of contacting certificate-holders to inform them of a scheduled hearing on their certificate(s). Currently, the Investigative Unit notifies individuals by certified mail or through a process server of any hearings scheduled on their certificate(s). The existence of a default hearing that would be noticed in the same manner does not assist individuals in gaining notice of a subsequent hearing on their certificate(s), but rather only delays the process. In addition, legislation has been proposed and is moving through the legislative process to require certificate-holders to notify the Arizona Department of Education of changes in their address. The Investigative Unit will then use the last known address as provided by the certificate-holder to notify an individual of any hearing scheduled on their certificate(s). This system is used by several other regulatory agencies and is more efficient and reflects the partnership that exists between certificate-holder and licensing entity.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
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:

The proposed rules will not diminish any previous grant of authority of a political subdivision of this state.

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

The rules as proposed are not expected to have any economic impact on small businesses or consumers. A possible cost savings may occur for the State Board of Education in reduced administrative hearings as a result of not having to hold default proceedings at the Professional Practices Advisory Committee, saving the time of our volunteer members who receive per diem and travel reimbursement and the time of our staff and legal counsel in preparing for such hearings.

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: Christy Farley
Executive Director, State Board of Education
Address: 1535 West Jefferson, Room 418
Phoenix, AZ 85007
Telephone: (602) 542-5057
Fax: (602) 542-3046
E-mail: cfarley@ade.az.gov

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:

An oral proceeding on the proposed rulemaking is scheduled as follows:

Date: May 12, 2004
Time: 9:00 a.m.
Location: State Board of Education
1535 West Jefferson, Room 417
Phoenix, AZ 85007

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

Not applicable

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

None

13. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 7. ADJUDICATIONS

Section

R7-2-708. ~~Failure to appear; default~~ Repealed

ARTICLE 7. ADJUDICATIONS

R7-2-708. ~~Failure to appear; default~~ Repealed

- A.** ~~If, after being served with a notice of hearing, a party fails to appear at the time and place of any proceeding in a contested case, a proposed default order that includes a statement of the reasons to default the nonappearing party may be served upon all parties.~~
- B.** ~~Within seven days after service of a proposed default order, the party against whom it was issued may file a written request to deny the proposed default order, including a statement of the reasons it should be denied. The hearing body shall rule upon request to deny the proposed default order within 30 days of the date of filing.~~
- C.** ~~The hearing body may enter the default order after expiration of the time specified in subsection (B) of this rule.~~
- D.** ~~After entering a default order, the hearing body may conduct any further proceedings necessary to complete the contested case without the defaulted party and shall determine all issues in the case, including those affecting that party.~~

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

The rules as proposed are not expected to have any economic impact on small businesses. There is an estimated impact on teachers in Arizona who will be required to obtain the education coursework or training necessary to be eligible for an SEI endorsement by August 31, 2006 at their cost or the cost of their employing school district. However, H.B. 2010 allocated funds to the Arizona Department of Education to distribute to school districts and charter schools to reimburse teachers for the cost of successfully completing courses and other training required to obtain an SEI endorsement according to State Board rules (Laws 2001, 2nd S.S., Ch. 9, § 11, H.B. 2010). A positive impact is expected for ELL students who will have access to teachers and administrators with a professional background in teaching and learning strategies and standards for ELLs.

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: Christy Farley
Executive Director, State Board of Education
Address: 1535 West Jefferson, Room 418
Phoenix, AZ 85007
Telephone: (602) 542-5057
Fax: (602) 542-3046
E-mail: cfarley@ade.az.gov

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:

An oral proceeding on the proposed rulemaking is scheduled as follows:

Date: May 12, 2004
Time: 1:30 p.m.
Location: State Board of Education
1535 West Jefferson, Room 417
Phoenix, AZ 85007

