

## 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 6. ECONOMIC SECURITY

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

*Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor's Office authorized the notice to proceed through the rulemaking process on May 25, 2010.*

[R11-11]

#### PREAMBLE

**1. Sections Affected**

Article 23  
R6-6-2301  
R6-6-2302  
R6-6-2303  
R6-6-2304  
R6-6-2305  
R6-6-2306  
R6-6-2307  
R6-6-2308  
R6-6-2309  
R6-6-2310  
R6-6-2311

**Rulemaking Action**

New Article  
New Section  
New Section  
New Section  
New Section  
New Section  
New Section  
New Section  
New Section  
New Section  
New Section  
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. § 41-1954(A)(3)

**Implementing statutes:** A.R.S. § 36-554(C)(6) and A.R.S. §§ 36-557 and 36-595, as amended by Laws 2010, 49th Legislature, 2nd Regular Session, Ch. 228

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

Notice of Rulemaking Docket Opening: 17 A.A.R. 301, February 25, 2011 (*in this issue*)

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

Name: Beth Broeker

Address: Department of Economic Security  
P.O. Box 6123, Site Code 837A  
Phoenix, AZ 85005

or

Department of Economic Security  
1789 W. Jefferson St., Site Code 837A  
Phoenix, AZ 85007

Telephone: (602) 542-6555

Fax: (602) 542-6000

E-mail: bbroeker@azdes.gov

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

The purpose of this rulemaking is to provide a process by which the Department can grant deemed status to providers of services for people with developmental disabilities. The rules will also explain the requirements for providers presenting evidence of current accreditation from a nationally recognized organization.

**6. A reference to any study relevant to the rules that the agency reviewed and proposes to either rely on or not to rely on in its evaluation of or justification for the rules, 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 anticipated economic impact of this rulemaking is minimal, as any costs incurred are voluntary and result from legislative action, not the rulemaking itself. The persons who will be directly impacted by this rulemaking are businesses and individuals who provide services to persons with developmental disabilities. Neither the enabling legislation nor the rulemaking impose any obligation on a provider to obtain national accreditation. For those providers who choose to obtain national accreditation, the Department anticipates that the economic impact will be moderate to substantial. The cost to providers to obtain national accreditation that would entitle them to apply for deemed status under this rule is a business cost that the provider will assume, in anticipation of the market benefits associated with national accreditation, and the decreased costs that may result from less monitoring by the Department. No individual consumers will be directly impacted by this rulemaking.

The anticipated economic impact of this rulemaking on the Department includes the minimal cost associated with administering the program and the cost of rulemaking activity. This cost may be off-set in part or in whole by the reduction in expenses resulting from the decreased monitoring of providers that apply for and obtain deemed status. Other than the cost of rulemaking activity, the Department does not expect the rulemaking to have any additional economic impact on any other public entities or agencies.

**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:**

Individuals requiring additional information should contact the person listed in item 4.

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

The Department does not plan to hold oral proceedings on this rule unless a written request is submitted to the individual listed in item 4.

**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 6. ECONOMIC SECURITY**

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

**ARTICLE 23. DEEMED STATUS**

Section

<u>R6-6-2301.</u>	<u>Definitions</u>
<u>R6-6-2302.</u>	<u>Deemed Status: Eligibility, Application, and Limitations</u>
<u>R6-6-2303.</u>	<u>Time-frame for Department Review of Application</u>
<u>R6-6-2304.</u>	<u>Responsibilities of Provider with Deemed Status</u>
<u>R6-6-2305.</u>	<u>Expiration and Renewal of Deemed Status</u>
<u>R6-6-2306.</u>	<u>Notice of Change in Accreditation</u>

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- R6-6-2307. Non-assignability of Deemed Status
- R6-6-2308. Monitoring of Provider with Deemed Status
- R6-6-2309. Revocation of Deemed Status
- R6-6-2310. Administrative Review, Appeal, and Hearing
- R6-6-2311. Judicial Review

**ARTICLE 23. DEEMED STATUS**

**R6-6-2301. Definitions**

1. "Accredited" means a status conferred on a provider by a nationally recognized agency that indicates the provider meets the professional standards of the reviewing body.
2. "Applicant" means a provider requesting deemed status from the Department.
3. "Application" means the letter, documents, and additional information the Department requires an applicant to submit to request deemed status.
4. "Complete application" means an application that conforms to the requirements of this Article and that provides sufficient information for the Department to determine that the standards of the accrediting body meet Department standards.
5. "Day" means a calendar day.
6. "Department" means the Arizona Department of Economic Security.
7. "Deemed status" means that the Department has determined that a provider has been accredited by a nationally recognized organization whose accreditation standards meet Department standards for the program or service offered by the provider to Department consumers.
8. "Division" means the Division of Developmental Disabilities within the Arizona Department of Economic Security.
9. "Department standards" means programmatic and contractual requirements set forth in statute, rule, contract, policy, and procedure for the program or service to which the standard applies.
10. "Documentation" means written information in any medium.
11. "Nationally recognized agency" means a nationally recognized accrediting body for organizations, programs, and services that correspond to organizations, programs, and services for which a provider seeks deemed status under this rule. A list of nationally recognized agencies approved by the Department for purposes of deemed status is available on the Division's web site at: <http://www.azdes.gov/developmentaldisabilities/>.
12. "Provider" means an individual, agency, or other organization that provides or seeks to provide programs and services to Division consumers.

