

## 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 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 45. BOARD OF RESPIRATORY CARE EXAMINERS

[R05-439]

#### PREAMBLE

**1. Sections Affected**

R4-45-101  
R4-45-102  
R4-45-103  
R4-45-104  
R4-45-201  
R4-45-202  
R4-45-203  
R4-45-204  
R4-45-205  
R4-45-206  
R4-45-207  
R4-45-208  
R4-45-209  
R4-45-210  
R4-45-211  
R4-45-212  
R4-45-213  
R4-45-214  
R4-45-215  
R4-45-216  
R4-45-217  
R4-45-301  
R4-45-302

**Rulemaking Action**

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

Authorizing statute: A.R.S. § 32-3504(A)(2)

Implementing statute: A.R.S. §§ 32-3504(A)(9); 32-3506(C)(4); 32-3521; 32-3523; 32-3524; 32-3525; 32-3526; 32-3554

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

Notice of Rulemaking Docket Opening: 11 A.A.R. 1940, May 20, 2005

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

Name: Mary Hauf Martin

Address: Board of Respiratory Care Examiners  
1400 W. Washington St., Ste. 200  
Phoenix, AZ 85007

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Telephone: (602) 542-5995  
Fax: (602) 542-5900  
E-mail: Mary@rb.state.az.us

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

The agency is amending all of its rules to make them more clear, concise, and understandable. It is also increasing the fee for an initial license and a renewal license; eliminating the phrase "respiratory care technician" to be consistent with current industry standards; establishing a rule regarding reinstatement of an expired license; distinguishing between renewal of a temporary license by an applicant who has passed the licensing examination and one who has not; establishing the times to submit necessary documentation in response to an audit of continuing education records performed at the time of license renewal or another time; and making the Board's hearing procedures consistent with statute and the procedures of the Office of Administrative Hearings.

**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:**

The cost of both an initial license and a renewal license is increasing 20%. The Board has not increased fees since 2000. Because licensing fees are the primary source of support for the regulatory activities of the Board, it is necessary to increase them to enable the Board to continue to provide services to licensees and protect the public. Either the licensee or the licensee's employer will pay this increased cost. Licensing fees are a cost of doing business that may be passed on to consumers of respiratory care services and third-party payers.

The distinction in requirements for renewal of a temporary license by an individual who has passed the licensing examination and one who has not will require the individual who has not passed the licensing examination at least attempt to pass the examination before it is time to renew the temporary license. This may have a minimal economic impact on the individual taking the licensing examination. However, those who employ respiratory care practitioners will benefit from this change because they will not continue to invest time and training costs in an individual who ultimately may not be able to be licensed.

The economic impact of other changes in the rulemaking is minimal.

**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: Mary Hauf Martin  
Address: Board of Respiratory Care Examiners  
1400 W. Washington, Ste. 200  
Phoenix, AZ 85007  
Telephone: (602) 542-5995  
Fax: (602) 542-5900  
E-mail: Mary@rb.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:**

An oral proceeding regarding the proposed rules will be held as follows:

Date: Thursday, January 19, 2006  
Time: 9:00 a.m.  
Location: 1400 W. Washington; Room B-1  
Phoenix, AZ 85007

The rulemaking record will close at 5:00 p.m. on Friday, January 20, 2006.

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

Not applicable

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

None

**13. The full text of the rules follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 45. BOARD OF RESPIRATORY CARE EXAMINERS**

**ARTICLE 1. GENERAL PROVISIONS**

Section

- R4-45-101. Definitions
- R4-45-102. Fees
- R4-45-103. Service by the Board
- R4-45-104. Change of Name or Address

**ARTICLE 2. LICENSURE**

Section

- R4-45-201. Application
- R4-45-202. ~~Minimum Standards Curriculum~~ Approved Respiratory Therapy Training Programs
- R4-45-203. Examinations
- R4-45-204. Application ~~Based on by a Foreign Training -trained Applicant~~
- R4-45-205. Application Based on Licensure ~~By Another by another State~~
- R4-45-206. Licensure Based on Organizational Registration or Certification
- R4-45-207. ~~Renewal; Reinstatement~~
- R4-45-208. Continuing Education ~~Requirements~~ Requirement
- R4-45-209. Approved Continuing Education ~~Programs~~
- R4-45-210. Criteria for Approved Continuing Education ~~Courses and Programs~~
- R4-45-211. Audit of Compliance and Sanctions for Noncompliance with Continuing Education Requirement
- R4-45-212. Waiver of Requirements
- R4-45-213. Temporary Licensure
- R4-45-214. Standards of Professional Conduct
- R4-45-215. Procedures for Processing Initial License Applications; Time-frames
- R4-45-216. Procedures for ~~Issuing~~ Processing License Renewal or Reinstatement Applications; Time-frames
- R4-45-217. Appeal from Denial

**ARTICLE 3. HEARINGS**

Section

- R4-45-301. Hearing Procedures
- R4-45-302. Rehearing or Review of Decision

**ARTICLE 1. GENERAL PROVISIONS**

**R4-45-101. Definitions**

In addition to the definitions in A.R.S. § 32-3501, in this Chapter, unless otherwise specified:

1. ~~“ACLS” means Advanced Cardiac Life Support Protocols.~~
2. “Applicant” means an individual who meets the qualifications of A.R.S. § 32-3523 and applies for licensure under A.R.S. § 32-3522.
3. “Approved continuing education” means a planned course or program that the Board confirms meets the criteria in R4-45-210 or is qualified approved by the American Association for Respiratory Care or the Arizona Society for Respiratory Care.
4. ~~“BLS” means Basic Life Support Protocols.~~
5. ~~“CPR” means cardiopulmonary resuscitation.~~
6. “Contested case” means the same as defined in A.R.S. § 41-1001.

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7. "Continuing education unit" or "CEU" means a segment of an approved continuing education ~~course or program~~.  
"CRT examination" means the objective measure of essential knowledge, skills, and abilities required of an entry-level respiratory therapist, which is approved by the Board and administered by the NBRC.
8. "Day" means calendar day.
9. "Direct supervision" means that a licensed respiratory care practitioner, or physician licensed under A.R.S. Title 32, Chapters 13 or 17, is physically present at a work site and readily available to provide respiratory care to a patient or observe and direct the practice of a temporary licensee.
10. "Executive Director" means the officer employed by the Board to perform administrative and investigative functions.
11. ~~"health professional", as defined in A.R.S. § 32-3201, means a licensee, in addition to the health professionals listed.~~
12. "Individual"; as used in A.R.S. § 32-3521(B)(4), means only those persons listed with current, valid certifications, registrations, or licenses acting within the scope of their authorized practice.
13. "License" means the document issued by the Board to practice respiratory care in Arizona.
14. "License application package" means a license application form and any documents required to be submitted with the license application form.
15. "Licensee" means an individual who holds a current license issued under A.R.S. Title 32, Ch. 35.
16. "National Board for Respiratory Care, Inc." or "NBRC" means the national credentialing board for respiratory therapy.
17. "Party" means the same as ~~the definition defined~~ defined in A.R.S. § 41-1001.
18. "Pharmacological, diagnostic, and therapeutic agents"; as used in A.R.S. § 32-3501(5), means medications that are aerosolized and given through artificial airways or ~~through~~ vascular access.
19. "Temporary license" means the document issued by the Board under A.R.S. § 32-3521 that allows an applicant to practice respiratory care under direct supervision before the Board issues the applicant a license.
20. ~~"Verification of license" means a form the Board provides to an applicant to submit for completion to a state to confirm that the applicant currently holds or previously held a license, certification, or registration.~~
21. "Verification by a licensed respiratory therapist or respiratory therapy technician"; as used in A.R.S. § 32-3521(B)(7) and (C), means a licensee's written confirmation, before equipment is delivered, that the equipment is consistent with the patient's prescription and needs ~~of the patient.~~  
"Verification of license" means a form the Board provides to an applicant to submit for completion to a state to confirm that the applicant currently holds or previously held a license, certification, or registration from that state.

**R4-45-102. Fees**

- A. ~~The~~ Under the authority provided by A.R.S. 32-3526, the Board establishes and shall charge collect the following fees:
1. Application for a license, \$100;
  2. Application based on a diploma from a foreign respiratory therapy school, \$200;
  3. Initial license, ~~\$100~~ \$120;
  4. Biennial renewal of a license, ~~\$100~~ \$120;
  5. Renewal of a temporary license, \$75;
  6. Verifying an Arizona license to another state:
    - a. Current valid license, \$25;
    - b. Expired license, \$50;
  7. Duplicate license or duplicate wallet license card, \$25;
  8. Copy of the Board's Respiratory Care Practitioner ~~List~~ Register compiled under A.R.S. § 32-3504(A)(7):
    - a. Noncommercial, \$25;
    - b. Commercial, \$25 or the amount allowed under A.R.S. § 39-121.03(A), whichever is greater;
  9. Insufficient funds check submitted to the Board as payment of any fee, \$25;
  10. Fingerprint fee, ~~under A.R.S. § 41-1008(C),~~ in the form of a certified check or money order, \$50; and
  11. ~~Transcription~~ Copy of the audiotape of a hearing under A.R.S. § 41-1092.07(E); ~~41-1092.07(E), \$25.~~
    - a. ~~Copy of audiotape, \$25;~~
    - b. ~~Any party that requests a transcript of a proceeding shall pay the costs of the transcript to the court reporter or other transcriber.~~
  12. ~~Photocopying under A.R.S. § 39-121.03, \$1 per page.~~
- B. With the exception of the fingerprint fee specified in subsection (A)(10), all fees shall be remitted to the Board of Respiratory Examiners by personal check, ~~cashier's~~ certified check, or money order. All fees remitted to the Board are nonrefundable, except as provided in A.R.S. § 41-1077.