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

Not applicable

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

None

13. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 6. CERTIFICATION

Section
R7-2-613. Endorsements

ARTICLE 6. CERTIFICATION

R7-2-613. Endorsements

- A. An endorsement shall be automatically renewed with the certificate on which it is posted.
- B. Except as noted, all endorsements are subject to the general certification provisions in R7-2-607.
- C. Endorsements which are optional as specified herein may be required by local governing boards.
- D. Special subject endorsements -- grades K-12.
 1. Special subject endorsements shall be issued in the area of art, computer science, dance, dramatic arts, music, or physical education.
 2. Special subject endorsements are optional.
 3. The requirements are:
 - a. An Arizona elementary, secondary, or special education certificate;
 - b. One course in the methods of teaching the subject at the elementary level;
 - c. One course in the methods of teaching the subject at the secondary level; and

- d. One of the following:
 - i. Thirty semester hours of courses in the subject area; or
 - ii. A passing score on the subject area portion of the Arizona Teacher Proficiency Assessment, if an assessment has been adopted by the Board.
- E. Mathematics Specialist Endorsement -- grades K-8
 1. The mathematics specialist endorsement is optional.
 2. The requirements are:
 - a. An Arizona elementary or special education certificate;
 - b. Three semester hours of courses in the methods of teaching elementary school mathematics; and
 - c. Fifteen semester hours of courses in mathematics education for teachers of elementary or middle school mathematics.
- F. Reading Specialist Endorsement -- grades K-12
 1. The reading specialist endorsement shall be required of an individual in the position of reading specialist, reading consultant, remedial reading teacher, special reading teacher, or in a similar position.
 2. The requirements are:
 - a. An Arizona elementary, secondary, or special education certificate; and
 - b. Fifteen semester hours of courses to include decoding, diagnosis and remediation of reading difficulties, and practicum in reading.
- G. Elementary Foreign Language Endorsement -- grades K-8
 1. The elementary foreign language endorsement is optional.
 2. The requirements are:
 - a. An Arizona elementary, secondary or special education certificate.
 - b. Proficiency in speaking, reading, and writing a language other than English, verified by the appropriate language department of an accredited institution. American Indian language proficiency shall be verified by an official designated by the appropriate tribe.
 - c. Three semester hours of courses in the methods of teaching a foreign language at the elementary level.
- H. Bilingual Endorsements -- grades K-12
 1. A provisional bilingual endorsement or a bilingual endorsement is required of an individual who is a bilingual classroom teacher, bilingual resource teacher, bilingual specialist, or otherwise responsible for providing bilingual instruction.
 2. The provisional bilingual endorsement is valid for three years and is not renewable. The requirements are:
 - a. An Arizona elementary, secondary, or special education, or vocational certificate; and
 - b. Proficiency in a language other than English or sign language.
 3. The holder of the bilingual endorsement is also authorized to teach English as a Second Language.
 4. The requirements are:
 - a. An Arizona elementary, secondary, special education, or vocational certificate;
 - b. Completion of a bilingual education program from an accredited institution or the following courses:
 - i. Three semester hours of foundations of instruction for non-English-language-background students;
 - ii. Three semester hours of bilingual methods;
 - iii. Three semester hours of English as a Second Language for bilingual settings;
 - iv. Three semester hours of courses in bilingual materials and curriculum; assessment of limited-English-proficient students; teaching reading and writing in the native language; or English as a Second Language for bilingual settings;
 - v. Three semester hours of linguistics to include psycholinguistics, sociolinguistics, first language acquisition, and second language acquisition for language minority students; or American Indian language linguistics;
 - vi. Three semester hours of courses dealing with school, community, and family culture and parental involvement in programs of instruction for non-English-language-background students; and
 - vii. Three semester hours of courses in methods of teaching and evaluating handicapped children from non-English-language backgrounds. These hours are only required for bilingual endorsements on special education certificates.
 - c. A valid bilingual certificate or endorsement from another state may be substituted for the courses described in subsection (H)(4)(b);
 - d. Practicum in a bilingual program or two years of verified bilingual teaching experience; and
 - e. Proficiency in a spoken language other than English, verified by the language department of an accredited institution except in the case of Spanish and American Indian languages. Spanish language proficiency shall be demonstrated by passing the Arizona Classroom Spanish Proficiency Examination approved by the Board. American Indian language proficiency shall be verified by an official designated by the appropriate tribe.
- I. English as a Second Language (ESL) Endorsements -- grades K-12
 1. An ESL or bilingual endorsement is required of an individual who is an ESL classroom teacher, ESL specialist, ESL