**R6-6-2302. Deemed Status: Eligibility, Application, and Limitations**

**A. To be eligible for deemed status, the provider shall:**

1. Have a current accreditation from a nationally recognized accrediting agency for organizations, programs, and services the provider offers or seeks to offer to Division consumers.
2. Submit a letter to the Department's Division of Developmental Disabilities applying for deemed status. The letter shall:
  - a. Name the accrediting agency.
  - b. Specify the applicant's programs or services that the nationally recognized agency has accredited.
  - c. Include documentation of:
    - i. The current accreditation certificate;
    - ii. Specific programming policies and procedures for populations being served;
    - iii. Credentials for staff providing services to populations served by the applicant;
    - iv. All correspondence between the provider and the accrediting agency, including survey/credentialing reports, notices or deficiencies, quality improvement plans, and any similar correspondence that pertains to the programs, services, and staff providing the programs and services for which the provider seeks deemed status;  
and
  - d. State that the provider agrees to adhere to and be accountable for meeting all Department standards.

**B. The Department shall only grant deemed status to providers who apply and satisfy the eligibility criteria set forth in subsection (A).**

**R6-6-2303. Time-frame for Department Review of Application**

**A. Within 30 days of receiving an application for deemed status, the Department shall:**

1. Review the application for completeness, and
2. Send written notification to the applicant if the application is incomplete. The written notification shall state:
  - a. The reason the Department considers the application to be incomplete,
  - b. The information the applicant is required to submit to complete the application,
  - c. The time-frame for submitting the additional information.

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- B.** Within 45 days of receipt of a complete application, the Division shall notify the applicant in writing whether the application satisfies Department requirements for deemed status.

**R6-6-2304. Responsibilities of a Provider with Deemed Status**

- A.** A provider with deemed status shall adhere to and be accountable for meeting all Department standards, as specified in statute, rule, contract, Department and Division policies, and Department and Division procedures.
- B.** A provider with deemed status shall provide the Department timely and complete documentation of any communication between the provider and the accrediting organization that pertains to the programs, services, and staff providing the programs and services for which the Department has granted deemed status to the provider. Timely and complete documentation means that the provider shall send the Division a complete copy of all communication between the provider and the accrediting agency within 10 days of sending or receiving the communication.

**R6-6-2305. Expiration and Renewal of Deemed Status**

- A.** Deemed status shall expire on the earlier of the expiration date of the provider's accreditation at the time of application for deemed status, or three years from the date deemed status is granted by the Department.
- B.** The Department shall renew deemed status using the same procedures as those set forth in this Article for initial application.

**R6-6-2306. Notice of Change in Accreditation**

- A.** The provider with deemed status shall advise the Department of any change in the provider's accreditation within 10 days of such change.
- B.** Failure to provide timely notice of a change in accreditation status is grounds for revocation of deemed status.

**R6-6-2307. Non-assignability of Deemed Status**

Deemed status is not assignable or transferable.

**R6-6-2308. Monitoring of Provider with Deemed Status**

- A.** The Department shall reduce its required group home monitoring visits from two times a year to one time a year for a provider with deemed status.
- B.** If the Department determines that there is reasonable cause to believe the provider with deemed status is not adhering to Department standards, as required under R6-6-2304, the Department or its designee may enter the premises at any reasonable time for the purpose of determining the state of the provider's compliance with the programmatic or contractual requirements of the Department.
- C.** A provider's deemed status shall not limit the Department's ability to conduct a full investigation, including site visits, at any time in response to complaints, incidents, or health and safety concerns, or to require corrective action or impose other sanctions in accordance with contract and law.
- D.** The Department shall report all complaints, findings, and required corrective action to the accrediting organization.

**R6-6-2309. Revocation of Deemed Status**

- A.** The Department shall revoke deemed status:
1. When the accreditation body finds instances of uncorrected noncompliance with accreditation requirements;
  2. When the accreditation status of the provider, program, or service expires without renewal;
  3. When the provider's accreditation status is withdrawn by the accreditation body or is downgraded to a level or category that does not meet Department standards;
  4. When the Department finds that the provider is not adhering to Department standards;
  5. When the Department finds that the standards of the accrediting organization no longer meet Department standards;
  6. If the accrediting body ceases to exist; or
  7. If the Department determines that the provider has not timely reported a change in its accreditation status under this Section.
- B.** The Department shall give a provider with deemed status written notice of the Department's decision to revoke deemed status. The written notice shall inform the provider of the right to administrative review if the provider disagrees with the Department's revocation decision.

**R6-6-2310. Administrative Review, Appeal and Hearing**

- A.** A provider seeking administrative review of the Department's decision to revoke deemed status may, within 35 calendar days of the decision, file a written request for an administrative review by the Division's Compliance and Review Unit.
- B.** The Division's Compliance and Review Unit shall review the request for an administrative review and render a written decision within 30 calendar days of receipt of the request.
- C.** The procedures set forth in R6-6-2201 et seq. shall govern an appeal of any administrative review decision. These procedures provide for a hearing before the Department's Office of Appeals and further review by the Department's Appeals Board.

*Arizona Administrative Register / Secretary of State*  
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**R6-6-2311. Judicial Review**

Any person adversely affected by an Appeals Board decision may seek judicial review as prescribed in A.R.S. § 41-1993.