**R4-45-103. Service by the Board**

Service of any decision, order, subpoena, notice, or other written process may be made by, for, or on behalf of the Board by personal service or by mailing a copy by certified mail. ~~Service~~ The Board shall make service by certified mail ~~shall be made~~ to the address of record on file with the Board. Service upon an attorney who has appeared on behalf of a party constitutes ser-

vice upon the party. If service is by certified mail, service is complete upon deposit in the United States mail.

**R4-45-104. Change of Name or Address**

- A. A licensee shall notify the Board in writing within 30 days after the licensee's name is legally changed. The licensee shall include with the notice ~~shall include~~ a notarized or certified copy of the official document evidencing the name change. At the time of notification, the licensee shall request a duplicate license in the new name and ~~shall~~ pay the fee prescribed in R4-45-102(A)(7).
- B. A licensee shall notify the Board in writing within 10 days after a change in the licensee's address of record.

**ARTICLE 2. LICENSURE**

**R4-45-201. Application**

- A. ~~An~~ In addition to meeting the qualifications listed in A.R.S. § 32-3523(A), an applicant for a license to practice as a respiratory care practitioner shall submit the following information on a license application form furnished by the Board.
  - 1. Applicant's full name and ~~social security~~ Social Security number;
  - 2. Applicant's current mailing and permanent addresses;
  - 3. ~~Employer's~~ Current employer's name, address, and phone number;
  - 4. Current employment position and beginning date of employment;
  - 5. Current supervisor's name and phone number;
  - ~~4-6.~~ Applicant's area of care or specialty;
  - ~~5-7.~~ Applicant's birth date;
  - ~~6-8.~~ Applicant's home and work phone numbers;
  - ~~7-9.~~ Any name by which the applicant has ever been known. The applicant shall submit documentation of name change if the applicant is applying for licensure under a ~~different~~ different name than ~~different from~~ that on the applicant's credentials, educational degree, or diploma;
  - ~~8-10.~~ A statement of the facts entitling the applicant to take ~~an~~ the CRT examination or to receive a license without examination under R4-45-206;
  - ~~9-11.~~ Name of any state or province in which the applicant has been granted a certification, registration, or license as a respiratory care practitioner; including certificate number, date issued, expiration date, and a statement whether that certificate, registration, or license has ever been the subject of discipline, censure, probation, practice restriction, suspension, revocation, or cancellation;
  - ~~10-12.~~ Whether A statement whether the applicant has ever been denied a professional license or certificate or the privilege of taking an examination by a governing licensing authority and, if the answer is yes, a complete explanation of the denial including date, state or province, and a copy of any order issued;
  - ~~11-13.~~ Whether A statement whether the applicant is the subject of any pending disciplinary action that is directly or indirectly related to the practice of respiratory therapy and, if the answer is yes, a complete explanation, including date, state or province, and a copy of any order issued;
  - ~~12-14.~~ Whether A statement whether the applicant has ever voluntarily surrendered a professional license and, if the answer is yes, a complete explanation, including dates, state or province, and a copy of any order issued;
  - ~~13-15.~~ Whether A statement whether the applicant has ever filed an application for a respiratory care practitioner license in Arizona and, if the answer is yes, the date;
  - ~~14-16.~~ Whether A statement whether the applicant has been enrolled in or committed to a substance-abuse or alcohol-treatment program (~~substance abuse includes alcohol~~) in the past 10 years and, if the answer is yes, a complete explanation, including date, place, and a copy of any documentation of completion of the program;
  - ~~15-17.~~ Except for a minor traffic violations (infractions) violation, a statement whether the applicant has ever been convicted of, pled no contest (nolo contendere) to, entered into any agreement concerning an arrest or charge (even if the agreement resulted in a dismissal or expungement of record), or has an outstanding arrest or charge for any violation of any law of any state of the United States, or a foreign country and, if the answer is yes, a complete explanation, including place, date, and a copy of any pertinent documentation such as a court orders order or plea agreements agreement;
  - ~~16-18.~~ Whether A statement whether the applicant has ~~even~~ had an intemperance to drugs or alcohol within the last 10 years and, if the answer is yes, a complete explanation;
  - ~~17-19.~~ Applicant's physical description, including height, weight, and eye and hair color;
  - ~~18-20.~~ Highest level of education completed by the applicant;
  - ~~19-21.~~ Consistent with the Board's ~~statutory~~ authority under A.R.S. § 32-3522(B)(4), such other information or documentation ~~as the Board may deem~~ determines is necessary to ~~fully~~ fully evaluate the applicant fully; and
  - ~~20-22.~~ A record or documentation release and ~~Applicant's~~ the applicant's sworn statement verifying the truthfulness of the information provided by the applicant and that the applicant has not engaged in any acts act prohibited by Arizona

law or Board rules.

- B. An applicant shall submit or have submitted on the applicant's behalf the following with the license application form:
1. 2" by 2" color, bust photograph of the applicant taken within the last 60 days and signed on the back by the applicant;
  2. Photocopy of the applicant's diploma awarded upon successful completion of a an approved respiratory therapy training program, or letter of completion from the registrar of a an approved respiratory therapy training program; that provides the date of the applicant's successful completion;
  3. If NBRC-certified or registered, a photocopy of the applicant's ~~registration or~~ NBRC-issued certification or registration issued by the NBRC;
  4. ~~A~~ If ever licensed as a respiratory care practitioner in another state, a verification of license, completed, signed, and authenticated by seal or notarization by the board of each state in which the applicant holds or has held certification, licensure, or registration as a respiratory care practitioner;
  5. If foreign-trained, ~~the applicant shall cause the foreign respiratory therapy school to deliver to the Board certified copies~~ a certified copy of all course transcripts as well as all and complete, descriptive information concerning the applicant's course of study delivered to the Board by the foreign respiratory therapy school and the applicant shall provide a photocopy of the applicant's diploma from a the foreign respiratory therapy school submitted by the applicant;
  6. The ~~required~~ required fee required under R4-45-102(A)(1);
  7. A full set of fingerprints submitted on a card provided by the Board for a state and federal criminal background check along with a certified check or money order in the amount prescribed at R4-45-102(A)(10) ~~as authorized at A.R.S. § 41-1008(C); and~~
  8. A photocopy of the applicant's ~~NBRC CRTT exam~~ CRT examination results. ~~The exam results in this subsection are not required for issuance of a temporary license under R4-45-213; and~~
  9. ~~The documents and information under R4-45-215(D). The documents and information in this subsection are not required for issuance of a temporary license under R4-45-213.~~

C. The Board shall issue a temporary license to an applicant who is qualified under R4-45-213.

~~C.D.~~ An applicant shall inform the Board in writing of any change in the applicant's address of record within 10 days from the date of change.

~~D.~~ An applicant shall be a high school graduate or have obtained a General Equivalency Diploma (GED).

#### **R4-45-202. Minimum Standards Curriculum Approved Respiratory Therapy Training Programs**

~~A~~ The Board shall approve any respiratory therapy training program for respiratory therapists or respiratory therapy technicians shall consist of a curriculum conforming to the requirements of the Essentials and Guidelines of an Accredited Education Program for the Respiratory Therapy Technician and Respiratory Therapist as adopted in 1962, and revised in 1986 (and no later amendments or editions) by the Joint Review Committee for Respiratory Therapy Education of the Commission on Accreditation of Allied Health Education Programs (CAAHEP), which is incorporated by this reference and on file with the Board, and the Office of the Secretary of State that is accredited by the Committee on Accreditation for Respiratory Care.

#### **R4-45-203. Examinations**

A. Except when a license may be issued without an examination pursuant to under A.R.S. § 32-3524, an applicant shall pass a ~~written examination for Certified Respiratory Therapy Technicians provided by the NBRC~~ the CRT examination. The passing score ~~shall be a~~ is the scaled score set by the NBRC.

B. An applicant shall inform the Board as soon as possible by one of the following methods that the applicant passed the ~~Certified Respiratory Therapy Technicians~~ CRT examination ~~by of the following methods:~~

1. Forward to the Board a copy of either the examination results or certificate, or
2. Direct the NBRC to forward to the Board a copy of either the examination results or certificate.