- resource teacher, or otherwise responsible for providing ESL instruction.
2. The provisional ESL endorsement is valid for three years and is not renewable. The requirements are:
 - a. An Arizona elementary, secondary, or special education, or vocational certificate; and
 - b. Six semester hours of courses specified in subsection (I)(3)(b), including at least one course in methods of teaching ESL students.
 3. The requirements for the ESL endorsement are:
 - a. An Arizona elementary, secondary, special education, or vocational certificate;
 - b. Completion of an ESL education program from an accredited institution or the following courses:
 - i. Three semester hours of courses in foundations of instruction for non-English-language-background students. Three semester hours of courses in the nature and grammar of the English language, taken before January 1, 1999, may be substituted for this requirement;
 - ii. Three semester hours of ESL methods;
 - iii. Three semester hours of teaching of reading and writing to limited-English-proficient students;
 - iv. Three semester hours of assessment of limited-English-proficient students;
 - v. Three semester hours of linguistics; and
 - vi. Three semester hours of courses dealing with school, community, and family culture and parental involvement in programs of instruction for non-English-language-background students.
 - c. Three semester hours of a practicum or two years of verified ESL or bilingual teaching experience, verified by the district superintendent;
 - d. Second language learning experience, which may include sign language. Second language learning experience may be documented by any of the following:
 - i. Six semester hours of courses in a single second language, or the equivalent, verified by the department of language, education, or English at an accredited institution;
 - ii. Completion of intensive language training by the Peace Corps, the Foreign Service Institute, or the Defense Language Institute;
 - iii. Placement by the language department of an accredited institution in a third-semester level;
 - iv. Placement at level 1-intermediate/low or more advanced score on the Oral Proficiency Interview, verified by the American Council for the Teaching of Foreign Languages;
 - v. Passing score on the Arizona Classroom Spanish Proficiency Examination approved by the Board; or
 - vi. Proficiency in an American Indian language, verified by an official designated by the appropriate tribe.
 - e. A valid ESL certificate or endorsement from another state may be substituted for the requirements described in subsection (I)(3)(b), (c), and (d).

J. Structured English Immersion (SEI) Endorsements -- grades K-12

1. From and after August 31, 2006, an SEI, ESL or bilingual provisional or standard endorsement is required of all classroom teachers, SEI specialists, SEI resource teachers, supervisors, principals and superintendents.
2. The provisional SEI endorsement is valid for three years and is not renewable. The requirements are:
 - a. An Arizona elementary, secondary, special education, career and technical education, supervisor, principal or superintendent certificate; and
 - b. Three semester hours of courses in Structured English Immersion methods of teaching ELL students for teachers certified on or after August 31, 2006; or
 - c. One semester hour or fifteen clock hours of professional development in Structured English Immersion methods of teaching ELL students for teachers certified before August 31, 2006.
3. The requirements for the SEI endorsement are:
 - a. An Arizona elementary, secondary, special education, or vocational certificate, and;
 - b. A valid provisional SEI endorsement, and either:
 - i. Completion of an SEI education program from an accredited institution, or
 - ii. Three semester hours of courses related to the teaching of the English Language Proficiency Standards adopted by the State Board of Education, or
 - iii. Completion of forty-five clock hours of professional development of teaching of the English Language Proficiency Standards adopted by the State Board of Education through a program that meets the Professional Teaching Standards of R7-2-602 and has received Board approval of curriculum and instructor qualifications.