~~C.~~ The examination results or certificate shall be provided to the Board as soon as possible.

#### **R4-45-204. Application Based on by a Foreign Training-trained Applicant**

~~If an application for a license is based on~~ An applicant who has a diploma from a respiratory therapy school located outside the United States, ~~the applicant~~ shall cause the school from which the diploma was issued to deliver to the Board ~~a certified copies~~ a certified copy of course transcripts and other information concerning the applicant's course of study sufficient to enable the Board to determine whether the course of study is equivalent to the Board's ~~minimum~~ minimum standards in R4-45-202.

#### **R4-45-205. Application Based on Licensure By Another by another State**

A. If an application for a license is based on licensure by another state, the applicant shall cause the state that issued the license to deliver to the Board a certified copy of the license and a Verification of License regarding the status of the applicant's license in that state.

B. An applicant shall cause the state in which the applicant is licensed to deliver to the Board either a copy of the results of the ~~NBRC~~ CRT examination or a copy of an other examination administered to the applicant, the results of the other examination, and any information necessary to enable the Board to determine whether the other examination is equivalent

to the ~~NBRC~~ CRT examination.

**R4-45-206. Licensure Based on Organizational Registration or Certification**

The Board shall issue a license to an applicant without examination if the applicant:

1. Is qualified ~~pursuant to~~ under A.R.S. § 32-3523,
2. Files an application for licensure under R4-45-201, and
3. ~~Satisfies the requirements prescribed in A.R.S. § 32-3524, and~~
4. ~~3.~~ Is registered as a ~~respiratory therapist~~ or certified as a ~~respiratory therapy technician~~ therapist by the NBRC.

**R4-45-207. Renewal; Reinstatement**

A. A respiratory care practitioner's ~~1st~~ first license expires on the licensee's ~~2nd~~ second birthday following issuance of the license. Thereafter, a respiratory care practitioner's license expires every other year on the licensee's birthday.

B. To apply for renewal of a license, a licensee shall:

1. ~~complete~~ Complete a license renewal application form and provide the following information:
  - a. Applicant's full name;
  - b. Applicant's Arizona license number;
  - c. Applicant's street or mailing address and phone number;
  - d. Applicant's highest educational degree;
  - e. Applicant's employment status;
  - f. Applicant's principal field of employment;
  - g. Current employer's name and address;
  - h. Current supervisor's name and phone number;
  - i. Applicant's physical description, including height, weight, and eye and hair color;
  - j. A statement whether, since the time of last application, the applicant:
    - i. Has been arrested, pled guilty or no contest to, or convicted of a felony, misdemeanor, or undesignated offense, and if the answer is yes, a complete explanation, including place, date, charge, and a copy of any pertinent documentation such as a court order or plea agreement;
    - ii. Has been arrested for a traffic violation that resulted in a fine greater than \$150, and if the answer is yes, a complete explanation, including date, offense, and a copy of any pertinent documentation such as a court order;
    - iii. Has been named in a civil or malpractice lawsuit relating to the applicant's employment as a respiratory care practitioner, and if the answer is yes, a complete explanation;
    - iv. Has been or is subject to any disciplinary action, consent order, or settlement regarding the applicant's license in any jurisdiction, and if the answer is yes, a complete explanation;
    - v. Has abused illegal substances, prescription drugs, or alcohol or been enrolled or committed to a substance-abuse or alcohol-treatment program, and if the answer is yes, a complete explanation, including date, place, and copy of any documentation of program completion; and
    - vi. Has been disciplined, suspended, or terminated from employment as a respiratory care practitioner, and if the answer is yes, a complete explanation; and
  - k. The applicant's sworn statement verifying the truthfulness of the information provided;
2. Attach a 2" by 2" color, bust photograph of the applicant taken within the last 60 days and signed on the back by the applicant;
3. ~~3.~~ Pay the renewal fee prescribed in R4-45-102(A)(4); and
4. ~~4.~~ Complete the required continuing education units.

~~B-C.~~ The Board shall notify a licensee by mail at the licensee's address of record of:

1. Need to renew the licensee's license, ~~and~~
2. Expiration of the licensee's license, ~~and~~
3. Audit of the licensee's continuing education records.

D. If a license expires because it is not renewed timely, the former licensee may apply to have the license reinstated within two years from the date of expiration. To apply for reinstatement, the former licensee shall comply with subsection (B).

~~E.~~ If an expired license is not renewed reinstated before 2 two years from the date of expiration, ~~an individual~~ the former licensee may obtain a new license only by applying as a new applicant.

~~F.~~ Misrepresentation of information on the license renewal application form or of compliance in acquiring CEUs with the continuing education requirement in R4-45-208 constitutes grounds for disciplinary action.

**R4-45-208. Continuing Education Requirements Requirement**

Continuing education is required as a condition of licensure renewal.

1. A respiratory care practitioner shall acquire 20 CEUs during every 2 two-year licensure period. To renew a license, a respiratory care practitioner shall report compliance with the continuing education ~~requirements~~ requirement. ~~Documentation~~ A respiratory care practitioner shall submit documentation showing evidence of compliance ~~shall be sub-~~

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mitted only if requested by the Board.

2. During the ~~1st~~ first licensure period, a licensee shall use the licensure issuance date as the beginning of the period in which the licensee is required to acquire CEUs. ~~Licensees~~ A licensee shall acquire 20 hours of CEUs before expiration of the ~~1st~~ first licensure period. Subsequent continuing education periods coincide with subsequent licensure periods.

**R4-45-209. Approved Continuing Education Programs**

- ~~A.~~ The Board shall accept for CEUs a course or program meeting the criteria set forth in R4-45-210. The Board shall have the authority to audit programs offering CEUs for compliance with the criteria.
- ~~B.A.~~ Any The Board shall accept for CEUs a course or program approved by the American Association for Respiratory Care or the Arizona Society for Respiratory Care ~~shall be accepted by the Board for CEUs.~~
- B.** The provider of or an individual who takes a continuing education that is not approved by the American Association for Respiratory Care or the Arizona Society for Respiratory Care may apply to the Board for approval under R4-45-210.

**R4-45-210. Criteria for Approved Continuing Education Courses and Programs**

- ~~A.~~ Approved The Board shall approve for CEUs a continuing education ~~courses and programs shall meet that meets~~ the following criteria:
  1. The content of the ~~course or program~~ continuing education is relevant to the scope of practice of respiratory care as defined in A.R.S. § 32-3501(5), ~~and~~
  2. At least 2/3 of the ~~course or program~~ continuing education hours relate to clinical practice. ~~.~~
- ~~B.3.~~ The nonclinical non-clinical ~~course or program~~ continuing education hours ~~may~~ cover:
  - ~~1-a.~~ Activities relevant to specialized aspects of respiratory care, such as education, supervision, and management;
  - ~~2-b.~~ Health care cost containment or cost management;
  - ~~3-c.~~ Preventative health services and health promotion;
  - ~~4-d.~~ Required abuse reporting; ~~and or~~
  - ~~5-e.~~ Other subject matter required by statute or rule to be included in continuing education for a licensed healing arts practitioners health professional. ~~.~~ and
- ~~C.4.~~ The faculty who provide the continuing education shall be are knowledgeable in the ~~course or program~~ continuing education subject matter as evidenced by:
  - ~~1-a.~~ A degree from an accredited college or university and verifiable experience in the subject matter, or
  - ~~2-b.~~ Teaching and clinical experience in the same or similar subject matter.
- ~~D.B.A~~ continuing education provider ~~of continuing education that wishes to grant CEUs shall apply to the Board for approval.~~ The using an application for approval shall include that provides:
  1. List of educational objectives;
  2. Description of the teaching methods, for example: lecture, seminar, audio-visual materials, or simulation;
  3. Description of the manner in which participants will be involved in the learning activities; and
  4. Names and qualifications of all faculty.
- ~~E.C.~~ Course or program providers A continuing education provider shall maintain a record of who attended each ~~course or program~~ continuing education for 3 ~~three~~ years.
- ~~F.D.~~ All course or program providers A continuing education provider shall provide documentation to each participant that includes: participant's name and respiratory care practitioner license number, ~~course or program~~ continuing education title, number of CEUs, date or dates, and name and address of provider.

**R4-45-211. Audit of Compliance and Sanctions for Noncompliance with Continuing Education Requirement**

- A.** The Board shall audit a random sample of licensees for compliance with the continuing education requirements. If documentation of compliance is incomplete, the licensee shall correct the deficiency. If the audit is conducted in conjunction with the license renewal, the licensee shall provide documentation proving compliance within 60 days of expiration of the licensee's license. If a licensee fails to submit documentation of compliance within this time, the Board shall revoke the licensee's renewed license and cause the renewal fee to be forfeited. The Board may audit all late renewals for compliance with continuing education requirements. When notice of the need to renew a license is provided, the Board shall also provide notice of an audit of continuing education records to a random sample of licensees. A licensee subject to a continuing education audit at the time of license renewal shall submit documentation that demonstrates compliance with the continuing education requirement at the same time the licensee submits the license renewal application form required under R4-45-207. If the licensee fails to submit the license renewal application form and documentation that demonstrates compliance with the continuing education requirement on or before the date of license expiration, the license expires.
- B.** Licensees shall make documentation of compliance with the continuing education requirements available to the Board upon request.