J.K. Gifted Endorsements -- grades K-12

1. A gifted endorsement is required of individuals whose primary responsibility is teaching gifted students.
2. The provisional gifted endorsement is valid for three years and is not renewable. The requirements are an Arizona elementary, secondary, or special education certificate and one of the following:
 - a. Two years of verified teaching experience in which most students were gifted;
 - b. Ninety clock hours of verified in-service training in gifted education; or
 - c. Six semester hours of courses in gifted education.

Notices of Proposed Rulemaking

3. Requirements for the gifted endorsement are:
 - a. An Arizona elementary, secondary, or special education certificate;
 - b. Completion of nine semester hours of upper division or graduate level courses in an academic discipline such as science, mathematics, language arts, foreign language, social studies, psychology, fine arts, or computer science; and
 - c. Two of the following:
 - i. Three years of verified teaching experience in gifted education as a teacher, resource teacher, specialist, or similar position, verified by the district; or
 - ii. A minimum of 135-clock hours of verified in-service training in gifted education; or
 - iii. Completion of 12 semester hours of courses in gifted education. District in-service programs in gifted education may be substituted for up to six semester hours of gifted education courses. Fifteen clock hours of in-service is equivalent to one semester hour. In-service hours shall be verified by the district superintendent or personnel director. Practicum courses shall not be accepted toward this requirement; or
 - iv. Completion of six semester hours of practicum or two years of verified teaching experience in which most students were gifted.

~~K-L~~ Library-Media Specialist Endorsement -- grades K-12

1. The library-media specialist endorsement is optional.
2. Requirements are:
 - a. An Arizona elementary, secondary, or special education certificate;
 - b. A passing score on the Library Media Specialist portion of the Arizona Teacher Proficiency Assessment. A Master's degree in Library Science may be substituted for a passing score on the assessment; and
 - c. One year of teaching experience.

~~L-M~~ Middle Grade Endorsement -- grades 5-9

1. The middle grade endorsement is optional. The middle grade endorsement may expand the grades a teacher is authorized to teach on an elementary or secondary certificate.
2. The requirements are:
 - a. An Arizona elementary or secondary certificate; and
 - b. Six semester hours of courses in middle grade education to include:
 - i. One course in early adolescent psychology;
 - ii. One course in middle grade curriculum; and
 - iii. A practicum or one year of verified teaching experience, in grades 5-9.

~~M-N~~ Drivers Education Endorsement

1. The drivers education endorsement is optional.
2. The requirements are:
 - a. An Arizona teaching certificate;
 - b. A valid Arizona driver's license;
 - c. One course in each of the following: safety education, driver and highway safety education, and driver education laboratory experience; and
 - d. A driving record with less than seven violation points and no revocation or suspension of driver's license within the two years preceding application.

~~N-O~~ Cooperative Education Endorsement -- grades K-12

1. The cooperative education endorsement is required for individuals who coordinate or teach vocational cooperative education.
2. The requirements are:
 - a. A provisional or standard vocational certificate in the areas of agriculture, business, family and consumer sciences, health occupations, marketing, or industrial technology; and
 - b. One course in vocational cooperative education.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES
OCCUPATIONAL LICENSING

PREAMBLE

1. Sections Affected

R9-16-401
R9-16-402
R9-16-403
R9-16-403
R9-16-404
R9-16-404
R9-16-405
R9-16-405
R9-16-406
R9-16-407
R9-16-407
R9-16-408
R9-16-409
R9-16-409

Rulemaking Action

Amend
Amend
Renumber
New Section
Renumber
Amend
Renumber
New Section
Renumber
Renumber
Amend
Renumber
Renumber
Amend

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. § 36-136(F)

Implementing statute: A.R.S. § 36-136.01

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

Notice of Rulemaking Docket Opening: 9 A.A.R. 4671, October 31, 2003

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

Name: Kathleen Phillips, Rules Administrator

Address: Department of Health Services
1740 W. Adams, Suite 202
Phoenix, Arizona 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: kphilli@hs.state.az.us

or

Name: Don Herrington, Office Chief

Address: Office of Environmental Health
Department of Health Services
150 North 18th Avenue
Phoenix, Arizona 85007

Telephone: (602) 364-3142

Fax: (602) 364-3146

E-mail: dherrin@hs.state.az.us

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

9 A.A.C. 16 provides requirements and procedures for the registration of sanitarians. Laws 2003, Ch. 21, effective September 18, 2003, amended the statutory authority for registration of sanitarians by adding a continuing education requirement and provisions for allowing the Council to waive the examination requirement for an individual who is registered, certified, or licensed as a sanitarian in another jurisdiction. The Department is amending the rules to be consistent with the statutory authority.