**R4-45-212. Waiver of Requirements**

- A.** At the time of making application When applying for renewal of a license, a licensee may request a waiver from comple-

tion of the continuing education ~~requirements~~ requirement. The Board shall grant a waiver only if the licensee verifies in writing that during the period immediately before expiration of the license, the licensee:

1. Resided in a country outside the United States for at least ~~±~~ one year, reasonably preventing completion of the continuing education ~~requirements~~ requirement;
2. Was absent from Arizona for at least ~~±~~ one year, reasonably preventing completion of the continuing education ~~requirements~~ requirement; or
3. Was prevented from completing the continuing education ~~requirements~~ requirement for reasons of health or other good cause including:
  - a. Physical or mental disability of the licensee for at least ~~±~~ one year, reasonably preventing completion of the continuing education ~~requirements~~ requirement; or
  - b. Physical or mental disability of a member of the licensee's family for at least ~~±~~ one year and the licensee had responsibility for the family member's care, preventing completion of the continuing education ~~requirements~~ requirement.

~~4.B.~~ A licensee who claims a disability ~~claimed~~ under subsection ~~(3)~~ (A)(3) shall ~~be verified in writing~~ submit with the waiver request a written verification of the disability by a licensed physician ~~or surgeon~~.

#### **R4-45-213. Temporary Licensure**

~~A.~~ The Board shall issue a temporary license, valid for ~~8~~ eight months, to an applicant only after a ~~complete~~ license application package, as described in R4-45-201, ~~including all necessary documents and fees~~ the application fee, is reviewed by the Board's Executive Director and the applicant is determined to be eligible to ~~apply for~~ receive a license pursuant to A.R.S. § 32-3523, ~~except that some of the following information is missing:~~

1. Passing score on the CRT examination.
2. Verification of license from another state in which the applicant is or was licensed.
3. Certified copy of course transcripts and descriptive information regarding the applicant's course of study at a foreign respiratory therapy school, or
4. Completed federal and state criminal background check.

~~B.~~ An applicant who is issued a temporary license shall perform respiratory care services only under direct supervision. ~~The temporary license may be renewed for an additional 120 days. An individual may receive only 1 8 month temporary license and 1 120 day temporary license renewal.~~

~~B.C.~~ A temporary licensee who applied for licensure under A.R.S. § 32-3524 ~~seeks renewal of a~~ may renew the temporary license ~~shall submit for an additional 120 days by submitting a request for renewal to the Board on a form prescribed by the Board.~~

~~D.~~ A temporary licensee who is required by A.R.S. § 32-3523 and R4-45-201 to pass the CRT examination before becoming licensed may renew the temporary license for an additional 120 days by submitting to the Board:

1. A request for renewal on a form prescribed by the Board, and
2. Evidence that the temporary licensee has either:
  - a. Passed the CRT examination, or
  - b. Attempted to pass the CRT examination and is registered to take the next scheduled CRT examination.

~~C.E.~~ The request for a renewed temporary license shall:

1. Include an address of record,
2. Be typed or written in black ink,
3. Be signed by the applicant, and
4. Be accompanied by the following:
  - a. The ~~service cost~~ fee prescribed in R4-45-102(A)(5), and
  - b. A statement under oath that the temporary license has not expired ~~and the temporary licensee is registered to take the next scheduled NBRC examination.~~

~~D.F.~~ A temporary licensee who is required but unable to submit the ~~statement described in subsection (C)(4)(b)~~ evidence under subsection (D)(2) may request an opportunity to explain this inability to the Board.

~~E.G.~~ The Board shall administratively close an application for licensure if the applicant fails to apply for renewal of a the applicant's temporary license. The temporary licensee shall apply for renewal no more than ~~within~~ 60 days before expiration of the temporary license. An individual who wishes to be considered for licensure after the individual's file ~~has been~~ is administratively closed shall reapply.

~~F.H.~~ Reapplication under subsection (G) does not qualify an individual for a ~~2nd~~ second temporary license. ~~No~~ The Board shall not issue more than one temporary license to an individual shall receive more than 1 temporary license.

~~G.I.~~ A temporary licensee is subject to disciplinary action by the Board ~~pursuant to~~ under A.R.S. § 32-3553.

*Arizona Administrative Register / Secretary of State*  
**Notices of Proposed Rulemaking**

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**R4-45-214. Standards of Professional Conduct**

Conduct or practice that is contrary to recognized standards of ethics of the respiratory therapy profession, as used in A.R.S. § 32-3501(10)(i), includes the following:

1. Engaging in the practice of respiratory care in a manner that harms or may harm a patient or that the Board determines falls below the community standard;
2. Procuring or attempting to procure by fraud or misrepresentation to procure a license or renewal of a license to practice respiratory care;
3. Violating a formal order, condition of probation, or stipulation issued by the Board;
4. Obtaining a fee by fraud, deceit, or misrepresentation;
5. Falsely claiming attendance at a an approved continuing education ~~course or program~~ to meet license renewal requirements;
6. Endangering a patient's or the public's physical or emotional health or safety or engaging in conduct or practice that may reasonably be expected to do so;
7. Engaging in sexual intimacies with a patient unless the sexual intimacies were initiated before the practitioner-patient relationship was established;
8. Committing an act of sexual abuse, misconduct, harassment, or exploitation;
9. Acting in a manner that the Board determines, based on community standards, constitutes incompetence, gross negligence, repeated negligence, or negligence that results in harm or death of a patient;
10. Abandoning or neglecting a patient, including failing to report for or leaving a respiratory therapy assignment before properly advising appropriate personnel;
11. Using or being under the influence of alcohol, illegal drugs or substances, or drugs or substances that impair judgment, while on duty in any health care work location;
12. Impersonating another licensed practitioner;
13. Knowingly employing, directing, or supervising an individual in the performance of respiratory care who is not authorized to practice respiratory care;
14. Violating the confidentiality of information concerning a patient;
15. Inaccurately recording, falsifying, or altering a patient record, including a patient ~~charts~~ chart or medication administration ~~records~~ record;
16. Misrepresenting or omitting ~~facts a fact~~ on an application for employment as a respiratory care practitioner;
17. Retaliating against any person who reports in good faith to the Board alleged incompetence or illegal or unethical conduct of any practitioner;
18. Using, removing, or possessing property belonging to an individual or entity without authorization;
19. Threatening the physical health or safety of a Board, or Board staff, member; and
20. Knowingly exceeding the scope of practice for a respiratory care practitioner at any health care location as the scope of practice is defined by ~~that health care~~ the entity responsible for that health care location.

**R4-45-215. Procedures for Processing Initial License Applications; Time-frames**

**A.** For the purpose of A.R.S. § 41-1073, the Board establishes the following licensing time-frames for an initial license application:

1. Administrative completeness review time-frame: 15 days;
2. Substantive review time-frame: 90 days;
3. Overall time-frame: 105 days.

**A.B.** ~~Within 14 days of receiving an initial license application package~~ The administrative completeness review time-frame listed in subsection (A)(1) begins on the date the Board receives a license application package. During the administrative completeness review time-frame, the Board shall notify the applicant that the package is either complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.

**C.** An initial license application package is not complete until the Board receives the results of the state and federal criminal background check required at A.R.S. § 32-3504(A)(6), and the applicant fully complies with the requirements of R4-45-201, the applicable provisions of R4-45-202 through R4-45-206, and submits the fee prescribed in R4-45-102(A)(3).

**B.D.** ~~An applicant with an incomplete license application package shall supply the missing information within 210 days from the date of the notice. If the applicant fails to do so, the Board may close the file. An applicant whose file has been closed, and who later wishes to become licensed, shall apply anew. Both the administrative completeness review and overall time-frames are suspended from the date of the Board's notice until the date that the Board office receives all missing information.~~

**C.E.** ~~Upon receipt of all missing information, the Board shall notify the applicant that the license application package is complete. The Board shall not send a separate notice of completeness if the Board grants or denies application a license within the administrative completeness review time-frame in subsection (F)(1) (A)(1).~~

**D.** ~~An application for initial licensure is not complete until the Board receives the results of the state and federal criminal background check required at A.R.S. § 32-3504(A)(6), and the applicant fully complies with the requirements of R4-45-~~

201, the applicable provisions of R4-45-202 through R4-45-206, and submits the fee prescribed in R4-45-102(A)(3).

- F.** If an applicant fails to submit the missing information within the 210 days provided under subsection (D), the Board shall close the applicant's file. An applicant whose file is closed and who later wishes to be licensed, shall apply anew.
- ~~E.G.~~ The Board shall grant or deny a license no later than 90 days from the postmark date of the notice advising the applicant that the package is complete. The substantive review time-frame listed in subsection (A)(2) begins on the date of the Board's notice of administrative completeness.
- F.** For the purpose of A.R.S. § 41-1073, the Board establishes the following licensing time-frames for an initial license application:
1. Administrative completeness review time frame: 15 days;
  2. Substantive review time frame: 90 days;
  3. Overall time frame: 105 days.
- H.** If the Board determines during the substantive review that additional information is needed, the Board shall send the applicant a comprehensive written request for the additional information. Both the substantive review and overall time-frames are suspended from the date on the Board's request until the date that the Board office receives the additional information.
- L.** Within the time listed in subsection (A)(3), the Board shall grant or deny a license.
- ~~G.I.~~ If the Board denies a license, the Board shall send the applicant a written notice explaining:
1. The reason for denial, with citations to supporting statutes or rules;
  2. The applicant's right to seek a fair hearing to challenge the denial; and
  3. The time periods period for appealing the denial.

**R4-45-216. Procedures for Issuing Processing License Renewal or Reinstatement Applications; Time-frames**

- A.** For the purposes of A.R.S. § 41-1073, the Board establishes the following licensing time-frames for renewal or reinstatement of a license:
1. Administrative completeness review time-frame: 7 days;
  2. Substantive review time-frame: 60 days;
  3. Overall time-frame: 67 days.
- ~~A.B.~~ The administrative completeness review time-frame listed in subsection (A)(1) begins on the date the Board receives a license renewal application package. Within 7 seven days of receiving a license renewal application package, the Executive Director shall notify ~~an~~ the applicant that the license renewal application package is complete or incomplete. If the license renewal application package is incomplete, the Board's notice shall specify the missing information.
- C.** An A license renewal application package for license renewal is not complete until the applicant fully complies with R4-45-207 and R4-45-208.
- ~~B.D.~~ The Board shall not send a notice of completeness if the Board renews the license within the administrative completeness time-frame in subsection (F)(1) (A)(1).
- ~~D.E.~~ The Board shall substantively review a license renewal application package and grant or deny a license the renewal within 60 days from the postmark date of the completion notice (the substantive review time frame) as follows:
1. For a license renewal an applicant who submits an a license renewal application package prior to before the expiration date of the applicant's existing license expires:
    - a. If the license renewal application package is complete, the Executive Director Board shall renew the license; or
    - b. If the license renewal application package is incomplete and the applicant supplies the missing information prior to before the date of expiration of the existing license expires, the Executive Director Board shall renew the license;
  2. For an applicant with an incomplete license renewal application package who supplies the missing information within 7 seven days after the date of expiration of a the applicant's license expires, or an applicant who submits a complete license renewal application package within 7 seven days after the date that the applicant's license expired expires, the Executive Director shall review the applicant's compliance with A.R.S. § 32-3556. The Board shall notify the applicant of the Board requirement for a signed statement that regarding whether the applicant has or has not violated A.R.S. § 32-3556 during the time that the applicant's license was expired. The applicant shall submit the required statement within have 7 seven days from the postmark date of the Board's notice of the required statement to submit the statement. Upon receipt of a complete license renewal application package and the signed statement:
    - a. For an applicant who has did not knowingly violated A.R.S. § 32-3556, the Executive Director Board shall renew the license and issue a letter of concern conditioned upon Board ratification within the substantive review time-frame;
    - b. For an applicant who has knowingly violated A.R.S. § 32-3556, the Board shall:
      - i. deny Deny the renewal unless the applicant can demonstrate to the Board that:
      - ii. No no person has been was harmed by the violation, and
      - iii. The the applicant understands the nature and consequences of the applicant's actions; ; or
      - iii-ii. The Board may grant a conditional renewal based upon its assessment of the evidence presented by the

Notices of Proposed Rulemaking

~~applicant under this subsection. Require the applicant to appear before the Board, present evidence regarding the applicant's violation of A.R.S. § 32-3556, and enter into an agreement regarding discipline. The Board shall conditionally renew the applicant's license. The Board shall remove the condition when the applicant complies fully with the agreement;~~

~~e-3. For an An applicant with an incomplete license renewal application package who supplies the missing information more than 7 seven days after the date of expiration of a the applicant's license expires, or for an applicant who submits an a complete license renewal application package more than 7 seven days but less than 2 two years after the date that the applicant's license expired expires, is an applicant for reinstatement. The Executive Director shall review the applicant's compliance with A.R.S. § 32-3556. The Board shall notify the applicant of the Board requirement for a signed statement that regarding whether the applicant has or has not violated A.R.S. § 32-3556. The applicant shall have 7-submit the required statement within seven days from the postmark date of the Board's notice of the required statement to submit the statement. Upon receipt of the signed statement, the Board shall:~~

- ~~i. deny Deny the renewal reinstatement unless the applicant can demonstrate to the Board that:~~
- ~~i. No no person has been was harmed by the violation, and~~
- ~~ii. The the applicant understands the nature and consequences of the applicant's actions; ; or~~
- ~~iii-ii. The Board may grant a conditional renewal based upon its assessment of the evidence presented by the applicant under this subsection; Require the applicant to appear before the Board, present evidence regarding the applicant's violation of A.R.S. § 32-3556, and enter into an agreement regarding discipline. The Board shall conditionally reinstate the applicant's license. The Board shall remove the condition when the applicant complies fully with the agreement;.~~

~~E. An applicant who submits an application package more than 2 years after the date that the previously held license expired shall apply as a new license applicant.~~

~~F. For the purposes of A.R.S. § 41-1073, the Board establishes the following licensing time frames for renewal or reinstatement of a license:~~

- ~~1. Administrative completeness review time frame: 7 days;~~
- ~~2. Substantive review time frame: 60 days;~~
- ~~3. Overall time frame: 67 days.~~

~~G.F. If the Board denies a license renewal or reinstatement, the Board shall send the applicant written notice explaining:~~

- ~~1. The reason for denial, with citations to supporting statutes or rules;~~
- ~~2. The applicant's right to seek a fair hearing to challenge the denial; and~~
- ~~3. The time periods period for appealing the denial.~~

**R4-45-217. Appeal from Denial**

~~A. If the Board denies an application a license, an applicant may make a written request for a hearing to review the denial. The applicant shall file the request with the Board within 15 30 days following service of notice of the denial. The request shall state specifically the reasons why the Board should review its decision. The Board shall schedule the hearing at its next meeting or at the 1st first meeting that is convenient for all parties. The Board shall conduct the hearing in accordance with A.R.S. § 41-1092 et seq.~~

~~B. If an applicant whose application who is denied a license does not request a hearing to review the denial or if the denial is affirmed, the Board shall administratively close the applicant's file. An individual who wishes to be considered for licensure after the individual's file has been is administratively closed shall reapply.~~

**ARTICLE 3. HEARINGS**

**R4-45-301. Hearing Procedures**

~~The following procedures are applicable to all hearings conducted A.R.S. § 32-3553(I):~~

- ~~1. A complaint and notice of hearing upon all parties at least 20 days before the date set for hearing.~~
- ~~2. A licensee served with a complaint and notice of hearing shall file an answer within 10 days of service of the complaint, admitting or denying each allegation of the complaint.~~
- ~~3. Before the hearing, a complaint and notice of hearing may be amended to add new or additional grounds. The licensee shall file an amended answer to the amended complaint within 10 days of being served.~~
- ~~4. If a party fails to appear, the hearing may be held in the party's absence.~~
- ~~5. The chairperson of the Board or the designated presiding officer may continue, reschedule, or extend a hearing for good cause or for the performance of acts required by law or the Board.~~
- ~~6. Hearings conducted by the Board shall be open to the public.~~
- ~~7. The designated presiding officer shall conduct the proceedings and rule on the admissibility of evidence.~~
- ~~8. All hearings shall be mechanically or stenographically recorded. The Board is not required to transcribe the record of a hearing unless there is an appeal to the superior court. Upon written request, the Board shall either transcribe the~~

record or allow the individual requesting the record to have it transcribed. In either case, the individual requesting the record shall pay to have it transcribed.

9. ~~In all cases determined by hearing, the Board shall issue a decision and order in accordance with A.R.S. Title 41, Chapter 6.~~

The Board shall conduct all hearings, including those held under A.R.S. § 32-3553, according to the procedures in A.R.S. Title 41, Chapter 6, Article 10 and rules issued by the Office of Administrative Hearings.