Notices of Proposed Rulemaking

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

Cost bearers

The Department will bear the costs of reviewing and approving continuing education submitted by registered sanitarian with renewal applications and tracking continuing education and deferments of continuing education.

County health departments may choose to bear the cost of providing continuing education to the registered sanitarians employed by a county health department.

Individuals may bear the cost of obtaining continuing education, although some continuing education is available from several sources for no cost.

Beneficiaries

Individuals applying to be registered as a sanitarian will benefit from not being required to retake the sanitarian examination if they have previously taken the sanitarian examination and passed with a score of 70% or more. These individuals will be able to be employed as a registered sanitarian by a county health department within 180 days as opposed to 290 days, providing a benefit to the individual and county health department.

Allowing a registered sanitarian to defer continuing education if the registered sanitarian is ill or on active military duty will provide a benefit to registered sanitarians in those situations. If a registered sanitarian was not allowed to defer required continuing education, the registered sanitarian's registration would expire or the renewal application would be denied, and the applicant would be required to complete the initial application process before functioning as a registered sanitarian.

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: Kathleen Phillips, Rules Administrator

Address: Department of Health Services
1740 W. Adams, Suite 202
Phoenix, Arizona 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: kphilli@hs.state.az.us

or

Name: Don Herrington, Office Chief

Address: Office of Environmental Health
Department of Health Services
150 North 18th Avenue
Phoenix, Arizona 85007

Telephone: (602) 364-3142

Fax: (602) 364-3146

E-mail: dherrin@hs.state.az.us

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:

The Department has scheduled the following oral proceeding:

Date: April 19, 2004

Time: 1:00 p.m.

Location: 1740 W. Adams, Room 411

Close of record: Phoenix, AZ 85007
5:00 p.m, April 19, 2004

The Department will accept written comments until the close of record.

Persons with a disability may request a reasonable accommodation by contacting Valerie Grina at vgrina@hs.state.az.us or (602) 364-2580. Requests should be made as early as possible to allow sufficient time to arrange for the accommodation.

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

None

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

Not applicable

13. The full text of the rules follow:

TITLE 9. HEALTH SERVICES

**CHAPTER 16. DEPARTMENT OF HEALTH SERVICES
OCCUPATIONAL LICENSING**

ARTICLE 4. REGISTRATION OF SANITARIANS

Section

- R9-16-401. Definitions
- R9-16-402. Sanitarian Examination ~~and Registration~~
- R9-16-403. Sanitarian Registration
- ~~R9-16-403-R9-16-404.~~ Annual Registration Renewal
- R9-16-405. Continuing Education
- ~~R9-16-404-R9-16-406.~~ Change of Name or Address
- ~~R9-16-405-R9-16-407.~~ Time-frames
- ~~R9-16-406-R9-16-408.~~ Authority of a Registered Sanitarian
- ~~R9-16-407-R9-16-409.~~ Denial, Suspension, or Revocation

ARTICLE 4. REGISTRATION OF SANITARIANS

R9-16-401. Definitions

In this Article, unless otherwise specified:

1. No change
2. No change
3. No change
4. No change
5. No change
6. “Continuing education” means a course, seminar, lecture, conference, workshop, or programmed learning activity related to an individual’s employment as a registered sanitarian.
- ~~6-7.~~ No change
- ~~7-8.~~ No change
- ~~8-9.~~ No change
- ~~9-10.~~ No change
- ~~10-11.~~ No change
- ~~11-12.~~ No change
- ~~12-13.~~ No change
- ~~13-14.~~ No change
- ~~14-15.~~ No change