**R4-45-302. Rehearing or Review of Decision**

- A. ~~Except as provided in subsection (G), any party who is aggrieved by a decision of the Board may file with the Board, not later than 15 days after service of notice of the decision, a written motion for rehearing or review of the decision specifying the particular grounds for a rehearing or review. The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.~~
- B. ~~A party may amend a motion for rehearing or review at any time before the motion is ruled upon by the Board. Any party may file a response within 10 days after service of a motion or amended motion. The Board may require the filing of written briefs addressing the issues raised in the motion and may provide for oral argument. Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.~~
- C. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- ~~C.D.~~ A motion for The Board may grant a rehearing or review of the decision may be granted based on a contention that the decision was for any of the following reasons materially affecting a party's rights:
1. Founded on or contained errors of law including errors of construction or application of relevant rule, Irregularity in the proceedings of the Board or any order or abuse of discretion that deprived the moving party of a fair hearing;
  2. Unsupported by any competent evidence as disclosed by the entire record, Misconduct of the Board, its staff, or an administrative law judge;
  3. Materially affected by unlawful procedures; Accident or surprise that could not have been prevented by ordinary prudence;
  4. Based on a violation of any constitutional provision, or Newly discovered evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
  5. Arbitrary or capricious. Excessive penalty;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; or
  7. The findings of fact or decision is not justified by the evidence or is contrary to law.
- ~~D.E.~~ The Board may affirm or modify the a decision or grant a rehearing or review to all or some of the parties and on all or some of the issues for any of the reasons set forth in subsection (C) (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the ground or grounds for the order, on which the If a rehearing or review is granted, and the rehearing or review shall cover only those the matters specified in the order.
- ~~E.F.~~ Not later than 15 days after the date of a decision is rendered, and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of its decision for any reason it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. The An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted.
- ~~F.G.~~ When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may serve opposing affidavits within 10 15 days after service of the motion. This period may be extended by the Board for an additional period not exceeding a maximum of 20 days for good cause shown as described in subsection (H) or upon written stipulation of the parties. Reply affidavits may be permitted.
- H.** The Board may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have been known in time, using reasonable diligence, and a ruling on the motion will:
1. Further administrative convenience, expedition, or economy; or
  2. Avoid undue prejudice to any party.
- ~~G.I.~~ If, in a particular decision, the Board makes a specific findings finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare, the decision may be issued as a final decision without an opportunity for rehearing or review. If an application for judicial review of the decision is made, it shall be made in accordance with under A.R.S. § 12-901 et seq.



Telephone: (602) 417-4484  
Fax: (602) 253-9115  
E-mail: Linda.Barry@azahcccs.gov

Proposed rule language will be available on the AHCCCS web site [www.ahcccs.state.az.us](http://www.ahcccs.state.az.us) the week of November 21, 2005. Please send written comments to the address in this item by 5:00 p.m., January 12, 2006. E-mail comments will be accepted.

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

Date: January 12, 2006  
Time: 2:00 p.m.  
Location: AHCCCS  
701 E. Jefferson  
Phoenix, AZ 85034  
Nature: Public Hearing

Date: January 12, 2006  
Time: 2:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
110 S. Church, Suite 1360  
Tucson, AZ 85701  
Nature: Public Hearing

Date: January 12, 2005  
Time: 2:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
3480 E. Route 66  
Flagstaff, AZ 86004  
Nature: Public Hearing

**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 9. HEALTH SERVICES**

**CHAPTER 29. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
MEDICARE COST SHARING PROGRAM**

**ARTICLE 3. BENEFITS AND SERVICES**

Section  
R9-29-302. Dually Eligible Member



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

Notice of Rulemaking Docket Opening: 11 A.A.R. 5219, December 9, 2005

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

Name: Linda Barry  
Address: AHCCCS  
Office of Legal Assistance  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4484  
Fax: (602) 253-9115  
E-mail: AHCCCSRules@azahcccs.gov

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

The Administration has initiated rulemaking for the Extra Help subsidy program. When a person is approved for the Extra Help program, Centers for Medicare & Medicaid Services (CMS) helps pay an applicant's premium, deductible, and copayments associated with the Medicare Part D prescription drug program. The applicant may apply for the Extra Help subsidy program with the Social Security Administration or with the Administration, under the requirements of Section 1860D-14(a)(3) of the Act. The Administration shall determine eligibility for the Extra Help applicant when the individual applies with AHCCCS instead of the Social Security Administration.

**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 Administration did not review any study relevant to these rules.

**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 contractors, members, providers, the Administration will be minimally impacted by the creation of the Extra Help Subsidy Program's rule language. The Administration is initiating the rulemaking to make the rules consistent with the federal law changes for the Medicare Part D prescription drug benefit program.

**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: Linda Barry  
Address: AHCCCS  
Office of Legal Assistance  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4484  
Fax: (602) 253-9115  
E-mail: Linda.Barry@azahcccs.gov

Proposed rule language will be available on the AHCCCS web site [www.ahcccs.state.az.us](http://www.ahcccs.state.az.us) the week of November 21, 2005. Please send written comments to the above address by 5:00 p.m., January 12, 2005. E-mail comments will be accepted.

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

Date: January 12, 2005  
Time: 2:00 p.m.  
Location: AHCCCS  
701 E. Jefferson  
Phoenix, AZ 85034  
Nature: Public Hearing

Notices of Proposed Rulemaking

Date: January 12, 2005  
Time: 2:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
110 S. Church, Suite 1360  
Tucson, AZ 85701  
Nature: Public Hearing

Date: January 12, 2005  
Time: 2:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
3480 E. Route 66  
Flagstaff, AZ 86004  
Nature: Public Hearing

**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:**

- 20 CFR 418.3301 to 418.3350, March 4, 2005, R9-30-207
- 42 CFR 423.773, January 28, 2005, R9-30-207
- 20 CFR 418.3401 to 418.3425, March 4, 2005, R9-30-209
- 42 CFR 423.773, January 28, 2005, R9-30-209
- 20 CFR 418.3010, March 4, 2005, R9-30-211
- 42 CFR 423.773, 42 CFR 423.780, and 42 CFR 423.782, January 28, 2005, R9-30-213

**13. The full text of the rules follows:**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 30. ~~REPEALED~~ ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
MEDICARE PART D PRESCRIPTION COVERAGE EXTRA HELP SUBSIDY PROGRAM**

**ARTICLE 1. DEFINITIONS**

Section  
R9-30-101. General Definitions

**ARTICLE 2. ELIGIBILITY**

Section  
R9-30-201. General  
R9-30-202. Opportunity to Apply  
R9-30-203. How to File an Application  
R9-30-204. Assistance with an Application  
R9-30-205. Social Security Number (SSN)  
R9-30-206. Residency  
R9-30-207. Income  
R9-30-208. Ineligible Person  
R9-30-209. Resources  
R9-30-210. Verification  
R9-30-211. Medicare Requirements  
R9-30-212. Eligibility Determination  
R9-30-213. Determination of Extra Help Subsidy Level  
R9-30-214. Notice of Eligibility Determination by AHCCCS

<u>R9-30-215.</u>	<u>Effective Date of Eligibility</u>
<u>R9-30-216.</u>	<u>Discontinuance or Change in Level of Subsidy</u>
<u>R9-30-217.</u>	<u>Redetermination</u>
<u>R9-30-218.</u>	<u>Reporting Changes</u>

**ARTICLE 3. SERVICES**

Section	
<u>R9-30-301.</u>	<u>Administration's Requirements</u>

**ARTICLE 4. GRIEVANCE SYSTEM**

Section	
<u>R9-30-401.</u>	<u>General Provisions for a State Fair Hearing</u>
<u>R9-30-402.</u>	<u>Eligibility Hearing for an Applicant or a Member</u>

**ARTICLE 1. DEFINITIONS**

**R9-30-101. General Definitions**

In addition to definitions contained under 20 CFR 418.3010, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

"Act" means the Social Security Act

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

"Extra Help" means the subsidies that are available for Medicare Part D premiums, deductibles, and co-payments in accordance with Section 1860D-14 of the Act.

"SSA" means the Social Security Administration

**ARTICLE 2. ELIGIBILITY**

**R9-30-201. General**

- A. In accordance with the requirements of Section 1860D-14(a)(3) of the Act, the applicant may apply for Extra Help with the Social Security Administration or with AHCCCS. AHCCCS shall first offer to help an applicant complete the Social Security Administration's application for Extra Help. AHCCCS shall determine eligibility for Extra Help under this Article when the applicant declines to apply to SSA for the Extra Help program.
- B. Confidentiality. The Administration shall maintain the confidentiality of an applicant's or member's records and limit the release of safeguarded information under R9-22-512.

**R9-30-202. Opportunity to Apply**

The Administration shall provide the opportunity to apply without delay.

**R9-30-203. How to File an Application**

- A. To apply for the Extra Help, a person shall submit a written application form prescribed by AHCCCS to any AHCCCS office or outstation location.
- B. The application is considered filed and complete under R9-22-1501 (C).
- C. An application shall be submitted by:
  - 1. The applicant, or
  - 2. The applicant's personal representative.

**R9-30-204. Assistance with an Application**

- A. AHCCCS shall allow a personal representative of an applicant's choice to accompany, assist, and represent the applicant in the application process.
- B. Assistance by AHCCCS. If requested, AHCCCS shall help a person complete an application.