R9-16-402. Sanitarian Examination ~~and Registration~~

- A. No change
- B. No change
- C. At least seven days before a Council meeting, an applicant for the sanitarian examination shall:
 1. No change
 2. No change
 3. No change

Notices of Proposed Rulemaking

- 4. No change
- 5. No change
- D. No change
- E. No change
- F. No change

R9-16-403. Sanitarian Registration

An applicant for registration as a sanitarian shall submit to the Council the application form, information, and application fee in R9-16-402 and:

- 1. If the applicant is registered, certified, or licensed as a sanitarian in another jurisdiction, submit to the Council:
 - a. A copy of the applicant's sanitarian registration, certification, or licensure from the other jurisdiction;
 - b. A copy of the examination requirements for registration, certification, or licensure for the other jurisdiction;
 - c. The name of the testing company that provided the sanitarian examination the applicant passed to be registered, certified, or licensed in the other jurisdiction; and
 - d. Documentation of a score of 70% or more by the applicant on the sanitarian examination; or
- 2. If the applicant is not registered, certified, or licensed as a sanitarian in another jurisdiction:
 - a. Be approved to take the sanitarian examination and take and pass the sanitarian examination in R9-16-402 with a score of 70 percent or more, and
 - b. Submit to the Council the fee in R9-16-402(D).

R9-16-403-R9-16-404. Annual Registration Renewal

- A. Except as provided in subsection (B), a registered sanitarian shall submit an application packet for registration renewal on or before December 31 of each year that includes:
 - 1. No change
 - 2. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. Name and address of the state or jurisdiction that suspended or revoked the registration, license, or certificate or issued the consent agreement;
 - b. No change
 - c. No change
 - 3. Documentation of:
 - a. The continuing education required in R9-16-405(A) or (E) including for each continuing education:
 - i. A description of the continuing education's content.
 - ii. The name of the person providing the continuing education.
 - iii. The number of hours the sanitarian participated in the continuing education, and
 - iv. The date the continuing education was completed; or
 - b. A request for deferring continuing education and applicable documentation;
 - 3-4. No change
 - 4-5. No change
- B. No change

R9-16-405. Continuing Education

- A. Except as provided in subsections (B), (C), and (E), a registered sanitarian shall obtain 12 hours of continuing education in the 12 months preceding the registered sanitarian's registration renewal.
- B. A registered sanitarian who has been registered for less than 12 months is not required to obtain continuing education for renewal of registration.
- C. A registered sanitarian may submit, with a renewal application, a request to defer the 12 hours of continuing education for renewal of registration that includes written documentation of the registered sanitarian's illness or active military duty for six months of the preceding 12 months that prevented the registered sanitarian from completing the continuing education requirement.
- D. The Council shall approve a registered sanitarian's request for a deferral of the continuing education requirement if the request includes the required written documentation of the registered sanitarian's illness or active military duty.
- E. A registered sanitarian who has had the continuing education requirement deferred in a calendar year shall obtain the 12 deferred hours of continuing education by the end of the subsequent calendar year.

R9-16-404-R9-16-406. Change of Name or Address

- A. No change
- B. No change

~~R9-16-405~~ **R9-16-407. Time-frames**

- A. No change
- B. No change
 - 1. No change
 - a. No change
 - b. No change
 - c. For an applicant who is registered, certified, or licensed as a sanitarian in another jurisdiction, when the Council receives the application packet required in R9-16-403(A)(1); or
 - ~~e.d.~~ No change
 - 2. If an application packet in subsection (B)(1)(a), ~~or (B)(1)(c), or (B)(1)(d)~~ is:
 - a. Incomplete, the Council shall provide a deficiency notice to the applicant describing the missing documentation or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice until the date the Council receives the documentation or information listed in the deficiency notice. An applicant shall submit to the Council the documentation or information listed in the deficiency notice within the time period specified in Table 1 for responding to a deficiency notice:
 - i. No change
 - ii. No change
 - b. No change
 - 3. No change
- C. No change
 - 1. No change
 - 2. No change
 - 3. If an application for registration as a sanitarian in subsection (B)(1)(c):
 - a. Does not comply with the requirements in this Article, the Council shall provide a comprehensive request for additional information to the applicant:
 - i. If the applicant does not submit the additional information within the time specified in Table 1 or the additional information submitted by the applicant does not demonstrate compliance with this Article and A.R.S. § 36-136.01, the Council shall deny registration and provide the applicant a written notice of appeal agency action that complies with A.R.S. § 41-1092.03(A); or
 - ii. If the applicant submits the additional information within the time specified in Table 1 and the additional information submitted by the applicant demonstrates compliance with this Article and A.R.S. § 36-136.01, the Council shall issue a certificate of registration as a sanitarian to the applicant; or
 - b. Complies with the requirements in this Article and A.R.S. § 36-136.01, the Council shall issue a certificate of registration as a sanitarian to the applicant.
- ~~3-4.~~ If an application for renewal of registration as a sanitarian in subsection ~~(B)(1)(e)~~(B)(1)(d):
 - a. No change
 - b. No change
- D. If an applicant receives a written notice of appealable agency action in subsections (C)(1)(a)(i), (C)(2)(b), ~~or (C)(3)(a)(i),~~ or (C)(4)(a)(i) the applicant may file a notice of appeal with the Department within 30 days after receiving the notice of appealable agency action. The appeal shall be conducted according to A.R.S. Title 41, Chapter 6, Article 10.
- E. If the Council grants approval to take the sanitarian examination or issues or renews a certificate of registration as a sanitarian during the administrative completeness review time-frame, the Council shall not issue a separate written notice of administrative completeness.
- F. No change
- G. No change

Notices of Proposed Rulemaking

Table 1. Time-frames (in days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Comprehensive Written Request
Sanitarian Examination (R9-16-402)	A.R.S. § 36-136.01(B)	290 days	30 days	60 days	200 days	60 days
Registration after completing the sanitarian examination (R9-16-402) (R9-16-403)	A.R.S. § 36-136.01(B)	90 days	30 days	N/A	60 days	N/A
<u>Registration of an individual registered, certified, or licensed as a sanitarian in another jurisdiction</u> (R9-16-403)	<u>A.R.S. § 36-136.01(C)</u>	<u>180</u>	<u>90</u>	<u>15</u>	<u>90</u>	<u>15</u>
Annual Registration Renewal (R9-16-403) (R9-16-404)	A.R.S. § 36-136.01(C) (D)	180 days	90 days	15 days	90 days	15 days

~~R9-16-406~~R9-16-408. Authority of a Registered Sanitarian

- A. No change
- B. No change
- C. No change

~~R9-16-407~~R9-16-409. Denial, Suspension, or Revocation

- A. The Council may deny, suspend, or revoke a sanitarian’s registration if the Council determines that an applicant or a registered sanitarian:
 - 1. Intentionally provided false information on an application or cheated during the sanitarian examination;
 - 2. Had an application for a registration, license, or certificate related to the practice of a registered sanitarian denied or rejected by any state or jurisdiction;
 - 3. Had a registration, license, or certificate related to the practice of a registered sanitarian suspended or revoked by any state or jurisdiction or entered into a consent agreement with any state or jurisdiction;
 - ~~2-4.~~ Pled guilty to, was convicted of, or entered into a plea of no contest to a misdemeanor resulting from employment as a registered sanitarian or a felony;
 - ~~3-5.~~ Assisted an individual who is not a registered sanitarian to circumvent the requirements in this Article;
 - ~~4-6.~~ Allowed an individual who is not a registered sanitarian to use the registered sanitarian’s registration; or
 - ~~5-7.~~ Failed to comply with any of the requirements in A.R.S. § 36-136.01 or this Article.
- B. No change
- C. No change
- D. No change