**R9-30-205. Social Security Number (SSN)**

To be eligible for Extra Help, a person shall furnish a SSN or apply for a SSN.

**R9-30-206. Residency**

To be eligible for Extra Help, a person shall reside in Arizona.

**R9-30-207. Income**

- A.** AHCCCS shall calculate countable income under 20 CFR 418.3301 through 418.3350, as of March 4, 2005, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
- B.** AHCCCS shall determine income eligibility under 42 CFR 423.773 as of January 28, 2005, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

**R9-30-208. Ineligible Person**

A person residing in a penal institution is not eligible under this Article.

**R9-30-209. Resources**

- A.** AHCCCS shall calculate countable resources under 20 CFR 418.3401 through 418.3425, as of March 4, 2005, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
- B.** AHCCCS shall determine resource eligibility under 42 CFR 423.773, as of January 28, 2005, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

**R9-30-210. Verification**

To be eligible for Extra Help, a person shall provide verification, or authorize the release of verification, for all information necessary to complete the determination of eligibility.

**R9-30-211. Medicare Requirements**

To be eligible for Extra Help, a person must be a Medicare beneficiary as defined in 20 CFR 418.3010, as of March 4, 2005, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

**R9-30-212. Eligibility Determination**

Determinations of eligibility for subsidies under this Chapter are made by the AHCCCS within 45 days if the individual applies with AHCCCS.

**R9-30-213. Determination of Extra Help Subsidy Level**

AHCCCS shall determine the amount of an applicant or member's Extra Help subsidy under 42 CFR 423.773, 42 CFR 423.780, and 42 CFR 423.782, as of January 28, 2005, which are incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

**R9-30-214. Notice of Eligibility Determination by AHCCCS**

- A.** Notice. The administration shall send an applicant written notice of the eligibility decision. The notice shall include a statement of the action and an explanation of an applicant or member's hearing rights under 9 A.A.C. 34, Article 1.
- B.** Approval. If AHCCCS determines that the applicant is eligible, the notice shall contain the effective date of eligibility and the level of the Extra Help subsidy.
- C.** Denial. If AHCCCS determines that the applicant is not eligible, the notice shall contain:
1. The effective date of the decision;
  2. A statement detailing the reason for the decision, including specific financial calculations and the financial eligibility standard if applicable; and
  3. The legal authority supporting the decision.

**R9-30-215. Effective Date of Eligibility**

The effective date of eligibility is the first day of the first month that the applicant is eligible for Extra Help under this Article, but no earlier than the month in which the applicant applies or January 1, 2006, whichever is later.

**R9-30-216. Discontinuance or Change in Level of Subsidy**

- A.** Discontinuance. AHCCCS shall discontinue a person's eligibility if any of the conditions of eligibility under this Article are not met.
- B.** Change in the Level of Subsidy. AHCCCS will adjust the level of the Extra Help subsidy, if a change in countable income or a change in countable resources causes the subsidy level to change.

**C. Notice.**

1. AHCCCS shall follow the discontinuance notice requirements under R9-22-1501(J).
2. AHCCCS will issue a notice if there is a change in the level of the Extra Help subsidy.

**R9-30-217. Redetermination**

AHCCCS shall redetermine an individual's eligibility at least every 12 months.

**R9-30-218. Reporting Changes**

A member shall report any changes to AHCCCS, under R9-22-1501(G).

**ARTICLE 3. SERVICES**

**R9-30-301. Administration's Requirements**

The Administration and Administration's designee are under no legal obligation to provide pharmaceutical services to individuals approved for Extra Help.

**ARTICLE 4. GRIEVANCE SYSTEM**

**R9-30-401. General Provisions for a State Fair Hearing**

A request for State Fair Hearing under this Chapter shall comply with 9 A.A.C. 34, Article 1.

**R9-30-402. Eligibility Hearing for an Applicant or a Member**

An eligibility hearing for a member or an applicant under this Chapter shall comply with 9 A.A.C. 34, Article 1.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

[R05-427]

**PREAMBLE**

**1. Sections Affected**

R20-5-1001  
R20-5-1002  
R20-5-1002  
R20-5-1003  
R20-5-1003  
R20-5-1004  
R20-5-1004  
R20-5-1005  
R20-5-1005  
R20-5-1006  
R20-5-1006  
R20-5-1007  
R20-5-1007  
R20-5-1008  
R20-5-1008  
R20-5-1009

**Rulemaking Action**

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

**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. §§ 23-107(A)(1), 23-350, and 23-361

Implementing statutes: A.R.S. §§ 23-107(A)(3), 23-356, 23-357, 23-358, and 23-359

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

Notice of Rulemaking Docket Opening: 11 A.A.R. 5131, December 2, 2005

Notices of Proposed Rulemaking

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

Name: Patricia K. Husbands, Esq.  
Legal Division  
Industrial Commission of Arizona  
Address: 800 W. Washington St., Suite 303  
Phoenix, AZ 85007  
Telephone: (602) 542-5781  
Fax: (602) 542-6783  
E-mail: phusbands@ica.state.az.us

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

Employees may file a claim with the Industrial Commission of Arizona, Department of Labor, for unpaid wages of \$2,500.00 or less. When an employee files a claim with the Department, the Department notifies the employer of the claim and requests the employer submit information concerning the claim. Depending on the information submitted by the employee and employer, the Department may perform additional investigation concerning the claim. After investigation of the claim, the Department issues a written determination stating whether the employer owes the wages claimed or that no determination can be made. An employer who does not comply with the Department's determination within ten days after the determination becomes final is liable for triple the amount of the unpaid wages owed.

The existing rules were made in 1988. Since that time, practices and procedures have changed in the Department of Labor and the format and style changes for rules have also changed. The Department has initiated this rulemaking to amend existing rules and to make new rules that will:

1. Update existing rules to conform to current rulemaking format and style requirements;
2. Update existing rules to conform to the Secretary of State's format;
3. Conform the rules to existing practices;
4. Promote ease of use and improved understanding of the rules; and
5. Reduce the time period for the wage claim process by changing the time from 15 calendar days to 10 calendar days.

**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:**

Not applicable

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

The proposed rulemaking will not result in any measurable economic impact on small businesses or consumers. The economic impact to the Commission as a result of these rules will be minimal costs associated with printing the rules in a booklet for distribution to the public.

**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: Patricia K. Husbands, Esq.  
Legal Division  
Industrial Commission of Arizona  
Address: 800 W. Washington St., Suite 303  
Phoenix, AZ 85007  
Telephone: (602) 542-5781  
Fax: (602) 542-6783  
E-mail: phusbands@ica.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:**

Date: January 9, 2005  
Time: 10:00 a.m.

Notices of Proposed Rulemaking

Location: Industrial Commission of Arizona, 3rd Floor, Room 308  
800 W. Washington St.  
Phoenix, AZ 85007

Nature: Oral and written comments will be accepted on or before the date set forth in this item.

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

Not applicable

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

Not applicable

**13. The full text of the rules follows:**

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 10. WAGE CLAIMS

Section

- R20-5-1001. Definitions
- R20-5-1002. ~~Filing of Claim Forms~~
- R20-5-1003. Filing Requirements; Time for Filing; Computation of Time
- ~~R20-5-1003.~~ R20-5-1004. Investigation of Claim
- ~~R20-5-1004.~~ R20-5-1005. Mediation of Disputes
- ~~R20-5-1005.~~ R20-5-1006. Dismissal of Claim
- ~~R20-5-1006.~~ R20-5-1007. Determination of Claim Notice of Right of Review
- ~~R20-5-1007.~~ R20-5-1008. Payment of Claim
- ~~R20-5-1009.~~ Service of Determinations, Notices and Other Documents

ARTICLE 10. WAGE CLAIMS

**R20-5-1001. Definitions**

In this Article, unless the context otherwise requires:

1. "Claim" means a wage claim pursuant to A.R.S. § 23-356.
2. "Claimant" means a person who files a wage claim.
3. "Day" means calendar day.
- ~~3-4.~~ "Department" means the Labor Department of the Industrial Commission of Arizona.
- ~~4-5.~~ "Determination" means an action by the Department pursuant to under A.R.S. § 23-357 in which the Department finds that a wage claim is either valid or invalid or that the Department cannot resolve the dispute.
- ~~5-6.~~ "Director" means the Director of the Department.
- ~~6-7.~~ "Dismissal" means an action by the Department in which the Department makes no determination regarding the validity of the claim and refers the claimant to other statutory remedies.
- ~~7-8.~~ "Notice" or "notification" when made by the Department or the Director means a written communication transmitted to the employer or claimant or both by ordinary mail.

**R20-5-1002. Filing of Claim Forms**

~~A.~~ All wage claims shall be filed on forms approved by the Department which are incorporated herein by reference and on file with the Office of the Secretary of State. The claim shall contain the claimant's complete name, address and telephone number and the complete name, address and telephone number of the employer. The claim shall contain the dollar amount of the wages claimed and the nature and date of the adverse wage action. The claim shall be signed by the claimant.

The following forms are available upon request from the Department or from the Industrial Commission's Internet web site at [www.ica.state.az.us](http://www.ica.state.az.us):

1. Wage Claim. A claimant shall provide the following information to include:
  - a. Claimant's name, address, telephone number, date of birth;
  - b. Employer's name, address, telephone number, description of business;
  - c. Claimant's dates of employment, position, and pay;
  - d. The amount of the wages claimed and whether the claimant requested payment of the wages from employer; and
  - e. Claimant's signature and signature date.

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2. Employer's Response. An employer shall provide the following information to include:

- a. Employer's name, address, telephone number, description of business;
- b. Claimant's dates of employment, position, and pay;
- c. Whether claimant is owed any wages, and, if so, employer's reason for nonpayment; and
- d. Employer's signature and signature date.

~~B. The date the wage claim form is actually received by the Department shall be considered the date of filing the claim.~~

~~C. If the claim does not contain the information required in subsection (A), the Department will contact the claimant by telephone or return the claim to the claimant by ordinary mail for completion of the claim. The claimant shall return the completed claim to the Department within 15 days of the Department's notification.~~

~~D. A copy of the claim, together with an employer response form incorporated herein by reference and on file with the Office of the Secretary of State shall be sent by ordinary mail to the employer listed on the claim.~~

**R20-5-1003. Filing Requirements; Time for Filing; Computation of Time**

A. A wage claim must be filed within one year of the date of the accrual of the wages claimed.

B. In computing any period of time prescribed or allowed by this Article, the day of the act or event from which the designated period of time begins to run is not included. The last day of the period, Saturdays, Sundays, and legal holidays are included in the computation of time.

C. The date of filing of the claim shall be the date the claimant's wage claim form is received by the Department.

D. The Department shall deem a form, document, instrument, or other written record filed at the Tucson office as filed at the Phoenix office for the purpose of computing time.

E. An individual filing a wage claim form or document shall legibly fill out the form or document in ink or type.

F. If the wage claim form received from claimant does not include the information required by R20-5-1002(1), the Department shall return the wage claim form to the claimant by regular mail with a request that the claimant provide the required information and return the completed wage claim form to the Department within 10 days of the date of the Department's request. If the Department does not receive the completed wage claim form within 10 days, the Department shall not initiate an investigation of the claim and the claim shall be considered withdrawn without prejudice to the claimant. Claimant may refile the same wage claim with the information required by R20-5-1002(1), provided the claim is refiled within one year of the date of the accrual of wages claimed.

**R20-5-1003.R-20-5-1004. Investigation of Claim**

~~A. The employer~~ Upon receipt of a completed wage claim form, the Department shall respond to the claim on the employer response form provided by the Department no later than 15 days after the Department mails the employer a copy of the claim by ordinary mail. mail a copy of the claimant's wage claim form within 10 days after receipt to the employer listed on the wage claim, with a request that the employer complete the employer's response form and file it with the Department within 10 days of the date of the Department's mailing.

~~B. If the employer fails or refuses to submit a response to the claim~~ Department does not receive the employer's response form in accordance with ~~under~~ subsection (A), the Department will shall notify provide written notice to the employer in writing stating that the employer must pay the amount claimed or submit file a written response to the wage claim within 15 10 days of the date of the Department's notification. written notice.

~~C. If the employer's employer timely files the employer's response form under subsection (A), but the response is incomplete or lacks documentation, the employer~~ Department shall submit further mail the employer a letter requesting the employer file the required information or documentation within 15 10 days of the date of the Department's notification of the deficiency to the employer. letter. If the employer fails or refuses to submit Department does not receive the required information or documentation required by the Department, within the 10 days, the Department will shall make a determination regarding of the claim based on the evidence in the file.

~~D. If the employer's response disputes or protests the amount of wages claimed by the claimant, the Department shall send mail a copy of the employer's response to the claimant and give offer the claimant the opportunity to file a written reply to the employer's response within 15 10 days from the date of notification by the Department's mailing by ordinary mail to reply to the employer's response. If the claimant fails or refuses to respond, Department does not receive claimant's reply within 10 days, the Department will shall make a determination of the claim based on the evidence in the file.~~

~~E. If the employer fails or refuses to pay the amount claimed or submit a written response to the claim in accordance with subsection (B), the Department will shall make a determination of the claim based on the evidence in the file.~~

~~F. Upon request from the Department, and, if necessary to complete the Department's investigation, The the claimant, the employer, or both parties, shall submit further written information or shall meet with the Director or his designee if necessary, to complete the Department's investigation of a claim. Except for a statement made during settlement, mediation, or informal conferences conference, the Director or his designee shall administer oaths for the purpose of taking affidavits and shall tape record the meeting.~~

~~G. Upon completion of its investigation, the Department shall notify the parties to the claim of its determination in writing.~~

**R20-5-1004.R20-5-1005. Mediation of Disputes**

~~A. During the investigation of a claim, the Department is authorized to mediate and conciliate a claim between the claimant and the employer.~~

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- B. If mediation results in an informal resolution of the claim, the Director ~~will~~ shall prepare and ~~execute~~ ensure execution of the documents providing for the case resolution ~~and close the file.~~

~~R20-5-1005~~, **R20-5-1006. Dismissal of Claim**

- A. The Department ~~will~~ shall dismiss ~~the~~ a claim if:
- ~~1. If an incomplete claim is not responded to by the claimant within 15 days of the Department's return of the claim by ordinary mail or if a~~ The claim is filed more than one year after the date of the accrual of the wages claimed; or the amount of wages claimed exceeds \$2,500.
  - ~~2. If the Department's investigation of the claimant's evidence reveals no possible violation of A.R.S. § 23-350 et seq.~~ The claimant does not comply with R20-5-1003(F);
  - ~~3. If the Department's investigation reveals that the claimant has filed a civil action regarding the same adverse wage action which is the subject of the claim.~~ The amount of wages claimed exceeds \$2,500.00;
  - ~~4. If the The Department's investigation reveals that the employer listed on the claim is in bankruptcy.~~ of the claimant's evidence reveals no possible violation of A.R.S. § 23-350 et seq.;
  - ~~5. If the Department is unable to locate the employer based on the information provided by the claimant.~~ The claimant has filed a civil action regarding the same adverse wage action which is the subject of the claim;
  - ~~6. If the Department's investigation reveals that the wages in question have been withheld from the claimant pursuant to the claimant's prior written authorization.~~ The employer listed on the claim is in bankruptcy;
  - ~~7. The Department is unable to locate the employer based on the information provided by the claimant; or~~
  - ~~8. The wages in question have been withheld from the claimant pursuant to the claimant's prior written authorization.~~
- B. All ~~notices~~ Notices of dismissal ~~will~~ shall notify the claimant of the availability of other remedies. ~~The Department shall send a notice of dismissal to the claimant and, Except except as provided in subsections (A)(1) through (A)(3) and (7), the Department will~~ shall send a ~~copy of the~~ notice of dismissal to the employer.

~~R20-5-1006~~, **R20-5-1007. Determination of Claim Notice of Right of Review**

- A. All ~~determinations~~ A determination issued under A.R.S. § 23-357 shall include a notice ~~will notify~~ informing the parties of their right to seek review ~~pursuant to~~ under A.R.S. § 23-358 and § 12-901 et seq.
- B. All ~~determinations~~ A determination will be served on the parties by ordinary mail.

~~R20-5-1007~~, **R20-5-1008. Payment of Claim**

- A. ~~Payments of wage claims~~ The Department shall send any payment of the wage claim received by the Department ~~will promptly be sent to the claimant by ordinary certified mail, accompanied by a return receipt form for signature by the claimant and returnable to the Department. requested.~~
- ~~B.~~ The Department will send a copy of the signed receipt to the employer.
- ~~C.~~ B. If the Department discovers that payment of a wage claim is alleged to have been made directly to the claimant, the Department will verify such payment by ~~letter~~ certified mail, return receipt requested within 10 days of mailing to the claimant. If the claimant does not respond to the Department's letter within ~~15~~ 10 days of the date of the Department's letter, the Department ~~will~~ shall deem the claim to have been paid.
- ~~D.~~ C. Payment of a partial amount of a wage claim does not preclude the Department from completing its investigation of the balance of the claim.
- ~~E.~~ D. In the case of a determination and directive for payment issued by the Department ~~pursuant to~~ under A.R.S. § 23-357, the Department shall, if the employer agrees and, with the written consent of the claimant, enter into a payment agreement with the employer for payment of the amount of wages found to be owed the claimant.

**R20-5-1009. Service of Determinations, Notices and Other Documents**

- A. A determination, notice, or other document required by this Article or by law to be mailed or served upon a party, shall be made upon the party, or, if represented by legal counsel, the party's legal counsel. Service upon legal counsel shall be considered service upon the party.
- B. Service may be made and is deemed complete by depositing the document in regular or certified mail, addressed to the party served at the address shown by the records of the Commission, or by personal delivery upon the party.